



## rural development & land reform

Department:  
Rural Development and Land Reform  
REPUBLIC OF SOUTH AFRICA

### **REGISTRAR'S CIRCULAR NO 03 OF 2016** **SPATIAL PLANNING AND LAND USE MANAGEMENT ACT, 2013 (ACT** **NO. 16 OF 2013)**

#### **1. DATE OF COMING INTO OPERATION**

- 1.1 The Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013) (hereinafter referred to as 'SPLUMA') came into operation on 1 July 2015 (see notice 26 in Government Gazette No. 38828 dated 27 May 2015).
- 1.2 The Regulations to the Act came into operation on 13 November 2015 (see notice No. 1126 Government Gazette, No. 39415 dated 13 November 2015).

#### **2. PURPOSE OF THE ACT**

- 2.1 The Act applies to the entire area of the Republic of South Africa and its purpose, amongst other things, is to provide a framework for spatial planning and land use management; to promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development; and to provide for matters incidental thereto.
- 2.2 SPLUMA is National framework legislation and as such, does not comprehensively deal with deeds registration issues. Its primary aim is to provide provisions relating to the establishment of systems, principles, policies and directives relating to land use.

Schedule 1 to the Act provides for Provincial legislation to regulate land development, land use management, township establishment, spatial planning, subdivision of land, consolidation of land, removal of restrictive conditions, and other land use matters.

In terms of Section 32 (1) of SPLUMA read with Section 156(1) of the Constitution of South Africa, 108 of 1996, the respective Municipalities may pass By-laws which will deal with the above, provided it complies with the provisions of Section 2(2) of SPLUMA. In the event that no By-laws have been passed, the current legislation in the specific Province will prevail subject to the provision of Section 2(2) of SPLUMA.

#### **3. LEGISLATION REPEALED BY SPLUMA**

The following laws have been repealed by Schedule 3 to the Act:-

- 3.1 Removal of Restrictions Act 84 of 1967;

- 3.2 Physical Planning Act 88 of 1967 and 125 of 1991;
- 3.3 Less Formal Township Establishment Act 113 of 1991;
- 3.4 Development Facilitation Act 67 of 1995.

#### **4. APPLICATION OF THE ACT**

- 4.1 Section 33(1) prescribes that all land development applications from the 1<sup>st</sup> July 2015, must be submitted to a Municipality as authority of first instance.
- 4.2 In terms of Section 41(1) of SPLUMA, the Municipal Planning Tribunal, may change the use, form or function of land. As this is not identified, the definitions provided in SPLUMA will provide further guidelines.
- 4.3 In terms of Section 41(2) of SPLUMA the following may include an application as referred to in Section 33(1).
  - 4.3.1 township establishment;
  - 4.3.2 subdivision of land;
  - 4.3.3 consolidation of different pieces of land;
  - 4.3.4 amendment of land use or town planning scheme; or
  - 4.3.5 removal, amendment or suspension of a restrictive condition.
- 4.4 Section 43 (2) of SPLUMA provides that a conditional approval referred to in Section 41 lapses if a condition is not complied with, within a period of 5 years from the date of approval. The approval though, can prescribe a shorter period for compliance. If extension is granted, it may not exceed 5 years from date of the original approval. This has the effect that a new land development application need to be applied for if not registered within the said period.
- 4.5 Section 2 prescribes that SPLUMA applies to the entire Republic. It further provides that except as provided for in SPLUMA no legislation not repealed by SPLUMA may prescribe an alternative or parallel planning mechanism.
- 4.6 Section 60(1) prescribes that the repeal of the laws referred to in section 59 of SPLUMA or by a provincial legislature in relation to provincial or municipal planning does not affect the validity of anything done in terms of that legislation.
- 4.7 Due to the fact that municipalities within the area of jurisdiction of the Pretoria Deeds Registry may have different land use schemes / by-laws in place, further circulars will be issued to provide for the different By-laws.

## 5. TRANSITIONAL MEASURES

Transitional measures will be issued which is provincially directed. It will be issued under cover of a further circular once finalized by the Department.

## 6. DECISION MAKING AUTHORITY

6.1 Powers, functions and duties in terms of SPLUMA, must be exercised by a Municipal Planning Tribunal, or an authorized official or the Municipality.

6.2 Section 35(1) provides that a municipality must, in order to determine land use and development applications, establish a Municipal Planning Tribunal.

