
REAL ESTATE

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ELECTRICAL COMPLIANCE CERTIFICATE AND ELECTRIC FENCE CERTIFICATE

This Alert sets out the differences between electric fencing certificates and certificates of compliance and considers the legal consequences flowing from non-compliance with the respective regulations.

Electrical Installations Regulations, 2009

The Electrical Installations Regulations impose a positive obligation on landowners and users of premises to manage the safety risks related to electrical installations. The definition of 'premises' includes 'buildings' which in turn refers to:

- i. any structure attached to the soil;
- ii. any building or such structure or part thereof which is in the process of being erected; or
- iii. any prefabricated building or structure not attached to the soil.

Collectively, these definitions are wide enough to include installations in residential homes (even prefabricated structures), commercial buildings and industrial structures (such as factories).

In terms of regulation 2, a user, lessor or a lessee of an electrical installation shall be responsible for the safety, safe use and maintenance of electrical installations, which he or she uses or leases. This provision therefore binds landowners and users or tenants, if they have taken on the responsibility to comply with the regulations in terms of a written undertaking or lease agreement.

Regulation 7(1) states that "every user or lessor of an electrical installation shall have a valid certificate of compliance for that installation...which shall be accompanied by a test report in the format approved by the chief inspector, in respect of every such installation". Regulation 7(3) provides that a regulation shall not apply to an electrical installation that existed prior to 23 October 1992 and where there was no change in ownership after 1 March 1994. However, if there has been an addition or alteration to such an electrical installation, the user or the lessor of the electrical installation, shall obtain an electrical certificate of compliance for the whole installation, where after the provisions of sub regulation (1) shall be applicable to that installation.

In short, regulation 7(3) requires that landowners (either as occupier or lessor of an property or both) and users (such as tenants) obtain a certificate of compliance for the entire installation if the property was sold after March 1994 and where any changes or alterations were made to an installation that existed before October 1992. Landowners and users will also be required to obtain certificates of compliance for alterations or additions to the electrical installation if the original installation existed after October 1992 and a certificate of compliance had been issued previously for that original installation.

Landowners may, in terms of the regulation 7(5), not permit the transfer of property if certificates of compliance are older than two years. Typically, the agreement of sale will regulate the relationship between a seller and purchaser in so far as a compliance certificate is concerned. However, this provision places the onus on the landowner (in either his capacity as lessor or user) to furnish a valid certificate of compliance in instances where the certificate is older than two years; where he wants to sell the property and where the sale agreement does not govern this aspect of the seller/purchaser relationship.

Electrical Machinery Regulations, 2011

Regulation 1 defines an electric fence as an electrified barrier consisting of one or more bare conductors erected against the trespass of persons or animals. This definition should be read with the definition for electric fence energiser, namely electrical machinery arranged so as to deliver a periodic non-lethal amount of electrical energy to an electrical fence connected to it. An electric fence system refers to the electric fence and the energiser. Finally, in the context of electric fence systems, a 'registered person' means a person registered in terms of regulation 14 as an electric fence installer.

The Electrical Machinery Regulations regulates the manufacturing, design, sale installation or use of electrical machinery, including electric fences. Therefore, these regulations are binding on all designers, manufacturers, installers, sellers, users, employers and suppliers of electric fence system, who in terms of regulation 12, shall not install, sell or use an electric fence or electric fence energiser other than in accordance with the health and safety standards incorporated in the regulations under s44 of the Occupational Health and Safety Act, No 85 of 1993. However, electric fence systems installed in terms of the Electrical Machinery Regulations, 1988 prior to the coming into operation of the 2011 regulations, shall be deemed to comply with regulation 12.

Regulation 12(4) provides – subject to sub regulation (5) – that every user or lessor of an electric fence system, shall have an electric fence certificatein respect of such electric fence system, provided that such certificate shall be transferable. However, in terms of regulation 12(5), sub regulation (4) will not apply to an electric fence system that existed before the 2011 regulations came into force, unless:

- a) an addition or alteration is effected to such an electric fence system; or
- b) there is a change of ownership in respect of premises on which an electric fence system exists after 1 October 2012.

Therefore, unlike the compliance certificate for electrical installations, an outdated certificate will not be a precondition for the transfer of ownership. However, it is necessary to obtain a certificate for systems that were installed after 1 October 2012 and pre-2011 electric fence systems if changes and alterations were made to such systems after the existing regulations came in force.

Persons who fail to comply with these regulations may be fined or jailed for a maximum period of 12 months, and in the case of an continuous offence be fined an additional amount of R 200 a day or additional imprisonment for each day that the offence continues.

Attie Pretorius and Janke Strydom

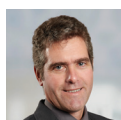
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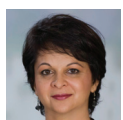
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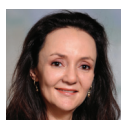
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