



## DEVELOPMENT MANAGEMENT SCHEME COMPLIANCE ADVISORY: 15 OF 2021

# TRANSFER CERTIFICATE IN TERMS OF THE CITY OF CAPE TOWN MUNICIPAL PLANNING BY-LAW, 2015 (MPBL)

## 1. BACKGROUND

To ensure a consistent approach with regard to transfer certificate processing in terms of the MPBL, the Development Management Department's position is set out in this advisory.

While this advisory deals with the processing of section 137 transfer certificates, it also deals with the following related issues:

- Structures proposed to straddle the boundary of two or more contiguous land units and the need for consolidation in terms of section 50(1).
- Construction of buildings or structures on land units in an unconfirmed subdivision in terms of section 55(4).

## 2. LEGAL POSITION

2.1. Since 1 July 2015 transfer certificates can no longer be issued in terms of the former Land Use Planning Ordinance, No 15 of 1985. This authority now lies in section 137 of the MPBL.

The relevant extract from the MPBL is below:

### **“137 Transfer certificate**

- (1) A transferor intending to effect the first registration of transfer of a land unit or to obtain a certificate of registered title which arises out of an approved subdivision within the geographic area of the City must provide the City Manager with proof to the satisfaction of the City Manager that all the further requirements contemplated in section 54(1) have been met.
- (2) A transferor intending to effect the registration of transfer of a land unit within the geographic area of the City that is indicated on the system as being subject to the action referred to in paragraphs (a) and (b), must provide proof to the satisfaction of the City, that –

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- (a) *in cases where a contravention levy was imposed in terms of the Ordinance and or an administrative penalty contemplated in section 129 was imposed – that the levy or penalty has been paid;*
    - (b) *in cases where a directive has been issued in terms of section 128 – that the directive has been complied with.*
  - (3) *If the City Manager is satisfied that the requirements of subsection (1) and (2) have been met, the City Manager must issue a certificate authorising the transfer and, if the land unit arises out of an approved subdivision, the City Manager must issue a certificate for each land unit and may only issue a certificate for a land unit within a phase approved by the City.*
  - (4) *No person may apply to the Registrar of Deeds for, and the Registrar of Deeds may not register, the transfer of a land unit without the certificate contemplated in subsection (3).*
  - (5) *If a certificate contemplated in subsection (3) is issued in error –*
    - (a) *the new owner must still comply with all outstanding requirements contemplated in subsection (1), regardless of whether another person also has the duty to do so; and*
    - (b) *the City is exempt from liability for any damage which may be caused as a result.”*
- 2.2. Section 137(1) requires that the transferor provide the City with proof to the satisfaction of the City that all the further requirements contemplated in section 54(1) have been met.

**“54      Transfer of land unit arising out of approved subdivision**

- (1) *No person may obtain transfer of a land unit or certificate of registered title of a land unit arising out of an approved subdivision or phase of a subdivision approved by the City unless –*
  - (a) *the Surveyor-General has granted the approval contemplated in section 53;*
  - (b) *the engineering services required by the conditions of approval contemplated in section 52(4) and any other applicable legislation in respect of the area or the approved phase of a subdivision on the approved general plan or diagram have been completely installed;*
  - (c) *all other conditions of subdivision or the conditions relating to the approved phase of a subdivision on the approved general plan or diagram and all conditions precedent to the transfer of the land unit have been met; and*
  - (d) *where an owners' association is required,*
    - (i) *the City has certified the constitution of the association (as contemplated in section 62(2));*

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- (ii) *the association has been or will be established upon transfer of the first land unit (as contemplated in section 61(5)); and*
- (iii) *all land designated in terms of the conditions of approval to be transferred to the owners' association including private roads and private open space, arising from the subdivision or approved phase of a subdivision have been, or together with the transfer of the first land unit, will be transferred to the association, without compensation."*

2.3. In addition, no building plan may be approved on a land unit not forming part of a confirmed subdivision subject to the following provisions:

*"(4) No building or structure may be constructed on a land unit forming part of an approved subdivision unless –*

- (a) the subdivision or relevant phased part thereof is confirmed; or*
- (b) the City approves the construction before the subdivision or phased part thereof is confirmed."*

2.4. Furthermore to the approval of building plans, it must be noted that no building may now straddle a property boundary:

**"50 Consolidation and construction of buildings**

(1) *A person may not construct a building or structure that straddles the boundaries of two or more contiguous land units unless the owners of the contiguous land units have either taken legal steps to the City Manager's satisfaction, to ensure that such land units cannot be separately sold, leased, alienated or otherwise disposed of or the City has approved the consolidation of the land units.*

..

