WERKSMANS
ATTORNEYS

REAL ESTATE

SPLUMA Certificate Confusion

5 May 2020 *8 min read*

By Fátima Rodrigues, Director and Head of the Property Law & Real Estate practice (Johannesburg) and Khathu Neluheni, Senior Associate

There has been some confusion created by recently published press articles about the requirement to have a "SPLUMA certificate" referred to in section 53 of the Spatial Planning and Land Use Management Act No 16 of 2013 ("**SPLUMA**") for purposes of giving effect to the transfer of immovable property. The articles suggest that all property transfers require a SPLUMA certificate and that such a certificate is a brand new requirement without precedent. In reality, only some property transfers require a certificate issued in terms of section 53 of SPLUMA ("**SPLUMA Certificate**") and similar certificate requirements already existed under older legislation even before the enactment of SPLUMA.

Section 53 of SPLUMA states that, "*... the registration of any property resulting from a land development application may not be performed unless the municipality certifies that all the requirements and conditions for the approval have been complied with.*"

For purposes of interpreting section 53 of SPLUMA, it is necessary to consider the definition of "land development" contained in section 1 of SPLUMA, which lengthy definition includes, "*...the change of use of land, including township establishment, the subdivision or consolidation of land...*". A land development application includes an application in relation to the aforegoing. Thus, a SPLUMA certificate is required where (i) any new erf's title deed is being applied for or any such erf is being transferred in a new township; or (ii) any new subdivided erf's certificate of registered title is being applied for or a new erf resulting from a subdivision is being transferred; or (iii) any new certificate of consolidated title is being applied for or a new erf resulting from the consolidation of two or more erven is being transferred (collectively, in this article referred to as "**New Erf**").

SPLUMA sets up a national framework for spatial planning and land use management and directs municipalities to determine the procedures relative to the approval of a land development application. In this regard, section 54 of SPLUMA enables the Minister of Rural Development and Land Reform to publish regulations in terms of SPLUMA and, in terms of Regulation 14 of SPLUMA, a municipality is obliged to determine the procedures relevant to land development applications. To this end, the City of Johannesburg ("**COJ**") published the City of Johannesburg Metropolitan Municipality Municipal Planning By-Law ("**COJ By-Law**") as required under the provisions of SPLUMA.

Although a SPLUMA Certificate is required in terms of the provisions of SPLUMA, the specific conditions and requirements to be met in order for such a certificate to be issued by a municipality are set out in the particular municipality's by-laws. By way of example, we will look at the relevant provisions of the COJ By-Law which requires certain certificates to be issued by the COJ and/or written consent to be obtained from the COJ in respect of the transfer of the following New Erven –

- a New Erf in a new township (section 29(1)(d) of the COJ By-Law);
- a New Erf resulting from a subdivision of another erf (section 33(1)(a) read together with section 34(5) of the COJ By-Law);
- a New Erf resulting from the consolidation of two or more erven (section 33(1)(b) read together with section 34(6) of the COJ By-Law); and
- the registration of a sectional title scheme on any property (section 53 of the COJ By-Law).

The abovementioned provisions of the COJ By-Law restrict the powers of the Registrar of Deeds ("**Registrar**") to register a new title deed (certificate of registered title or a certificate of consolidated title) or a deed of transfer in respect of a New Erf unless the municipality has certified that certain requirements and conditions stipulated by the municipality have been complied with.

The following table summarises the essential requirements and conditions to be met by a property owner in order to successfully obtain a certificate from the COJ in terms of the relevant provisions of the COJ By-Law –

Section 29(1)(d) Certificate: New Erf in an Approved New Township	**Section 34(5) Certificate: Subdivision of Erf in an Approved Township**	**Section 34(6) Certificate: Consolidation of Erven in an Approved Township**	**Section 53 Consent: Section Title Scheme Registration**
Following the approval by the COJ of a new township application, the Registrar cannot issue a certificate of registered title ("**CRT**") in respect of a New Erf in a new approved township nor permit the transfer thereof unless the COJ certifies that, within a period of three months from the date of such certification, the COJ will be able to provide the erf with such engineering services as it may deem necessary and that it is prepared to consider the approval of a building plan in terms of the National Building Regulations and Building Standards Act in respect of the erf in question. In addition, all outstanding external engineering services and inclusionary housing contributions and all amounts *in lieu* of open spaces (where applicable) in respect of the township must have been paid in full by the property owner to the COJ.	Following the approval by the COJ of a subdivision application, the owner of any erf resulting from that subdivision is not permitted to apply to the Deeds Registry for a CRT in respect of the New Erf nor transfer any new subdivided erf unless the power of attorney to apply for the CRT or the power of attorney to transfer the new subdivided erf has been endorsed by the COJ to the effect that the owner has complied with the subdivisional conditions imposed by the COJ or, alternatively, that arrangements (usually a guarantee) in respect of such compliance have been made to the satisfaction of the COJ prior to the submission (and lodgement) of the application for the CRT or deed of transfer at the relevant Deeds Registry. These conditions may include, among other things, that the property owner shall pay to the COJ an amount of money in respect of the provision of engineering services where it will be necessary to enhance or improve the services as a result of the subdivision as well as the imposition and registration of new conditions of title.	Following the approval by the COJ of the consolidation of two or more erven, the Registrar cannot issue a certificate of consolidated title in respect of the resulting consolidated New Erf nor permit the transfer thereof unless the COJ has confirmed in writing that the owner has complied with all of the conditions imposed by the COJ. These conditions may include, among other things, that the property owner shall pay to the COJ an amount of money in respect of the provision of engineering services where it will be necessary to enhance or improve the services as a result of the consolidation as well as the imposition and registration of new conditions of title.	The Registrar cannot register a sectional title scheme on any property unless the COJ has confirmed in writing that the property owner has complied with the COJ By-Laws, the COJ's Land Use Scheme and/or any other planning legislation that might still be in operation and applicable to the property in question. This is a new and prudent legal requirement.

The concept of a certificate being required to be issued by a municipality to permit the transfer of a New Erf in the deeds registry is not a new one. Even before the commencement of SPLUMA, under the different provincial town-planning ordinances, similar certificates and consents were required. By way of two examples –

1. in terms of section 82(1) of the Town-Planning and Townships Ordinance No 15 of 1986 ("**Old Ordinance**"), before the transfer of a New Erf in a new township could be registered in the Deeds Registry, the municipality was required to certify that it would be able to provide the relevant erf with the appropriate engineering services as it deemed necessary and that

it was prepared to consider an application for the approval of a building plan in respect of the particular erf ("**Old Section 82 Certificate**"). The new section 29(1) of the COJ By-Law is very similar to the Old Section 82 Certificate; and

2. insofar as subdivisions of erven were concerned, Regulation 38 of the Old Ordinance ("**Old Regulation 38**") provided that the property owner had to have the power of attorney in respect of the transfer endorsed by the municipality confirming that the property owner had complied with the conditions imposed or that arrangements (usually a guarantee) in respect of such compliance had been made to the satisfaction of the municipality. The Old Regulation 38 certification is almost identical to the new one set out in section 34(5) of the COJ By-Law.

In conclusion, only a New Erf requires a SPLUMA Certificate to be obtained from the municipality for purposes of registering a new title deed in respect thereof or for purposes of registering the transfer of a New Erf and the specific requirements to be complied with are set out in each municipality's by-laws. No such certificate is required in respect of any property which is not a New Erf.



Khathu Neluheni

Director

View Profile