

Applicability of Certificate of Occupancy – Section 14 of NBR&BS Act

The below provides some clarification in respect of when a Certificate of Occupation required by the National Building Regulations and Building Standards Act, No. 103 of 1977 became a mandatory requirement. Especially in situations where institutions and local authorities become insistent that proof of such must be provided by an owner although no such proof is available.

The information provided is not intended as legal advice and is provided in good faith. Where the issue is or becomes one of dispute legal advice should be obtained.

Until 1985 building in South Africa was controlled within the urban areas under the jurisdiction of individual local authorities. Each applying prescriptive regulations or bylaws adopted or formulated by themselves.

The urban area generally determined by the local authorities planning legislation which excluded the surrounding peri-urban, farmsteads, rural and tribal areas.

Finalisation of any authorised building work being recorded by way of an adjustment to the extent and value of buildings on the property.

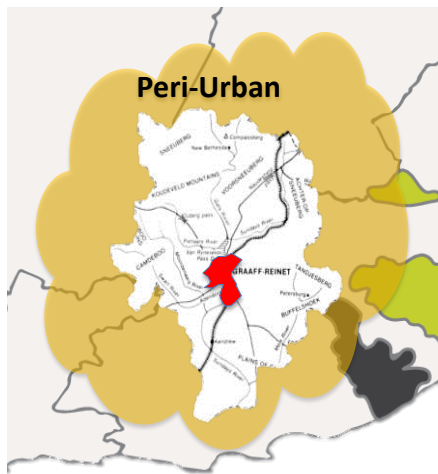
In 1966 an attempt was made to rationalise the disparate regulations throughout South Africa by producing prescriptive Standard Building Regulations. This effort was unsuccessful as adoption of these regulations was not made mandatory.

Following this the South African Bureau of Standards (SABS) developed the National Building Regulations (NBR). Legislation was then promulgated to ensure that these would be uniformly enforced by local authorities. The National Building Regulations and Building Standards Act, No. 103 of 1977 (NBR&BS), became effective on 1 September 1985.

One aspect introduced by the NBR&BS was the issuing of a Certificate of Occupancy by a local authority. This required in terms of section 14 of the NBR&BS. Such Certificate of Occupancy being in relation to building work approved by the local authority in terms of section 7 of the NBR&BS.

As peri-urban, farmsteads, rural, tribal areas, and self-governing and independent states, at the time, were outside the jurisdiction of local authorities the adoption of the 1985 NBR&BS, and thus the issuing of a Certificate of Occupancy, was limited to the urban areas of a local authority's jurisdiction from 01 September 1985. A Certificate of Occupancy, as required today, did not exist prior to 01 September 1985.

This situation existed until 1 February 1999 when the promulgated Municipal Structures Act, No 117 of 1998, became effective. This legislation establishing a “wall-to-wall” municipal structure within South Africa, ie: expanding the jurisdiction of existing local authorities to include the areas formerly outside of their jurisdiction.



Area in “red” shows municipal controlled area pre: February 1999.

The consequence of this on the NBR&BS is that, as of 1 February 1999, the requirement for obtaining an approval in terms of section 7 of the NBR&BS, and thus the issuing of a Certificate of Occupancy by a local authority, was expanded to include all areas in a local authorities jurisdiction, including those previously excluded.

As the NBR&BS is not retroactive in its application any buildings that existed, in areas formerly outside the jurisdiction of a local authority and those erected prior to 01 September 1985, are recognised as having a legal existence without a Certificate of Occupancy being issued.

The promulgation of the Municipal Structure Act did not affect such legal recognition.

Section 4(1) of the NBR&BS makes it clear that the legislation is only applicable to proposed (NEW) building work,

“No person shall without the prior approval in writing of the local authority in question, erect any building in respect of which plans and specifications are to be drawn and submitted in terms of this Act.”

As the building(s) in such areas and those built prior to 01 September 1985 are already existent, and have a legal status, they cannot be submitted to a local authority as a proposal. Plans for such building(s) can only be submitted to the local authority for it's record.

