

## SELLING A HOUSE WITH AN ASBESTOS ROOF - IS THIS STILL ALLOWED?

We are receiving a number of enquiries regarding the sale of erven where houses have an asbestos roof. The questions we have received are usually these: Is this seen as a defect or is it now a legal requirement that such roofing must be replaced with a normal roof such as tile or zinc sheets? The answer is, neither are correct or true.

We believe that these questions arise from the fact that certain Asbestos Abatement Regulations were published last year and then there was an article on social media which stated that all asbestos roofing has to be replaced by 09 May 2022. This article was hopelessly incorrect and misleading.

All that the regulations state is that any employer who has asbestos in the workplace, and where an employee is exposed to, or is likely to be exposed to asbestos, needs to draw up an inventory of all identifiable asbestos on the premises, and this is what must be done by 9 May 2022. A “competent person” (as defined) must be appointed do this. Every 24 months this must be reviewed (or more regularly if the first inspection reveals deterioration already). A risk assessment must be done every 24 months (or sooner). A 6 yearly audit is then also required by the “approved inspection authority”. If asbestos is found, then a management programme must also be compiled. This plan must be revised every 8 years. Then the regulations deal with training; dealing with people exposed to asbestos etc. And the regulations then also categorise the type of work that may be needed, into 3 different levels. If any asbestos work (defined to mean *any work that is likely to expose an employee to asbestos dust; transportation thereof; storage; removal, handling; treating repairing or disposal*) is going to be undertaken then, depending on whether it is level 1; 2 or 3 type of work, the Chief Director: Provincial Operations must have been informed on 7 days’ written notice. The regulations then also outline what steps must be taken before work may be carried out. Air monitoring may also be required, and it means you will have to appoint a suitably trained and registered person to attend to this. You cannot just walk into a hardware store; buy 25 litres of sealant and stick it on, in other words. ANY work done with asbestos MUST be done by a “competent person”.

While the Regulations do not require us to have a Certificate of Compliance issued, for asbestos, they do oblige an owner who does have an inventory of any “asbestos in place” at any workplace, to provide this to the new owner of the premises, upon transfer of ownership. This will be of special relevance to agents dealing with commercial and industrial property and will require a new clause to be added to the deed of sale along the following lines: *The seller has established that the property has asbestos in place as per the inventory attached hereto and marked as Appendix “...”, as is required by section 4(7)(d) of the Asbestos Abatement Regulations published under Government Notice R1196 in GG 43893 of 10 November 2020.*

Alternatively, where the Seller does not yet have a certificate, one should add something along these lines: *In the event that the property has parts made up of asbestos or asbestos-containing materials, the Seller undertakes to provide the Purchaser with an “inventory of asbestos in place” before registration of transfer, as required by section 4(7)(b) of the Asbestos Abatement Regulations published under Government Notice R1196 in GG 43893 of 10 November 2020.*

The bottom line is that property owners with homes which do happen to have asbestos roofing, are not under any obligation to now suddenly start replacing their roofing or to even disclose the existence of asbestos roofing unless it is used as a workplace where an employee is likely to be exposed to the asbestos. And in case you should wonder, this should not in our view include an ordinary domestic worker scenario, because there is no real risk of exposure in such instances, unless (for example), there is an asbestos roof over a patio or braai room where the domestic worker also cleans, and there are no ceiling boards installed. Then one may be struck by this new law. It all depends on the positioning of the asbestos sheets and where the domestic actually works.