

Electrical compliance certificates

The Occupational Health and Safety Act ('the Act') aims to provide for the health and safety of persons at work and as such is not an Act that one would expect to find in a conveyancing and property law context. However, the Act determines that the responsibility for and maintenance of any electrical installation on a property lies with the owner or lessor thereof; and it also lays down requirements that must be complied with when ownership of any electrical installations (whether installed on residential, commercial or any other property) is passed. Therefore it is relevant to all home owners, lessors and role players in the property market.

The aim of the regulations promulgated in terms of this Act is not to ensure that each and every aspect of the electrical installation is in 100% working order, but that the installation is safe. A plug outlet may well not be in working order but nevertheless safe and an electrical clearance certificate can be issued in respect thereof.

NEW REGULATIONS CAME INTO EFFECT ON 01 MAY 2009, AND WILL BE DISCUSSED IN SHORT BELOW.

Definition of a "user"

The regulations refer to 'users' and 'lessors'. A 'user' is defined in section 1 of the Act and includes the person who uses the installation 'for his own benefit or who has the right of control over the use ...' thereof. From a conveyancing and property law perspective the term 'users' appears to include all owners of properties on which there are electrical installations.

Responsibility for electrical installations

The user or lessor of an electrical installation, as the case may be, shall be responsible for the safety, safe use and maintenance of the electrical installation he or she uses or leases.

Certificate of Compliance

Every user or lessor of an electrical installation, as the case may be, shall have a valid certificate of compliance for that installation in the form of Annexure 1 to the regulations, which shall be accompanied by a test report in the format approved by the chief inspector, in respect of every such electrical installation. This condition shall not apply to an electrical installation that existed prior to 23 October 1992, and where there was no change of ownership after 1 March 1994: Provided that, if any addition or alteration is effected to such an electrical installation, the user or lessor of the electrical installation, as the case may be, shall obtain a certificate of compliance for the whole electrical installation.

Where any addition or alteration has been effected to an electrical installation for which a certificate of compliance was previously issued, the user or lessor of such electrical installation shall obtain a certificate of compliance for at least the addition or alteration.

Every user or lessor of an electrical installation, as the case may be, shall on request produce the certificate of compliance for that electrical installation to an inspector, a supplier or an approved inspection authority for electrical installations.

The user or lessor may not allow a change of ownership if the certificate of compliance is older than two years.

Substitution of lost, damaged or destroyed certificate

If any registration certificate issued in terms of these regulations to an electrical contractor or a registered person is lost, damaged or destroyed, the person to whom the certificate was issued may apply to the chief inspector for a duplicate certificate in the form of Annexure 6 to the regulations, together with the relevant registration / application fee.

Condition to Offer to the Purchase and registration of a Mortgage Bond

Whether a clause in respect of the Electrical Compliance Certificate should be included in the Deed of Sale is a matter of much debate. There is no statute that compels its inclusion and neither is it an essential term of the agreement of sale. It is therefore difficult to argue that it is compulsory to include such a clause in the agreement. Be that as it may, it is certainly necessary to determine what the Seller and Purchaser agree to in respect of the certificate so as to ensure that the regulations are complied with.

Should the Offer to Purchase contain a condition in terms whereof a compliance certificate is to be delivered to the Purchaser, the Transferring Attorneys will ensure that they are in possession of the certificate (or a copy thereof) prior to registration, where after same will be delivered to the Purchaser.



Should the purchase price (or a portion thereof) be financed by way of a mortgage bond, the banks usually require a copy of the compliance certificate before providing the Bond Attorneys with a consent to proceed with registration. In such an instance, an electrical compliance certificate will have to be obtained even if it is not a condition to the Offer to Purchase.

- Annele Odendaal

MCAdemy

Gedurende April word die volgende onderwerp aangebied by MCAdemy: *Finansiële aspekte van 'n kooptransaksie*

10 April: 09:00 – 10:00 Afrikaans
(Donderdag) 11:00 – 12:00 Engels

16 April: 09:00 – 10:00 Engels
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The Newsletter with a difference

Elektriese omheiningssertifikate – Is die kar voor die perde gespan?