6.3 Section 35(2) provides that a municipality may authorize that certain land use and land development applications may be considered and determined by an official of the Municipality.

## 7. CATEGORIZATION OF LAND DEVELOPMENT APPLICATIONS

7.1 Section 35(3) provides that a Municipality must categorise certain land use and land development applications to be considered by an authorized official of the Municipality and those to be referred to the Municipal Planning Tribunal. Examiners must ensure that approval/consent from the correct Authorizing Authority is obtained.

7.2 SCHEDULE 5 of the SPLUMA REGULATIONS set out the Standard Categories of Land Development and Land Use Applications which will be utilized in the absence of categorization by a Municipality.

The division of functions between an authorised official and a Municipal Planning Tribunal can be made as follows:

All **category 1** applications and all **opposed category 2** applications must be referred to the **Municipal Planning Tribunal**.

All **category 2** applications that are not opposed must be considered and determined by the **authorised official of the Municipality**.

7.3 The Act has certain specific references to the Authorizing Authority, which cannot be included in the categorization mentioned above:

7.3.1 Consents in terms of Section 45(6) -to be provided by the **Municipality**;

7.3.2 Removal, amendment or suspension of Restrictive conditions -to be performed by the **Municipal Planning Tribunal** (Section 47(1)) and Section 47(1);

7.3.3 Certificate that all the requirements and conditions for the approval have been complied with –to be provided by the **Municipality** (Section 53)

- 7.3.4 Development Facilitation applications -to be performed by the **Municipality** (Section 60(2) and Section 60(3)).

## 8. NOTIFICATION TO REGISTRAR OF DEEDS

- 8.1 Section 46(1) of SPLUMA provides that a Municipal Planning Tribunal must, after a land development application affecting the use of land *not in accordance with a condition in a title deed*, notify the Registrar of Deeds in whose office the deed or document is filed of such approval.
- 8.2 The notification referred to may only be lodged with the lodgement of an application or with deeds to be registered. In the case of a new Township to be opened, the notification can be filed on the Township file together with the Conditions of Establishment.
- 8.3 The notification must refer to the date of the conditional approval of the application to enable the Deeds Office to determine the date of validity, mentioned in Section 43 (2). In the case where the notification does not make mention of the date of approval, a separate document must be lodged by the Municipal Planning Tribunal to determine the mentioned date of validity.
- 8.4 Due to the categorization in terms of the different By-laws, the notification must refer to the specific category applicable. In case the notification does not make mention of the applicable categorization, a separate document must be lodged indicating the applicable category.
- 8.5 In terms of Section 46(2), the Registrar of Deeds and Surveyor-General must, upon receipt of the above-mentioned notification or in terms of requirement in terms of the applicable By-law, endorse the affected records to give effect to the decision.

## 9. COMPLIANCE

- 9.1 In terms of Section 53 of SPLUMA, no registration may be affected in respect of a property resulting from a land development application, unless the **municipality** has certified that all the requirements and conditions for the approval have been complied with.
- 9.2 The By-laws of the applicable municipality must be checked for applicable compliance requirements regarding consents to subdivision by the authorizing authority, certificates regarding compliance, etc.

## 10. EXEMPTIONS

- 10.1 Section 55(1) provides that the Minister may, in the public interest, on request from a province or municipality, by notice in the *Gazette*-
- (a) exempt from one or all the provisions of this Act-
    - (i) a piece of land specified in the notice;
    - (ii) an area specified in the notice;

10.2 The Surveyor General must refer to an Exemption on the applicable diagram or General Plan.

## 11. CONSULTATION WITH OTHER AUTHORITIES IN TERMS OF LEGISLATION

- 11.1 Section 33(2) prescribes that where an application or authorization is required in terms of any other legislation for related land use, such an application must also be made or such authorization must also be requested in terms of that legislation.

Consents required in terms of Legislation not repealed by SPLUMA (e.g. Advertising of Roads and Ribbon Development Act, Act 21 of 40; Act 70 of 70, SANRAL Act 7 of 1998 etc.) must therefore also be issued by that **Controlling Authority**. Examiners must ensure that where authorization is also regulated in terms of another law, the relevant Municipality **and** the authority in terms of that legislation may exercise their powers jointly in an integrated document or by separate documents as provided for in Section 30.

- 11.2 In terms of Section 45(6) where a condition of title, a condition of establishment of a township or an existing scheme provides for a purpose with the consent or approval of the administrator, a Premier, the township board or any controlling authority, such consent may be granted by the municipality and such reference to the administrator, Premier, township board or controlling authority, is deemed to be a reference to the said municipality.