This also means that no Certificate of Occupancy can be issued retroactively for such existing buildings by a local authority. This also applies where a plan of such existent building(s) is submitted to a local authority for record.

For a local authority to issue a Certificate of Occupancy it will first have to declare the existing building(s) to be unauthorised by way of court order. Thereafter it will have to serve a notice on the owner of such “unauthorised” building to make an application for approval in terms of sec.4 of the NBR&BS Act. A Certificate of Occupancy can then only be issued once an approval is granted under sec.7 of the NBR&BS Act.

Establishments and local authorities requesting a certificate of occupancy, or proof of such, being provided for building work that falls within the above framework unfortunately do so without an understanding of the legislative framework that existed prior to the implementation of the National Building Regulations and Building Standards Act of 1977 and the Municipal Structures Act of 1998.

The requirement for a Certificate of Occupancy is therefore only available where a building fell within the area under the jurisdiction of a municipality between 01 September 1985 and 1 February 1999, excluding the surrounding peri-urban, farmsteads, rural and tribal areas. From February 1999 the requirement applied to all NEW building(s) and building work proposed.

The above is reinforced by the recent amendment to the SANS 10400-A Deemed-to-Satisfy standard which now includes the following provision specifically related to a Certificate of Occupancy and older buildings.

4.5 Copy of Certificate of Occupancy required for older buildings erected before the enactment of The National Building Regulations and Standards Act and the issue of Occupancy Certificates for such buildings

NOTE The occupancy certificate process (Section 14 of the National Building Regulations Act) deals with an ongoing development process which starts with the approval of the building plan, the required building inspections during construction as it progresses up to completion of the building and the issuing of the occupancy certificate once the building is completed in accordance with the building plans approval granted in terms of Section 7 of the National Building Regulations Act. See annex E for information on the risk-based approach to building inspections.

4.5.1 Buildings already erected shall be categorised as follows:

a) buildings which were erected prior the effective date of the Act, which was 1 September 1985: (Gazette 9608 of 1 March 1985)

b) buildings for which building plans were approved after the effective date of the Act, but prior the effective date of recent amendments to the legislative framework.

4.5.2 Occupancy certificates shall be issued in terms of section 14 of the Act, and can only be issued in relation to building plans which were approved in terms of Section 7 of the Act.

NOTE 1 All buildings erected prior the effective date were therefore not approved in terms of Section 7 of the National Building Regulations Act but in terms of legislation applicable before the effective date of the National Building Regulations Act. Occupancy certificates in terms of section 7 of the National Building Regulations Act cannot be issued under the current legislation as the legislation is not retrospectively enforceable.

NOTE 2 There is no legal requirement for an owner to obtain an occupancy certificate for buildings erected prior the effective date, but any additions and alterations done to such building will after the effective date require an occupancy certificate to be issued in relation to an approval obtained.

NOTE 3 Local Authorities may issue at their discretion letters where such certification is required by owners for buildings erected prior to the effective date.

4.5.3 Buildings erected after the effective date and approved in terms of Section 7 of the National Building Regulations Act had to comply with the National Building Regulations and the related series of standards applicable at the date of approval. Such buildings shall therefore be deemed to be compliant with the requirements of the National Building Regulations Act.

Amendments to the National Building Regulations or the related series of standards after the date of approval of a building application are not retrospectively enforceable.

M. KEUTER

SACAP ST 0111 | SAIAT 60211 | CIBSE 043360 | SAGI I-219

12 December 2024

References:

Development Bank of Southern Africa (DBSA). 1993. *Development and the application of building regulations*. Gauteng, Development Bank of Southern Africa

South Africa, Department of Trade and Industry. 1977. *National Building Regulations and Building Standards Act No. 103 of 1977 (as amended)*. Pretoria: Government Printer.

South African Bureau of Standards. 2022. *The application of the National Building Regulations Part A: General principles and requirements*. SANS 10400-A:2022. Pretoria: SABS Standards Division.

National Regulator for Compulsory Specifications. 2017. *The National Building Regulations (Presentation)*.