Met ingang 1 Oktober 2012 vereis die Wet op Beroepsveiligheid en Gesondheid dat waar 'n eiendom 'n elektriese omheining het, die eienaar in sekere gevalle 'n elektriese omheiningssertifikaat moet bekom.

As algemene reël en vertrekpunt kan gestel word dat enige gebruiker van 'n elektriese omheining, hetsy die eienaar of huurder, na die inwerkingtreding van die Wet in besit moet wees van 'n elektriese omheiningssertifikaat. Dit beteken dat die eienaar so 'n sertifikaat moet bekom en indien die eiendom verhuur word, dit aan die huurder moet voorsien.

Hierdie vereistes is egter nie van toepassing op installasies van elektriese omheiningssertifikate wat reeds bestaan het voor 1 Oktober 2012 nie. Sodra daar egter 'n wysiging of 'n toevoeging tot sodanige installasie plaasgevind het na 1 Oktober 2012, word die verkryging van die sertifikaat wel verpligtend.

Van groter belang is egter die bepaling in die gemelde wet dat 'n elektriese omheiningssertifikaat verkry moet word indien oordrag van eienaarskap (na 1 Oktober 2012) van die eiendom plaasvind. Die gevolg hiervan is dat indien 'n eiendom wat oor 'n elektriese omheining beskik verkoop word, 'n elektriese omheiningssertifikaat bekom en aan die koper (of oordragprokureur) gelewer moet word voordat oordrag kan plaasvind.

Die elektriese omheiningssertifikaat is addisioneel tot die elektrisiteitsertifikaat en moenie daarmee verwar word nie. Anders as die elektrisiteitsertifikaat, wat slegs geldig is vir 2 jaar, verval die elektriese omheiningssertifikaat nie en kan dit oorgedra word van koper na koper. Indien daar egter 'n wysiging of 'n toevoeging tot die installasie plaasgevind het nadat die sertifikaat uitgereik is, sal die sertifikaat wel verval en sal 'n nuwe een bekom moet word.

Alhoewel daar meningsverskille oor die aangeleentheid is, is ek van mening dat hierdie vereiste nagekom moet word, ongeag of die betrokke bepaling in die koopvooreenkoms uiteengesit word al dan nie. Dit is derhalwe van kardinale belang dat die koper, verkoper en agent die oordragprokureur in kennis stel van

The right to claim commission: Effective cause

The question we are most frequently asked by estate agents is who will be entitled to commission where two agents from different estate agencies simultaneously market a seller's property and the property is eventually sold to someone that both the agents showed the property to.

The answer is seemingly simple: The agent who was the effective cause of the sale is entitled to commission.

This is exactly where it gets complicated as the term 'effective cause' cannot be clearly defined as a set of circumstances that when a particular agent has complied with certain prerequisites, he or she will then automatically be the effective cause of the transaction and as such be entitled to commission.

AS SET OUT HEREINAFTER A SET OF GUIDELINES HAVE CRYSTALLIZED THROUGH VARIOUS COURT CASES:

1. Introduction to the property in itself is not equal to effective cause. The question will be whether the estate agents introduction of a purchaser to the property remained the "overriding factor inducing the sale".

An introduction is not confined to arranging a meeting and thereafter showing the property to the prospective purchaser. Giving the address of the property can also constitute an introduction. However this does not mean that merely telling a person a property is for sale entitles an agent to commission. Such introduction will entitle the agent to commission only if a line of cause and effect can be

die bestaan en teenwoordigheid van 'n elektriese omheining op 'n eiendom.

Alhoewel daar maklik tot die teendeel geargumenteer kan word, sou ek uit 'n oormaat van versigtigheid redeneer dat die eienaar van 'n deeltiteleenheid ook so 'n sertifikaat sal moet bekom indien die deeltitelkompleks met 'n elektriese omheining toegespan is. Die eienaar van 'n deeltiteleenheid is ook die proporsionele eienaar van die gemeenskaplike eiendom. Die elektriese heining is gewoonlik op die gemeenskaplike eiendom opgerig. Verandering van eienaarskap in die deeltiteleenheid het noodwendig die gevolg van verandering in eienaarskap in die gemeenskaplike eiendom. Dit sal waarskynlik nie vir die deeltiteleenaar moontlik wees om self so 'n sertifikaat te kan bekom nie en gevolglik sal die sertifikaat van die regspersoon of hulle verteenwoordigers (trustees/ bestuursagent) verkry moet word. In sodanige gevalle sal die sertifikaat gebruik kan word vir al die deeltiteleenhede in daardie kompleks.

