

19 February 2021

BUILDING PLANS

The current legal position is that there is no legislation prohibiting transfer and the deeds office does not require approved building plans for a property before it registers a property in the name of the purchaser. The lack of updated approved building plans is a latent defect, covered by the voetstoots clause, if the Seller was not aware of such fact.

Building plans can however be a requirement due to the contractual agreement between the seller and purchaser or a requirement of the bank which approved the purchasers' loan.

Often the seller will indicate that they do not have updated plans for the property when completing the immovable property condition report. If this is indeed the case the agent must ensure that the purchaser is provided with a copy of the report.

On becoming aware that there are no plans the purchaser has to either agree to buy the property without updated plans, or the plans have to be addressed in the deed of sale. The options are:

1) The seller must provide updated, approved building plans before registration. This will definitely delay the transfer with 6 months or more, or

2) The seller will provide updated, approved building plans in due course and the transfer of the property into the name of the purchaser may proceed. A retention amount can be agreed on to set the purchasers mind at ease. The risk involved with this option is that there may be structures built over servitudes in which case the plans will not be approved until the structure encroaching the servitude is removed.

Be aware that your agency's pro forma contract may contain a clause that is not in line with the expectation of the seller or purchaser, for example the clause may read that the seller warrants that the plans are in order whilst they are not.

You may want to consider appointing iCompli2sell, a compliance specialist company, to ensure that your client's valued asset is legally compliant.

They can assist purchasers and sellers to ensure that legal measures like zoning, servitudes, building lines, building plans, site development plans, sectional plans etc. are in order. Our professional team consists of town planners, architects, draughtspersons, engineers, conveyancers, and land surveyors who will investigate and assess each case, based on its merits.