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SPLUMA: SPATIAL PLANNING AND LAND USE MANAGEMENT ACT

What is SPLUMA? SPLUMA is “The Spatial Planning and Land Use Management Act 16 of 2013” and came into operation on 1 July 2015.

In 2000 the entire country was demarcated into wall to wall municipalities. The result being that all land in South Africa is included in a municipality and municipalities are required to extend their planning and land use management beyond the traditional township areas.

What is the purpose of SPLUMA?

SPLUMA sets the principle that all land development applications must be submitted to the municipality as the **authority of first instance** – without actually prescribing in detail how spatial planning and land use management issues are to be dealt with within municipal areas.

SPLUMA seeks to promote consistency and uniformity in procedures and decision making for all land development within its authority.

What is the effect of SPLUMA on the local authorities?

SPLUMA is a national framework act that requires provincial legislation to enable municipalities to enact spatial planning and land use management by-laws. The municipal SPLUMA by-laws prescribe how land use applications and appeals are dealt with.

Municipalities in Mpumalanga all basically have similar spatial planning and land use management by-laws. These by-laws have many requirements and procedures regarding spatial planning and land development. One such requirement is that municipalities are required to issue SPLUMA certificates before a property can be registered or transferred in the deeds office.

In order for the municipality to issue a SPLUMA certificate the following needs to be in place:

- Conveyancer to certify that the funds have been paid in a sale agreement
- All contravention penalties must have been paid
- All compliance directives must have been complied with
- The land and buildings constructed on the land unit need to comply with the requirements of the land use scheme
- All conditions of approval of any land development application must have been complied with.

It's more than survey...

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The importance of these requirements should not be underestimated as non-compliance in any of the listed conditions will result in unnecessary delays in the issuing of a municipal certificate, and thus a delay in the final transfer and registration of a property. In certain instances, these delays could result in being a deal-breaker for purchase agreements!

Are the municipalities geared for implementing SPLUMA?

No, the implementation of SPLUMA is not without problems and challenges.

As the respective by-laws are being implemented by municipalities various shortcomings have been identified in the legislation that will require the by-laws to be amended in future.

Not all municipalities have access to updated property data, aerial photography and GIS systems that will affect the efficiency of the municipal officials and the issuing of SPLUMA certificates.

The bulk of the Mpumalanga SPLUMA municipal by-laws are incomplete as it lacks sections for the granting of real rights (specifically servitudes) in general.

It is yet to be seen how development of state land, tribal areas and farmland is to be authorised by the municipality.

How does SPLUMA affect me as property owner?

SPLUMA affects all properties: commercial, industrial, residential, sectional title, share block, tribal, farm, etc. State land is also subject to the SPLUMA legislation.

Most property owners will not be aware of the requirements of SPLUMA and it will have little affect on them as municipalities do not actively police and enforce compliance in terms of municipal requirements. However, the SPLUMA requirements affect all properties as a municipal SPLUMA certificate is required by the Registrar of Deeds prior to a land unit being transferred / registered in the deeds office. Although most transactions will be due to sale agreements, certificates will also be required for the transfer of properties in estates (will), auctions, or any other instance where a property needs to be transferred or registered in the deeds office.

How do I ensure that my property is SPLUMA compliant?

To be SPLUMA compliant the owner must ensure that the following is in place:

- Approved building plans for all buildings – including swimming pool;
- The use of the property has to be in accordance with the municipal zoning. For example, if your property is residentially zoned, operating a guest house from the property would be a violation of the bylaws;
- Ensure that there are no encroachments over the building lines and property boundaries. If you are uncertain regarding the encroachments of building lines and property boundaries, a professional land surveyor should be consulted.

What must I do if my property is non-compliant in respect of the following?

It is advisable that property owners seek the advice of knowledgeable property professionals to assist them with the ever changing and complex legislation involving properties and property transfers specifically.

- Building plans:
Appoint an architect or draftsman to prepare the necessary building plans for lodgement with the Municipality.

- **Zoning:**
Apply for the property to be rezoned. Although the procedure is complex property owners can lodge rezoning application themselves, or have a town planner or land surveyor lodge the application on their behalf.
- **Encroachment**
In the event of an encroachment it is advisable that a land surveyor be consulted to confirm and quantify the encroachment. There are various options in dealing with encroachments, including:
 - a) Structures to be demolished or relocated;
 - b) Servitudes to be registered for areas of encroachment;
 - c) Portions of properties to be purchased or swapped;
 - d) Building line relaxation can be applied for;
 - e) Some municipal by-laws make provision for the Purchaser to conclude a written agreement with the municipality regulating the rectification of the contravention whereupon the municipality will issue the SPLUMA certificate in order for the transfer to proceed irrespective of the contravention. However, this is not the case for all municipalities.

How are SPLUMA certificates applied for?

Each Local Municipality has different requirements due to different by-laws. In order to apply for SPLUMA certificates the respective municipalities have different requirements.

Must I provide my Conveyancer with a SPLUMA certificate?

No, it is the responsibility of the Conveyancer to attend to the administration involved in obtaining the SPLUMA certificate from the municipality. The Conveyancer will provide you with all the necessary documentation for signature and inform you of the application costs involved.

The municipality may refuse to issue a SPLUMA certificate if there is uncertainty regarding encroachments of building lines and property boundaries. In such cases it would be advisable for an owner or conveyancer to obtain a certificate from a land surveyor prior to requesting a certificate from the municipality.

How is SPLUMA enforced in the deeds office?

From 1st of June 2017 the Registrar of Deeds Mpumalanga has indicated that no transfer of property will be registered without a certificate issued by the relevant municipality indicating that the SPLUMA requirements have been complied with.

In Limpopo Province the respective Registrar of Deeds does not require a municipal certificate, but this will most probably change in future and many property owners will have to attend to “corrections” in order to have a property registered or transferred in a deeds office.