Groot onsekerheid heers tans oor wie nou eintlik die sertifikate mag uitreik. Die oorgrote meerderheid van elektrisiëns is van mening dat hulle net die krag kan toets tot by die "energizer". Al die installeerders van elektriese omheiningssertifikate wat ons gekontak het, het ons meegedeel dat hulle nog nie geakkrediteer is om die elektriese omheiningssertifikaat uit te reik nie.

By navraag aan die Departement van Arbeid is ons meegedeel dat die akkrediteringsproses eersdaags 'n aanvang gaan neem.



Die skokkende gevolgtrekking is dus dat alhoewel wetgewing reeds voorsiening maak vir die sertifikate, geen persoon by skrywe hiervan geakkrediteer is om dit uit te reik nie. Die spreekwoordelike wa is dus inderdaad voor die perde gespan.

- Tiaan (M.C.) van der Berg

traced from the introduction to the conclusion of the sale.

An initial introduction may become exhausted if, after termination of negotiations, the estate agent's mandate expires and the property is taken of the market. Should the purchaser later buy the property without further intervention on the part of the estate agent, the estate agent may have some difficulty in showing that he is the effective cause of the transaction. A long time lapse between the initial introduction and the eventual sale serves to significantly lessen the role of the initial introduction and to highlight the importance of subsequent events.

Where an agent introduces the property and the introduction is done thoroughly to such an extent that another estate agent could add nothing of substantive value during a subsequent introduction, the first introduction can readily be said to be the effective cause (assuming there to be no other intervening cause, such as the efforts of the seller or buyer)

Where the first agent has introduced a purchaser to a property and a second agent has persuaded the purchaser to purchase the property, the effective cause will depend on whether the first agent's introduction still operated to influence the purchaser to buy and upon the significance or importance of the part played by the second agent, in relation to the conclusion of the contract.

2. It can be asked whether the agent was the "decisive factor" of the transaction. (Continue on page 2)

The right to claim commission: Effective cause (Continue)

3. Was the agent the *causa causans* (major cause) of the sale? This does not mean that the agent is only entitled to commission if he has overcome all obstacles that stood in the way of a successful sale.

4. The question can be asked whether or not the estate agents effort rendered a seller willing and able to sell and a purchaser willing and able to buy. In this regard the terms of the sale is often viewed against the seller's initial terms on which he was prepared to sell.

5. It would further appear that it is the nature and effect of the agent's efforts and not the amount of time and effort that needs to be considered.

6. The mere fact that there is a mandate to sell is not crucial to determine effective cause. An estate agent can be the effective cause of a sale, even if the sale is concluded after expiry of the mandate. For example, where the seller revokes the agent's mandate to sell and later sells to a purchaser who was introduced to the property by the agent during the mandate period, the agent can be entitled to payment of the commission.

A recent decision in this regard is Wakefields Real Estate (Pty) Ltd v Attree, 2011. The Supreme court of Appeal found that it is difficult to establish who the effective cause of a sale is and that it is possible that more than one agent will be entitled to the commission. However the court found that in this particular case, it was the first agent (Wakefields) whose wisdom and business expertise lead the purchaser to purchase the property. (Continue on page 3)

Wakefields indicated that they only stopped negotiations to close the deal because the purchaser told them that they decided not to buy and preferred to renovate their existing home and invest in their business instead. Wakefields would undoubtedly have been entitled to the commission had the purchasers approached the sellers and persuaded them to sell at a lower price, or if the sellers approached the purchasers and offered a lower price to them. The court found that the second agent's effort was merely to make a phone call to the purchaser to arrange the viewing of the property, drawing up the offer to purchase, persuading the sellers to reduce their price and accept a reduced commission. Although they were instrumental in concluding the sale, they were not the effective cause.

In some cases it is impossible to distinguish between the efforts of one agent and another relating to the question which one was the effective cause. The bad

Dismissal based on operational requirements

In previous editions of MCMonthly the procedure and reasons for dismissal and the need for disciplinary code was discussed. In this edition dismissal based on operational requirements is discussed. As explained below this form of dismissal is not founded in any action or omission by the employee, but is based on circumstances within the employers' business venture or enterprise.

