

New Electrical Compliance Certificate Regulation

As most of us know since 1992 in terms of an Electrical Installation Regulation then promulgated it has become the common understanding of everyone involved in the process of buying and selling properties that “the Seller has an obligation to give the Purchaser a valid Electrical Certificate of Compliance”.

Although there were aspects about the 1992 Regulation which caused some interpretation debates one aspect which was not “debatable” was that once an electrical certificate was issued it remained valid for an indefinite period and only lost its validity if a change or addition was made to the electrical installation on the premises. The certificate was therefore freely transferable by mere delivery from the Seller to the Purchaser of the property when the property was sold. It was in other words not necessary to have the property re-inspected and re-certified.

Arising from the above general consensus on the effect of the 1992 Regulation most sale agreements of properties were amended to include a clause reading more or less as follows:

The Seller shall, prior to registration of transfer, furnish the Purchaser with a valid Electrical Certificate of Compliance [as prescribed by law] covering the property. All expenses incurred in meeting the criteria for the issue of such certificate, including the certificate itself, shall be borne by the Seller. The Seller furthermore warrants to the Purchaser that no addition or alteration to the electrical installations on the property has been effected since the issue of such certificate. Upon the Seller furnishing the Purchaser with the said Electrical Certificate of Compliance, the Purchaser shall have no claim whatsoever against the Seller and no further liability in this regard shall rest upon the Seller.”

Having noticed the fact that the sale of property industry had so thoroughly embraced the 1992 Regulation and accepted [without remuneration] the responsibility to ensure its implementation the Department of Labour has revisited the topic in a new regulation which will become effective as from the 1st May 2009. The new regulation now creates yet further burdens for Sellers of property

Before commenting on the new regulation I think it is appropriate to mention that it is appallingly drafted. Some of its stipulations are virtually unintelligible. I will not burden this article with a profound commentary on some of the nonsense which the regulation creates and will explain it on the basis of my own best understanding.

Although the regulation is in excess of 25 pages the only portions which are truly relevant to the property sale industry deal with the following issues:

1. It repeats the obligation which was catered for in the 1992 Regulation requiring the owner of all electrical installations within immovable properties to have such installations inspected by an approved electrician and a Certificate of Compliance issued.
2. As also provided for in the 1992 Regulation the certification obligation does not apply to electrical installations in properties which existed prior to 23 October 1992 and where

there was no change of ownership of the property since 1 March 1994. Such properties are exempted from the requirement of electrical certification until any addition or alteration is effected to the electrical installation at which time the whole installation (even the old portion) must be inspected and certified. Although the regulation does not in itself specify this it is the prevailing view that by virtue of Section 22 of the Occupational Health and Safety Act 85 of 1993 (The Act) the owner of such exempted property will not be allowed to sell the property to any purchaser thereof until a compliance certificate has been issued.

3. It allows an owner of a property to delegate the responsibility set out in paragraph 1 above to the lessee of the property if the issue is clearly stipulated for in the terms of the lease.
4. In similar fashion to the 1992 Regulation the Certificate of Compliance, once issued, remains valid indefinitely until an addition or alteration has been effected to the electrical installation in which case the owner of the property is required to obtain a Certificate of Compliance for the addition or alteration.
5. In similar fashion to the 1992 regulation but subject to a new rule that the certificate not be older than 2 years existing valid certificates can be transferred by mere physical delivery from the Seller of any property to the Purchaser thereof and it will not be necessary for the property to be reinspected and recertified.

The only truly "new stuff" is contained in the paragraph numbered 5 above. For ordinary residential properties the consequence of the new regulation is restricted to a limitation on the right of the Seller to deliver to the Purchaser an existing certificate. Whereas the Seller was previously permitted to rely on a certificate regardless of its age the ***Seller will as from 1 May 2009 be committing an offence if he allows the transfer of the property to be registered where the existing certificate is older than two years on the day of transfer of the property.*** In such circumstances the property will have to be reinspected and recertified before transfer can be registered.

The standard clause used in deeds of sale will need to be revised in the light of the "two-year rule" and in this regard I suggest a clause on the following lines;

"The Seller shall, prior to registration of transfer, furnish the Purchaser with a valid Electrical Certificate of Compliance [as prescribed by law] covering the property which certificate shall as at the date of registration of transfer of the property to the Purchaser not be older than two years. All expenses incurred in meeting the criteria for the issue of such certificate, including the certificate itself, shall be borne by the Seller. The Seller furthermore warrants to the Purchaser that no addition or alteration to the electrical installations on the property has been effected since the issue of such certificate. Upon the Seller furnishing the Purchaser with the said Electrical Certificate of Compliance, the Purchaser shall have no claim whatsoever against the Seller and no further liability in this regard shall rest upon the Seller."

For those who are involved in the field of selling property which is intended for commercial or industrial use it might be of interest to know that by virtue of Section 10 (4) of the Act it is permissible for the Seller to be excused from providing an electrical certificate of compliance of any sort if he can persuade the Purchaser of the property to agree in writing to accept responsibility for having the property inspected and a compliance certificate issued before the electrical installation on the property is used by the Purchaser after the transfer has occurred.

Although not strictly relevant to the purpose of this article I do wish to express my concerns about both the 1992 and the new regulation.

In the first place I question the right of the Department of Labour within the context of legislation which is designed to protect workers in the workplace to promulgate a regulation which effectively touches upon property rights. This is an interesting legal issue which I would dearly wish to pursue further in future.

In the second place I question the necessity for such regulations. The intention of the 1992 Regulation was presumably to protect consumers from "unsafe" installations. Although I do not challenge the thought that unsafe installations are bad things I do challenge the thought that the extent of "unsafe installations" necessitated a regulation of this nature. In my experience South African property owners were not being electrocuted by their own electrical installations in such numbers as to justify the imposition of a compulsory national spend of such a nature on an ongoing basis. In my 20-odd years of dealing with property transfers I have yet to lose any Purchaser or Seller to electrocution! I was concerned that the regulation (however well-intentioned it might be) would end up hurting the very people it was presumably designed to protect namely the property owners. This is regrettably precisely what has occurred and property owners have since 1992 pored millions (if not billions) of Rands into the pockets of electrical contractors.

With the passing of time since 1992 ownership of the majority of properties have "turned over" at least once and most properties have accordingly now already been electrically certified. As the 1992 regulation allowed for the certificates (regardless of their age) to be transferred from each Seller to each Purchaser the avalanche of money which had been directed to the electricians started to dry up and the financial prejudice to property owners diminished.

The new regulation simply serves to start the whole process all over again and to ensure that it continues in perpetuity. It is in my view thoroughly unacceptable and not in the true interests of property owners at all. One aspect of the new regulation causes me to wonder whether the true intention of the regulation was perhaps to benefit the electricians rather than the consumer. This relates to the "two-year rule". You will recall that a certificate once issued remains valid for an indefinite period (see paragraph numbered 4 above) and only effectively loses its validity when the current owner decides to sell the property (see paragraph numbered 6 above.) The effect of the rule is that certificates which are more than two years old are quite okay for the current owner of the property but not okay for the new owner. Why is that Is it possible for the current owner to be less susceptible to electrocution than the new owner or what Perhaps the fact that this regulation was created by the Department of Labour is a clue of some sort. I wonder.....

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