

IS IT COMPULSORY TO PROVIDE APPROVED BUILDING PLANS WHEN SELLING PROPERTY?

The short and crisp answer is (generally) no! Believe it or not but it is perfectly legal to sell an erf with a house on it, and for which there are no building plans. Remember this please – you don't buy a house. You buy the land that the house is built upon. The improvements on the land, is an issue between you and the local authority. The Deeds Office has nothing to do with this at all. All that the law requires is that if you as a Seller are aware that your improvements are not entirely on plan, that you then disclose this in your property condition report. Our Appeal Court ruled decades ago already, that the non-existence of building plans, is nothing more than a latent defect like a leaking roof or any other material defect.

If a Purchaser therefore offers to buy a property voetstoots and the Seller is not aware of any defective, or non-existent building plans, he is fully protected by voetstoots. The only time when a Seller will be compelled to provide approved building plans is when the sale agreement makes this a condition of sale, or, if you are selling property in Mpumalanga or Limpopo. In those two provinces, legislation exists which compels a Seller to first obtain a certificate (known as SPLUMA certificates), which confirms that all improvements are on approved building plans.

What does SPLUMA mean? South Africa has a piece of National legislation (as against the aforementioned "local" legislation) which is known as the Spatial Planning and Land Use Management Act (hence the acronym SPLUMA). Normally when we refer to SPLUMA we refer to this piece of National legislation that deals with land use management on a NATIONAL level, but in these 2 provinces, they went and passed "local" legislation, with the same name! And this is where the confusion has arisen.

When one therefore refers to a SPLUMA certificate in the sense that one is referring to Municipal confirmation that all improvements are on approved building plans, we are referring to sales in those municipalities, only. The Western Cape Land Use Planning Act (which is the provincial legislation that governs how we do things in the Western Cape), and the City of Cape Town Municipal By Law, do not require such a certificate before transfer of properties in the Cape Town Deeds Office. We do not know of any other legislation in other provinces or municipalities that requires a SPLUMA certificate and if and when we do become aware, you will be the first to know.

We hope this clarifies matters.