This Act defines a dismissal of an employee based on the operational requirements as a dismissal based on the economic, technological, structural or similar needs of an employer. This is not a closed category and it is difficult to define all the circumstances that may legitimately form the basis of a dismissal for this reason. As a general rule, economic reasons are those that relate to the financial management of the enterprise. Technological reasons refer to the introduction of new technology which affects work relationships either by making existing jobs redundant or by requiring employees to adapt to the new technology or a consequential restructuring of the workplace. Structural reasons relate to the redundancy of positions as a consequence of restructuring of the employer's enterprise.

Often this category of dismissals are categorised as "no fault" dismissals – in other words, the employee is not responsible for the termination of employment. The effective cause of the termination is one or more external or internal factors related to the employer's business needs. For this reason, the Basic Conditions of Employment Act places particular obligations on an employer, most of which are directed towards ensuring that all possible alternatives to dismissal are explored and that the employees to be dismissed are treated fairly.

The obligations of the employer are largely procedural. Primarily, they comprise of the duty to consult with the employees before a final decision to dismiss is taken, the fair selection of employees to be dismissed and the payment of severance pay.

The purpose of consultation is to permit the parties, in the form of a joint problem-solving exercise, to strive for consensus where possible. The act requires the parties to attempt to reach consensus on, amongst other things, appropriate measures to avoid dismissals. For this to be effective, the consultation process

news for the seller is that in such a situation it may well be that he will be held liable to pay commission to both agents.

The question that begs answering is what actions an agent can take to try and avoid a conflict about commission.

WE ARE OF OPINION THAT THE FOLLOWING MAY ASSIST IN PROVING EFFECTIVE CAUSE:

1. Educate the seller and purchaser. The prospective purchaser, for example, may not know that it could be problematic to go for a second viewing with another agent because the first agent is not available. The seller may also not know that should he see the same purchaser with different agents that it is best to alert the second agent to the fact. (We educate the seller in this regard in our MCSellersguide)
2. On showing the property to the purchaser explain all aspects of the property in detail to the prospective purchaser. As indicated above this may help to prove that the second agent could add nothing of substantive value on the second viewing.
3. Stay in contact with the prospective purchaser. Ask if he would like to go for a second viewing. Do not give another agent a window of opportunity by not following up with the purchaser.
4. Be the deal maker. Do not leave it up to the parties to negotiate the terms of the deed of sale amongst themselves. Leaving the negotiations to the parties have, in many cases, weakened the agents case in proving effective cause or given a second agent the opportunity to negotiate the deal and to become the effective cause.
5. Adhere to paragraph 8.3 of the Code of Conduct of the Estate Agency



Affairs board and refrain from introducing a purchaser to a property that you know or have reason to believe that he has already been introduced by another agent. The aforesaid shall not apply if the estate agent has advised the seller that there is a likelihood that another agent has introduced the same purchaser and the seller has given written consent that the agent may proceed

- Sonja du Toit

must commence as soon as it is clear that a reduction of the workforce is likely. The employer should act in good faith and consider proposals put forward.

PROPER CONSULTATION WILL INCLUDE:

- the opportunity to meet and report back to employees
- the opportunity to meet with the employer, and to request, receive and consider information.

The more urgent the need by the business to respond to the factors giving rise to any contemplated termination of employment, the shorter the period for consultation may be.

If one or more employees are to be selected for dismissal from a number of employees, the criteria for their selection must either be agreed upon with them or be fair and objective.

Criteria that infringe a fundamental right protected by the Act can never be fair. These include selection on the basis of union membership, pregnancy, or some other discriminatory ground.

Selection criteria that are generally accepted to be fair include length of service, skills and qualifications. However, depending on the circumstances, other selection criteria may also be fair.



Employees dismissed for reasons based on the employer's operational requirements are entitled to severance pay of at least one week's remuneration for each completed year of continuous service with the employer. If an employee either accepted or unreasonably refused to accept an offer of alternative employment, the right to severance pay is forfeited.

- Bennie Reynders

Koop op afbetaling

Dis is nie 'n vereiste vir die geldigheid van 'n koopkontrak dat die koopprys ten volle by kontraksluiting betaal moet wees nie.

