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Building plan approvals: What you should know

Building plan approvals are regulated by the National Building Regulations and Building Standards Act ('the Act').

Various municipal laws have been promulgated to regulate building plan approvals, including the City of Cape Town's Municipal Planning By-law.

Section 4(1) of the Act provides:

'No person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act.'

This means that any person who intends to build, extend, alter, or demolish a building within the jurisdiction of the City of Cape Town that affects its structure or services must submit a building plan to the City for prior written approval before starting any building work.

Sectional title schemes and complexes managed by homeowners' associations will also have specific building rules to be considered. These may be obtained from the body corporate or HOA.

There may also be variations if you live in a protected or environmentally sensitive area, such as an eco-estate. For heritage buildings, stricter planning rules generally apply, with even minor renovations subject to scrutiny by the South African Heritage Resources Agency ('SAHRA') as well as the local authority.

To get approval from the local authority, detailed plans must be drawn up by an architect and submitted to the municipality, along with all the relevant documentation outlined in the Act.

The building plans show the size, height, and location of the building on an erf, as well as all relevant details.

The municipality will check the plans to ensure that the contemplated building works comply with the minimum construction standards and specifications.

These standards and specifications are more clearly set out in the Act and SANS.

This approval mechanism ensures the integrity and safety of the existing building and/or new structures.

Although planning laws differ across municipalities, the approval of building activities within the City of Cape Town is regulated by the Act. Approval is required in respect of:

- The construction of all new buildings;
- Alterations or extensions to existing buildings;

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- Demolition;
- Major repairs;
- Changing the use of existing buildings without physical alterations (for example, converting a garage into a habitable space); and
- Temporary buildings (including builders' sheds, on-site toilets, and any other structure erected for a construction project).

More specific examples include:

- Constructing a new dwelling, garage, or outbuilding;
- Adding a room, carport, or swimming pool;
- Moving external walls or altering the drainage system;
- Changing the position of the main entrance or windows in ways that affect stability; and
- Demolishing structures that require a demolition permit.

Examples where approval is not required:

- Purely cosmetic changes such as repainting, tiling, or redecorating;
- Internal renovations that do not involve moving structural walls;
- Replastering, replacing kitchen cupboards, or repairing fixtures; and
- Installing appliances or fittings.

'Minor building works':

Note: Section 13 of the Act allows a building control officer to exempt building plan approval for minor building works, such as garden sheds below a certain size, pergolas, poultry runs, and free-standing walls not exceeding 1.8m in height, before construction begins.

Redecorating one's kitchen, for instance, doesn't require permission as no walls have been moved around or altered the drainage system.

Making changes to the structure, such as adding on a carport or moving the front door, requires approval.

When submitting a building plan for approval, it is essential to comply with zoning regulations.

Factors to consider in respect of building plan approvals:

- Impact on health and safety
- Heritage status
- Impact on the surrounding environment

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- Restrictive conditions in title deed of the property
- Zoning
- Impact on roads and future development of roads
- Servitudes
- Impact on neighbours

The consequences of building without approved plans:

- Section 4(4) of the Act makes it a criminal offence to build without approved plans.
- Building inspector can enter premises and stop construction.
- Demolition order may be granted upon the application of a neighbour or municipality.
- Demolition is at the owner's expense; owner may possibly be held liable for legal costs.
- Administrative penalties, which are determined by the circumstances, that is the extent of the contravention, value of property, etc.

Sale agreements and approved building plans:

Selling without approved plans

It is not a legal requirement that approved 'as built' plans are handed to a purchaser on or before registration of transfer.

This poses the question as to when approved plans are required:

1. The purchaser makes it a condition of sale that approved plans are delivered prior to registration of transfer;
2. The purchaser requests approved plans after signing the agreement of sale; or
3. The purchaser's bank requires approved plans in terms of a loan agreement prior to registration of the bond.

Building plans generally take up to three months to be approved, depending on the municipality. Sometimes, it can take up to six months to a year before being approved or referred.

1. The purchaser makes it a condition of sale that approved plans are delivered prior to registration of transfer:
 - The seller has an obligation in terms of the agreement to deliver approved plans to the purchaser.

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- If it is found that there are no approved plans for all existing buildings/structures, the seller has an obligation to obtain approved plans at their own cost.

Implications:

- ✓ Process to obtain approved plans can be lengthy – transfer might be delayed.
- ✓ If the building contravenes municipal regulations or title deed conditions, the demolition of certain structures may be ordered.
- ✓ It could lead to the cancellation of the sale agreement.

2. The purchaser requests approved plans after signing the agreement of sale:

- The seller's obligation will depend on whether they were aware that there are no approved plans.
- A lack of building plans is a latent defect.
- *Voetstoots* clause – a clause in most agreements stipulating that the property is sold 'as is'.
- **A seller is protected by the *voetstoots* clause provided that they were not aware of the latent defect and didn't fraudulently conceal it from the purchaser or agent.**
- Therefore, if the seller was aware that there are no approved plans and fraudulently concealed this, the purchaser can hold the seller liable (in this case, the onus is on the purchaser to prove this).
- Duty to disclose: Immovable Property Condition Report.
- If a seller effected alterations, they should know whether there are approved plans in place.

3. The purchaser's bank requires approved plans in terms of a loan agreement prior to the registration of the bond:

- It is common for banks to make it a condition of the loan agreement that approved plans are provided to it before registration of the bond.
- Once again, it depends on whether the seller was aware of the approved plans.
- If the seller was unaware of the lack of building plans or did not fraudulently conceal same, the purchaser can:
 - ✓ Apply for a loan at another bank (with no guarantee that they will not also request approved plans); or
 - ✓ Obtain building plans at their own cost.

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Sale agreements: building plan clauses

Examples of building plan provisions in sale agreements:

- The seller will obtain approved plans prior to registration of transfer.
- The seller will submit plans for approval prior to registration of transfer and endeavour to obtain approval as soon as possible.
- An amount from the proceeds will be retained by the conveyancers on registration until approved plans are obtained.
- The purchaser acknowledges that there are no approved plans for all existing structures on the property.
- The purchaser shall obtain approved plans at their own cost, if required by their bank for the purposes of registering the bond.
- The purchaser shall ensure that the transfer is not delayed by their bank as a result of the lack of approved building plans (purchaser to obtain approval from a different bank).

Avoid lengthy delays and possible cancellation of agreements

- It is advisable to properly deal with building plans in the agreement of sale.
- If a standard agreement of sale stipulates that the seller warrants that there are approved plans in place, explain the implications of this clause to the seller.
- The seller must disclose whether they are aware that there are no approved building plans in place.