(4) *No building plan may be approved in terms of section 7 of the National Building Regulations and Building Standards Act in respect of a building or structure contemplated in subsection (1), until –*

- (a) the consolidation or documentation arising out of the legal steps contemplated in subsection (1) has been registered; or*
- (b) a conveyancer provides written proof that the consolidation or the documentation arising out of the legal steps has been lodged with the Registrar of Deeds for registration."*

**3. WHEN IS THE ISSUING OF A TRANSFER CERTIFICATE APPLICABLE?**

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- 3.1. A request for a transfer certificate is only necessary when the transferor intends to effect the first registration of a land unit arising out of any approved subdivision, which includes a request for a Certificate of Registered Title (CRT). Section 137 is not applicable in any other circumstance.
- 3.2. The transferor is usually the owner/developer's conveyancing attorney who will engage with the City.
- 3.3. The certificate may only be issued if the authorised official is satisfied that the requirements of section 137(1) and (2) have been met.

### **4. SUBMISSION REQUIREMENTS**

- 4.1. A request for a transfer certificate must be submitted by completing the necessary request form, and attaching all required documentation and information needed for the City to consider such request. The onus is on the transferor to provide the proof of compliance. The City will no longer accept requests for transfer without the necessary proof of compliance. This means that the owner/developer will need to engage with the authorised official as well as the various service departments responsible for imposing any conditions to establish whether the conditions have been met, before submission.
- 4.2. In the case of larger and more complex subdivision applications, i.e. township establishment, the developer should be requested to appoint a conveyancing attorney at an early stage to scrutinise the conditions so as to apply for amendments or corrections when necessary.
- 4.3. Section 137 makes no reference to an application being required. An application should therefore be in the form of a request for a transfer certificate.
- 4.4. In terms of section 137(1) the transferor will need to supply:
  - 4.4.1. An approved SG diagram or general plan for the entire subdivision or for an approved phase.
  - 4.4.2. Proof that all subdivision conditions have been met. For this, it will be necessary for a copy of the subdivision approval together with any extensions of validity that have been approved.
  - 4.4.3. Proof that any other conditions in terms of any other applicable legislation have been met for the subdivision or phase thereof.

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- 4.4.4. If applicable, the certification of an owners' association, evidence that arrangements have been made for the association to be established and that the required portions of land to be transferred to the association upon the transfer of the first land unit have been put in place.

### **5. LAPSING OF SUBDIVISION AND PHASES**

- 5.1. The approval of a subdivision is valid for five years and a single extension of this may be applied for and granted in terms of the MPBL. This approval period applies to the entire subdivision. Registration of a single portion from an approved General Plan will only confirm the subdivision for the area covered by the General Plan. If there are approved phases to a subdivision then the confirmation of the first phase will only confirm that particular phase and not any of the others. Any phases that have not been confirmed will lapse five years after the approval date (together with any extensions of validity).
- 5.2. It should be noted that any amendment to an approved subdivision or phase does not change the validity period of the original subdivision approval.