- 11.2.1 Only where powers of the Controlling Authority have been assigned to the Municipality, will the Municipality on its own be able to issue such consents.

- 11.2.2 Section 45(6) should be narrowly interpreted. The provisions of Sections 33(2) and 30 must be applied where powers of the Controlling Authority have not been assigned to the Municipality. Examiners must therefore ensure that an integrated consent by the



Municipality **and** the authority in terms of the mentioned legislation or separate consents is lodged.

## 12. EFFECT OF SPLUMA ON EXISTING ACTS OF REGISTRATION

### 12.1 DEVELOPMENT FACILITATION ACT, ACT 67 OF 1995

12.1.1 Section 60(2)(b) of SPLUMA provides that a reference to a tribunal in terms of section 15 of the Development Facilitation Act, 1995 for the purposes of deciding or otherwise disposing of any application, appeal or other matters pending before a tribunal at the commencement of this Act must be construed as a reference to a local or metropolitan **municipality**.

12.1.2 Section 60(2)(c) of SPLUMA provides that references to a designated officer and the registrar in terms of the Development Facilitation Act, 1995 must for the purposes of deciding or otherwise disposing of any application, appeal or other matters pending before a tribunal at the commencement of this Act must be construed as a references to an **official** of a local or metropolitan **municipality** designated by such municipality to perform such function.

12.1.3 Section 60(3) of SPLUMA refers provides that despite the repeal of the Development Facilitation Act, 1995, a **municipality** must continue to perform the functions conferred on a designated officer in terms of the Development Facilitation Act, 1995 –

- (a) to inform the Registrar of Deeds that the conditions of establishment which have to be complied with prior to the commencement of registration, have been complied with as contemplated in Section 38(1)(c) of the Development Facilitation Act, 1995; and
- (b) to inform the Registrar of Deeds that the applicant and the municipality have fulfilled their obligations relating to the provision of services as contemplated in Section 38(1)(d) of the Development Facilitation Act, 1995.

12.1.4 Section 60(2)(d) of SPLUMA provides that the Minister may prescribe a date by which pending matters must be disposed of.

## 12.2 CLOSURE OF PUBLIC PLACES

12.2.1 Closure of public places is dealt with in terms of respective legislation in different Provinces.

12.2.2 The Deeds office should be notified who will affect the closure and in terms of which authority it will be affected. The specific authority will determine the registration in the deeds office to be effected.

12.2.3 It should be noted though that the application must be submitted to the municipality as the authority of first instance as provided for in Section 33(1) read with Section 33(2) of SPLUMA. If consent from another authority is required, the said consent must be lodged as well.

12.2.4 Servitude in favour of the General Public can only be cancelled by the Premier of the Province or by Court Order as per RCR 87/2010.

### **12.3 NATIONAL ROAD CLOSURES**

12.3.1 Section 45(1) of the South African National Roads Agency Limited and National Roads Act, Act 7 of 1998 provides for the closing of a National Road.

12.3.2 Section 52 (1) provides for a development application affecting national interest. Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), a land development application must be referred to the Minister where such an application materially impacts on-

- (a) matters within the exclusive functional area of the national sphere in terms of the Constitution;
- (c) land use for a purpose which falls within the functional area of the national sphere of government.

It should be noted though that the application must be submitted to the municipality as the authority of first instance as provided for in Section 33(1) read with Section 52(7) of SPLUMA.

12.3.3 Withdrawal of a declaration of a National Road as provided for in Section 40(1)(b) of Act 7 of 1998 supra, has the effect of a "National road" being converted back to a "Public road". This has the effect that the procedure referred to in paragraph 10.4.1 supra would apply to such roads, depending of the Municipality in whose area of jurisdiction the said road is situated.

### **12.4 SECTIONAL TITLES**

12.4.1 The definition of "**land development**" as provided for in SPLUMA means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme;

- 12.4.2 Section 53 of SPLUMA provides 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.  
This has the effect that a Municipality will have to lodge a certificate that all requirements and conditions for approval have been applied with in all cases where an opening of a scheme is lodged in terms of Section 11(1) of the Sectional Titles Act, Act 95 of 1886.
- 12.4.3 The provisions of Section 43(2) regarding the lapsing of the application if not completed within five years will also apply to Sectional Titles.
- 12.4.4 If a Developer reserve a Real Right of Extension in terms of Section 25 of the Sectional Titles Act, Act 95 of 1886, the proposed development need not to be complied with within the said five year period as the said right is not a conditional approval as referred to in Section 43(2) of SPLUMA.
- 12.4.5 SPLUMA is not applicable on registration of a subdivision of a section in terms of Section 22 or a consolidation of sections in terms of Section 23 of the Sectional Titles Act, Act 95 of 1886 as Section 41 of SPLUMA does not make reference thereto and no new conditions are included.