Daar is drie wyses om voorsiening te maak vir die koopprys, naamlik kontant, 'n lening en 'n afbetalingsooreenkoms. Die betaling van die koopprys deur kontant of 'n lening is alledaagse gebruik en word nie in hierdie artikel bespreek nie.

Wanneer die koper nie die eiendom in kontant kan koop nie en ook nie 'n lening by 'n bank kan bekom nie, kan die partye ooreenkom dat die koopprys oor 'n tydperk in paaiemente afbetaal word. Gewoonlik word dan ook ooreengekom dat oordrag van die grond slegs aan die koper gegee sal word nadat die balans van die koopprys ten volle betaal is.

Gemeenregtelik is 'n koper wat onroerende goed op afbetaling koop aan 'n aantal risiko's blootgestel. Van hierdie risiko's is die volgende:

1. Die verkoper kan insolvent verklaar word voordat die eiendom oorgedra word en dan sal die koper slegs 'n eis teen die insolvente boedel hê vir die paaiement wat hy reeds betaal het.
2. Die verkoper kan, selfs nadat die koopkontrak gesluit is, een of meer verbande oor die eiendom registreer. Dit kan daartoe lei dat, selfs al is die volle koopprys betaal, oordrag van die eiendom nie aan die koper kan plaasvind indien die verkoper nie finansiëel in staat is om die verbande af te los nie.
3. Die verkoper kan selfs die eiendom aan ander persone op dieselfde tipe afbetalingsooreenkoms verkoop.

Vanweë hierdie gemeenregtelike risiko's word hierdie tipe transaksies deur die bepalings van hoofstuk II van die Wet op Vervreemding van Grond 68 van 1981 gereël.

Die wetgewing bepaal dat die bestaan van sodanige afbetalingsooreenkoms teen die titelakte in die akteskantoor geregistreer moet word. 'n Caveat word dan teen die eiendom genoteer.

Ten einde die Caveat teen die titelakte geëndosseer te kry moet die volgende stappe geneem word.

Die verkoper moet die kontrak binne 90 dae na kontraksluiting by die aktekantoor laat opteken. Indien die verkoper versuim om die kontrak binne 90 dae te laat opteken, kan die koper die kontrak binne 14 dae na die verstryking van die 90 dae opse, of die koper kan self die kontrak laat opteken.

Die effek van optekening, is die beskerming van die koper op die volgende wyses:

1. Verbande – 'n Verband kan steeds oor die eiendom, ten aansien waarvan 'n afbetalingsooreenkoms opgeteken is, geregistreer word, maar ingevolge artikel 9(8) word die verbandhouer in wie se naam die verbande geregistreer word, geag onherroeplik en onvoorwaardelik tot kansellering van die verband toe te gestem het, indien die koper oordrag versoek.
2. Transporte – Dit verhoed die eienaar om die grond aan iemand anders te transporteer.
3. Voorkeur-eis – Dit verleen aan die koper 'n voorkeur-eis ten aansien van die opbrengs by die verkoping van die eiendom in eksekusie indien die verkoper gesekwestreer word.

'n Afbetalingsooreenkoms kan slegs in die akteskantoor opgeteken word indien daar aan die volgende 4 vereistes voldoen is.



1. Die grond moet vir woondoeleindes bestem wees en sluit dus plaasgrond uit.
2. Die eiendom moet vir 'n bedrag geld verkoop word.
3. Die koopsom moet betaalbaar wees is in meer as twee paaiemente.
4. Die koopsom moet oor 'n tydperk van meer as een jaar betaalbaar wees.

- Nicole Rokebrand

Bathrooms Completed

We met the friendly people of "Huis Remme-los" in 2011 at the yearly fundraising event hosted by Quads 4 Quads. We adopted their cause and enquired about their immediate needs. They indicated that their bathrooms are not quadruplegic friendly and we immediately decided that something must be done about that!



Together with singer Mathys Roets we hosted a fundraising event on the 17th of April 2012 to raise monies for the refurbishment of the bathrooms. We take great pleasure in showing you the final product, which now fulfill the basic needs of 12 individuals! We thank all our valued clients who contributed to make this possible.

- Rich Redinger

Before



After!