### **6. WHEN AND HOW A TRANSFER REQUEST WILL BE PROCESSED**

- 6.1. The City will firstly check that the required information has been submitted (as indicated on the request form). If complete, then an invoice is created for the clearance. The fee for the certificate will depend upon the number of erven for which clearance is requested.
- 6.2. A certificate may be issued for one erf or any number of the erven comprising an approved subdivision or general plan, including an approved phase. Before issuing the certificate for the first clearance in the subdivision it must be ensured that all conditions applicable to the subdivision or phase have been complied with as required in terms of section 137(1).
- 6.3. Each erf needs a transfer certificate (multiple erven can be listed in one certificate).
- 6.4. Once compliance with section 137(1) has been met, subsequent transfer certificates for any remaining erven can be issued immediately, unless there is a block on such transfer as a result of a condition of approval that allows for certain specific erven or a certain number of erven to be withheld from transfer clearance by a service department. An example of this is where the Roads and Stormwater Department includes a condition that only 50% of erven may be transferred until a particular external road/sewer/service has been installed.

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- 6.5. It is important, therefore, to know the history of the clearances within a general plan area to ensure that minimal delays are experienced with clearances after the first clearance has been given in terms of section 137.
- 6.6. An authorised official will check the submitted documentation for completeness and correctness. The correct diagrams and approvals need to have been submitted. And, very importantly, verification of the validity of the subdivision and any associated departure approvals is necessary before taking any further action.

### **7. ADVERTISING AND CIRCULATION**

- 7.1. No advertising of any transfer clearance requests is necessary.
- 7.2. Circulation to internal departments is, however, necessary when there are conditions of approval to be met. In certain cases it may also be necessary to obtain clearance from an external body, for example where Provincial Department requirements have been included in the subdivision conditions, or where Eskom is the electricity supplier for the area. Despite the need for the transferor to provide proof of compliance of conditions, it is required that the proposed certificate request be circulated via DAMS to the departments so that they can confirm compliance.

### **8. COMPLIANCE WITH SECTION 137(2)**

- 8.1. In terms of section 137(2)(a) the transferor must supply proof of payment of either a contravention levy imposed in terms of the Land Use Planning Ordinance, No 15 of 1985 or an administrative penalty as contemplated in terms of section 129 of the MPBL. Determination of an administrative penalty is currently delegated to the Municipal Planning Tribunal (MPT) and therefore there should be a report and decision by the MPT on record. The decision by the MPT to impose a penalty will determine the amount and may also include a time frame within which to pay.
- 8.2. Section 137(2)(b) requires the transferor to supply proof of compliance with a directive issued in terms of section 128 of the MPBL. This is where a directive (the follow-up to a notice) has been served in relation to the property where the City is of the opinion that a contravention of the By-law is taking place. The directive may require action to take place by a certain date, for example to stop an unauthorised land use or to demolish an unauthorised structure or to gain approval for unauthorised structures.
- 8.3. In both of the above cases, the request form will provide check boxes for the transferor to indicate whether either is applicable.

### **9. DELEGATED AUTHORITY AND POSSIBLE OUTCOMES**

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- 9.1. In terms of the City Manager's subdelegations certain authorised officials have the delegated authority to issue a certificate in terms of section 137(3).
- 9.2. Typical outcomes:
  - 9.2.1. A transfer certificate is issued.
  - 9.2.2. The transferor may be notified of any outstanding requirements, e.g. outstanding compliance with specified conditions as well as who to contact to get the compliance, or payment of a levy or compliance with a directive.
  - 9.2.3. The requester may be notified that the issuing of the transfer certificate has been refused. This may result from a lapsed subdivision approval, condition not being complied with or a service department's condition that cannot realistically be met in the short term.

### **10. CONSOLIDATION ASPECTS AND IMPLICATIONS ON ISSUING A TRANSFER CLEARANCE**

- 10.1. The need for consolidation of properties is a requirement introduced in the MPBL as a result of a standard set by the Land Use Planning Act (LUPA).
- 10.2. The provisions governing consolidations are contained in Chapter 6, Part 3 of the MPBL. It is now a provision in law that a building may not straddle a boundary of two or more properties.
- 10.3. Some consolidations are exempt from needing the approval of the City in terms of section 67 of the MPBL. This means that there is no approval required by the City.