## **12.5 REMOVAL OF RESTRICTION ACT**

- 12.5.1 The Gauteng Removal of Restrictions Act, Act 3 of 1996; has not been repealed.
- 12.5.2 The Removal of Restriction Act, Act 84 OF 1967 has been repealed. In terms of Notice Number 160, Government Gazette Number 16049, dated 31 October 1994 the Act, except for Section 5, had been assigned to the Provincial Government. This has the effect that North-West Province and Limpopo Province will still utilize the Act as assigned to them.
- 12.5.3 In terms of section 47(1) of SPLUMA a restrictive condition may, with the approval of a Municipal Planning Tribunal, be removed, amended or suspended.
- 12.5.4 Section 47(4) provides that a notice of an application to remove, amend or suspend a restrictive condition which operates for the benefit of the State must be in writing and given in the prescribed manner to the organ of state which is responsible for the administration of the law or the performance of the function to which such condition relates.
- 12.5.5 Section 47(5) of SPLUMA provides that an applicant at whose instance a restrictive condition is removed, amended or suspended in terms of the Act, must apply to the Registrar of Deeds for the recording of the removal, amendment or suspension. The Registrar must record such removal, amendment or suspension.



- 12.5.6 There are no prescriptive provisions in the Act or Regulations in respect of how and when such application must be made. However, the provisions of the Deeds Registries Act 47 of 1937 must be invoked for the recordal of the removal, amendment or suspension of the condition. An application in terms of section 3(1)(v) of Act 47 of 1937 must be lodged, in which reference is made to the relevant Act / By-Law / Land Use Scheme by which the condition has been removed/amended/suspended.

## **12.6 LESS FORMAL TOWNSHIP ESTABLISHMENT ACT, ACT 113 OF 1991**

The Less Formal Township Establishment Act, Act 113 OF 1991 has been repealed. In terms of Notice Number 159, Government Gazette Number 16049, dated 31 October 1994 the, Less Formal Township Establishment Act, Act 113 of 1991, had been assigned to the Provincial Government of Limpopo, the Provincial Government of North-West and the Provincial Government of Gauteng.

## **12.7 FURTHER ACTS OF REGISTRATION**

- 12.7.1 As per the following definitions it is clear that SPLUMA affects other acts of registration as well:

**“owner”** means the person registered in a deeds registry as the owner of land or who is the beneficial owner in law;

**“land”** means any erf, agricultural holding or farm portion, and includes any improvement or building on the land and any real right in land;

**“land development”** means the erection of buildings or structures on land, or the change of use of land, including township establishment, the subdivision or consolidation of land or any deviation from the land use or uses permitted in terms of an applicable land use scheme;

**“land use”** means the purpose for which land is or may be used lawfully in terms of a land use scheme, existing scheme or in terms of any other authorization, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes.

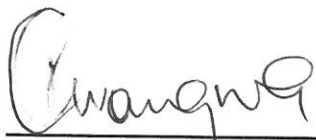
- 12.7.2 If the controlling authority determines that the land claim will ultimately have the effect of change of the use, form or function of land as determined in Section 41(1), SPLUMA will find application. This has the effect that a Municipality will have to lodge a certificate that all requirements and conditions for approval have been applied with in all cases where the usage of the land will change or if a person obtain land as a beneficial owner e.g. excisions.

### 13. EFFECT OF SPLUMA ON STATE LAND

13.1 SPLUMA also binds the State and it must comply with the land use scheme of a municipality.

13.2 Section 26(1) provides that an adopted and approved land use scheme- has the force of law, and all land owners and users of land, including a municipality, a state-owned enterprise and organs of state within the municipal area are bound by the provisions of such a land use scheme;

13.3 Section 45(1)(a) provides that a land development application may only be submitted by-  
an owner, including the State, of the land concerned.

  
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REGISTRAR OF DEEDS  
PRETORIA  
DATE: 26/02/16

