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Building plan approvals: What you should know

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Building plans: When and why are they required?

The importance of obtaining approved building plans

Section 4(1) of the National Building Regulations and Building Standards 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.'





When are approved building plans required?

Most building activities within the City of Cape Town require building plan approval, including ‘minor building works’:

- The construction of all new buildings;
- Alterations or extensions to existing buildings;
- Demolition;
- Changing the use of existing buildings without physical alterations (converting a garage into a habitable space); and
- Temporary buildings (including builders’ sheds, on-site toilets, etc).

Specific examples: City of Cape Town

Building works that require approved building plans:

- Swimming pool
- Garden/tool shed
- Wendy house
- Braai room
- Loft conversion
- Carport

Building works that do not require approved building plans:

- Braai without a chimney
- Installing/automating a vehicular gate
- Minor repairs to house
- Installing replacement windows
- Installing fittings/appliances

Factors to consider

- Impact on health and safety
- Heritage status
- Impact on the surrounding environment
- Restrictive conditions in title deed
- 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.
- A building inspector can enter premises and stop construction.
- Demolition order may be granted.
- Demolition is at the owner’s expense – may be liable for legal costs.
- Administrative penalties.

Sale agreements and approved building plans

Selling without approved plans

It is not a legal requirement that approved plans are handed to a purchaser before registration of transfer.

When approved plans are required:

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





The purchaser makes it a condition of sale that approved plans are delivered before transfer

- The seller has a contractual obligation to deliver approved plans to the purchaser.
- If no plans exist, the seller must obtain approved plans at their own cost.
- This can be lengthy – transfer might be delayed.
- The demolition of certain structures may be ordered.
- The sale agreement may be cancelled.

The purchaser requests approved plans after signature

- Was the seller aware that there are no approved plans?
- A lack of building plans is a latent defect.
- A seller is protected by the *voetstoots* clause if they were not aware of the latent defect and did not fraudulently conceal it from the purchaser or agent.
- If the seller was aware, the purchaser can hold them liable.
- Duty to disclose: Immovable Property Condition Report.





The purchaser’s bank requires it

- It is common for banks to make it a condition of the loan agreement that approved plans are provided before bond registration.
- Was the seller aware of the approved plans?
- If the seller was unaware/did not fraudulently conceal, the purchaser can:
  - ✓ Apply for a loan at another bank; or
  - ✓ Obtain building plans at their own cost.

Building plan clauses 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 will obtain approved plans at their own cost, if required by their bank for the purposes of registering the bond.*
- *The purchaser will 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).*

Pro tips

- It is advisable to properly deal with building plans in the sale agreement.
- If a standard agreement 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.
- Include this in the Immovable Property Condition Report.



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