A consolidation is still required, and is acquired by submitting a consolidation diagram to the Surveyor General for approval and then registering the new property at the Registrar of Deeds.
- 10.4. An authorised official will check to see whether there is a need or a condition for consolidation to take place in terms of a previous approval. An owner can no longer submit a consolidation diagram to the Surveyor General without the written approval of the City.

### **11. APPROVAL OF A STRUCTURE OR BUILDING IN AN UNCONFIRMED SUBDIVISION AND WHERE PARENT PROPERTIES HAVE NOT BEEN CONSOLIDATED**

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- 11.1. For a variety of reasons a developer may wish to obtain building plan approval to allow construction on a property prior to the confirmation of the subdivision or phased portion. Section 55(4) does not allow this to happen unless approval is granted by the City.
- 11.2. It is important to note that despite an approval in terms of section 55(4)(b), one must also be aware of the need for consolidation in the event of a building or structure straddling existing cadastral boundaries. If this situation arises then an owner must also consolidate before the building plan can be approved.
- 11.3. An application for approval in terms of section 55(4) is an application type in terms of section 42(v). This can be made either simultaneously with the subdivision application or subsequent to the subdivision approval. A developer, therefore, does not have to wait until a section 137 certificate is issued before applying.
- 11.4. Once the subdivision has been confirmed there is no further requirement for a section 55(4)(b) approval. An owner does not have to wait for the registration of the new erf before submitting building plans. Subdivision of land may involve one or more parent properties. If more than one, then a consolidated diagram will need to be created first before the new subdivided portions can be created.
- 11.5. The parent property or properties may already have existing dwellings approved and built. In some cases these dwellings are to remain, and in other cases the dwellings or portions of these dwellings will be demolished.
- 11.6. A developer may try to seek building plan approval on the parent property or properties prior to the confirmation of a related subdivision or prior to an approval in terms of section 55(4)(b). There are several scenarios where this can take place without any approval necessary in terms of the MPBL. The following consideration will to be taken into account when assessing a building plan in these situations:
  - 11.6.1. Building plans will need to be submitted on the parent erf number unless a section 55(4)(b) approval has been granted, in which case it would be submitted on the new erf number.
  - 11.6.2. No structures other than boundary walling may be approved where they are to straddle an existing property boundary unless a consolidated diagram has been approved.
  - 11.6.3. No structures are to be approved where they straddle any new boundary that forms part of an unconfirmed subdivision. Should the owner want to build, then the unconfirmed subdivision would first need to be withdrawn or amended.
  - 11.6.4. A new dwelling will need to comply with the development rules of the zone for the parent property if the subdivision is both unconfirmed and no section

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55(4)(b) approval has been granted. If a proposed dwelling does not comply with the development rules for the parent property in these circumstances, then a departure would first need to be approved. This could be applied for and considered simultaneously with the subdivision application as well as the development rules applicable to the proposed zoning for the new erf to be created, upon which the dwelling would be situated after the subdivision has been confirmed. It is necessary to check in particular for building line compliance to ensure that the new dwelling will be correctly positioned on its future erf.

- 11.6.5. In granting a section 55(4)(b) approval, a condition may be imposed that the development rules of the new subdivision would apply (this would only be necessary if there was to be a change in zoning following the subdivision).
- 11.6.6. If departures are necessary in respect of the proposed new erven and they have been granted as part of the subdivision approval, then new dwellings may be approved on the existing property or properties taking into account the new cadastral boundaries and any departures relating to them, only when a section 55(4)(b) application has been approved.
- 11.6.7. Future provision of services (together with any servitudes to protect them) needs to be considered by the owner/developer before commitment to dwellings on existing properties.
- 11.6.8. Approval in terms of section 55(4)(b) is required if more dwellings are proposed than are permitted in the existing (not future) base zoning.
- 11.6.9. Boundary walling can be approved around the outer perimeter of a series of properties that form the new subdivision regardless of whether there are approved subdivision phases or not. Walling needs to comply with the National Building Regulations and have regard to the relevant provisions in the MPBL. While the walling should be shown on an SDP, if it was made a requirement of subdivision, such SDP does not need to be approved before the building plans can be approved. The owner/ developer must be aware that any subsequent approval of an SDP or a specific condition relating to walling included in the subdivision approval would need to be complied with before subdivision confirmation and so care should be taken to not compromise such confirmation with a prematurely constructed boundary wall.
- 11.6.10. Security entrances, loading areas, and refuse collection areas may only be approved if they comply with an approved SDP. This would have been approved at the time of the original subdivision or could have been made a condition of the subdivision approval.

