

## Notes

### Planning law essentials: Occupancy certificates, zoning, and restrictive title deed conditions

#### Zoning

Different planning responsibilities are conferred on each of the three spheres of government in accordance with what is appropriate to each sphere.

In a nutshell, planning comprises the control and regulation of the use of land. Zoning is an integral part of land planning.

The Spatial Planning and Land Use Management Act of 2013 ('SPLUMA') and Western Cape Land Planning Act of 2014 ('LUPA') are the primary pieces of legislation regulating spatial planning and zoning in the Western Cape.

Spatial planning is about anticipating long-term change and planning for logical and flexible development for a more sustainable future. New developments will follow the spatial plans and SPLUMA is aimed at promoting social and economic integration by 'undoing' society's division of rich and poor, which is often defined by race and class.

Title deed conditions may also play a role in the zoning process.

Land is designated for a particular use and development.

The relevant zoning category sets out the purpose for which land may be used and the development parameters applicable, as per the relevant zoning scheme.

The 3 broad categories for zoning are:

- Residential;
- Commercial; and
- Industrial.

No person may utilise or develop land unless permitted in terms of the zoning scheme or approved under LUPA.

Rezoning, departures, and consent uses are made on application to the municipality. The municipality takes various factors into account when approving an application.

Factors which the municipality considers:

- The lawful utilisation of the land;
- Zoning that is most compatible with the lawful utilisation of the land and the conditions in the title deed;
- Any departure or consent use required in conjunction with the requested zoning;
- Vacant land – utilisation permitted in terms of the title deed; and
- Zoning most desirable and compatible with the title deed.

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- It is essential to know and understand that a business which belongs in a commercial zone cannot operate from a residential zone.
- SPLUMA gives municipalities authority over spatial planning within municipal areas. SPLUMA acts as a 'land use regulator' assisting municipalities with exercising their authority in respect of land use developments, the regulation of population density, and housing policies.

After the approval of the subdivision application, the applicant is required to attend to the following:

- Obtain approval from the Surveyor-General of the general plan/diagram;
- Complete the installation of the engineering services;
- Prove that all conditions of subdivision have been met;
- Registration of transfer of ownership in the Deeds Office of at least one new land unit.

### Building plans

The National Building Regulations and Buildings Standards Act ('the Act') regulates building plans.

Section 4(1) of the Act provides that a homeowner needs written prior approval from the local authority before starting any building work.

Section 4(4) of the Act makes it a criminal offence to build without approved plans.

A building inspector can enter premises and stop construction, and the municipality or an aggrieved neighbour may apply for a demolition order.

In South Africa, homeowners are entitled to design their own houses and submit their plans for municipal approval.

However, an architect must be appointed before the plans are submitted to the municipality for approval. This ensures that the design complies with all legal requirements. Detailed plans must be drawn up and submitted along with all the relevant documentation outlined in the Act.

To ensure that the plans are approved on time, it is important to regularly follow up with the municipality.

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

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Regulations for planning permissions are similar across South Africa but may differ slightly from one municipality to the next. 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 as well as the local authority.

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.

### Occupancy certificates

An occupancy certificate is issued by the Building Control sub-directorate in terms of section 14 of the National Building Regulations and Building Standards Act.

The certificate certifies that a building (residential or commercial) has been completed according to its approved municipal building plans and other Council requirements.

An occupancy certificate is compulsory for every building before occupation.

The certificate specifies the type of building erected and is required before water and electricity deposits can be accepted for newly-built properties.

A key reason for the occupancy certificate is safety. It is important that a building is compliant with its approved plans and meets all SANS, rules, and regulations.

The relevant local authority is required to issue the certificate within 14 days of being requested to do so in writing by the owner of the building or any person having an interest therein.

Before a certificate of practical completion can be issued, the local building control officer must substantiate that all the work has been completed as per the approved plans, and that the workmanship meets the specified standards.

The site must be cleaned, all surplus materials and temporary equipment or huts removed, and the surrounding street and sidewalks returned to their pre-existing condition.

It is vital that a building inspector for the area has checked and approved the building in accordance with the aforementioned documents upon completion of the said building.

It is commonly accepted that the building contractor applies to the local authority for an occupancy certificate.

It is also recommended that the contractor determine which documentation is expected from the local authority in terms of an occupancy certificate well in advance. If the request is

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denied, the municipality must provide reasons for the refusal and provide feedback on what needs to be rectified in order for it to be approved.

### Title deed conditions

In the Western Cape, restrictive conditions are now governed by the Western Cape Land Planning Act of 2014 ('LUPA'). In terms of section 39 of LUPA, a municipality is empowered, on application by a competent person, to remove, suspend, or amend a restrictive condition.

Section 1 of LUPA defines a restrictive condition as 'any condition registered against the title deed of land restricting the utilisation, development or subdivision of the land concerned, excluding servitudes creating real or personal rights'. LUPA is given real force through the City of Cape Town Municipal Planning By-law, 2015.

SPLUMA defines a restrictive condition as 'any condition registered against the title deed of land restricting the use, development, or subdivision of land concerned'. All title deed restrictions, including servitudes, are therefore covered under SPLUMA.

Residential property title deeds often contain restrictive conditions. In the context of this talk, the most important of these are restrictions regarding the size, number, and placement of dwellings and other buildings that may be erected on the property.

These restrictive conditions limit an owner's use and enjoyment of their own property in the sense that they often indicate a limitation or prohibition on some action by the property owner.

Some common restrictive conditions include the following:

- 1) No building or other structure may be erected within the servitude area;
- 2) No large-rooted trees may be planted within the servitude area;
- 3) The erf is subject to a servitude for transformer purposes; or
- 4) The erf is subject to servitude for municipal purposes.