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11.6.11. Owners and developers, therefore, have the opportunity to program and sequence the construction of dwellings in a new subdivision, and make all the necessary applications in terms of the MPBL at one time. The number of dwellings for which building plan approval can be granted will depend inter alia on the number of existing erven (and what is already developed on each portion), the base zoning limitations, subdivision approval (together with conditions) and any approvals granted in terms of section 55(4)(b) (together with conditions).

### **12. SECTION 55(4)(B) APPROVAL CONSIDERATIONS**

- 12.1. When an approval for construction on an unconfirmed subdivision is considered, the following are some of the issues that need to be considered:
- 12.1.1. Are services and access available to the construction?
  - 12.1.2. The number of structures to be built. The applicant must provide a convincing and reasonable argument why the proposed number of structures are required, i.e. development sold out or protection of services to be provided.
  - 12.1.3. Sometimes it is necessary to build structures prior to subdivision such that the party walls can be verified on site before registration of the new erf is created.
  - 12.1.4. Is the construction to be used for habitable purposes? If it is, then a condition of approval will be considered that permission to use the property in terms of the approved building plan may only take place once the subdivision has been confirmed.

### **13. BUILDING PLAN APPROVAL REQUIREMENTS FOLLOWING A SECTION 55(4)(B) APPROVAL**

- 13.1. Building plans can be submitted for approval in terms of the National Building Regulations once a section 55(4)(b) approval has been issued.
- 13.2. A requirement of submission will be an approved General Plan or erf diagrams for the subdivision or the applicable approved phase thereof.
- 13.3. The City may consider a 'permission to use for a habitable structure until such time as the subdivision is confirmed. The developer will need to demonstrate both a water supply and an operating sanitary facility. An example is for a show house where the dwelling

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can be certified to be safe to occupy, but may not be used as a dwelling i.e. living of a family.

- 13.4. No occupancy certificate will be issued until the erf is part of a registered subdivision, depending on a condition of this nature has been imposed during the section 55(4)(b) approval.
- 13.5. No provisional authorisation to commence construction of additional structures will be issued where there is an approval in terms of section 55(4)(b).

### **14. GIS REQUIREMENTS**

- 14.1. These requirements will apply for a request for transfer certificates in cases where application is made in terms of section 55(4)(b) approval and consolidations , after approval.
- 14.2. Should a proposed plan of subdivision or consolidation require any amendment as a result of a decision, it will be required that the applicant also submit the amended endorsed plan of subdivision or consolidation to the GIS section at the relevant District Office to which the application was submitted. These amendments must contain all information listed below.
- 14.3. A copy of the proposed plan of subdivision should be submitted as part of the application in terms of the MPBL and should include the minimum information required in terms of section 52(2) of the MPBL.
- 14.4. The plan of subdivision must also include the following information:
  - Portion numbers;
  - The extent of the portions;
  - Dimensions;
  - Proposed street numbers;
  - Proposed street names (private and/or public);
  - In the case of a proposed complex the proposed name for the development must be indicated and it must be indicated whether it will be a gated complex or not;
  - Proposed zonings in respect of the proposed land units.
- 14.5. A copy of the proposed plan of consolidation should be submitted as part of the application in terms of the MPBL and should include the minimum information required in terms of section 50(3) of the MPBL.

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14.6. A proposed consolidation plan must, in addition to depicting the proposed development in its cadastral context, also include the following information:

- Portion numbers;
- Proposed street numbers;
- Proposed zonings in respect of the proposed land unit(s).



### PLEASE NOTE

Always consult the City of Cape Town Municipal Planning By-law, 2015 (as amended), before any land use application is submitted to the Department.