



Midvaal Local Municipality
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Dear Property Owner,

When a property owner within a Golf Estate governed by a Homeowners Association (HOA) starts occupying their house without a Certificate of Occupancy from the municipality or without clearance approval from the HOA, it presents significant legal, financial, and safety risks for the owner, the municipality, and the HOA.

Below is an outline of the risks and responsibilities of each party to ensure compliance:

1. Risks and Responsibilities of the Property Owner

Risks:

- **Legal Consequences:** Occupying a house without an **Occupancy Certificate** is a violation of the **National Building Regulations and Standards Act** and **municipal by-laws** and may result in **penalties, fines, or even eviction orders**.
- **Insurance Issues:** The property may not be **covered by insurance** in the event of fire, theft, or natural disasters because it is **illegally occupied**.
- **Financial Risks:** The HOA or municipality may impose **finances, legal costs, or special levies** on the owner for non-compliance.
- **Resale and Transfer Restrictions:** The house **cannot be legally sold or transferred** until compliance is met.
- **Utility Disconnections:** The municipality or HOA may refuse to connect or may **disconnect water, electricity, and sanitation services** due to non-compliance.
- **Structural and Safety Risks:** The house may have **unapproved structural work, fire safety violations, or incomplete construction**, posing risks to occupants.

Responsibilities to Seek Compliance:

- **Apply for an Occupancy Certificate** from the municipality by ensuring the building meets **approved plans, safety standards, and regulations (SANS 10400)**.
- **Obtain Clearance from the HOA** by ensuring all **architectural guidelines, estate rules, and financial obligations** (e.g., levies, penalties) are met.
- **Rectify Non-Compliance Issues** if the structure was **not built according to approved plans or HOA standards** before applying for approvals.

2. Risks and Responsibilities of the Municipality

Risks:

- **Loss of Regulatory Control:** Allowing occupation without an **Occupancy Certificate** **undermines building regulations** and sets a precedent for other non-compliant developments.
- **Liability for Unsafe Structures:** If an incident occurs (e.g., building collapse, fire), the municipality may be held **liable for failing to enforce building regulations**.

- **Weakened Governance:** Failure to act may result in other property owners **ignoring municipal approvals**, reducing **overall compliance**.

Responsibilities to Seek Compliance:

- **Issue a Compliance Notice or Contravention Notice** under the National Building Regulations and Building Standards Act (NBRBSA, Act 103 of 1977).
- **Enforce Legal Action if Necessary**, such as issuing fines or **ceasing occupation** until compliance is met.
- **Conduct Inspections** to verify that the building is safe and meets all **SANS 10400 building regulations** before issuing an Occupancy Certificate.

3. Risks and Responsibilities of the Homeowners Association (HOA)

Risks:

- **Loss of Estate Control:** Allowing occupation without HOA clearance undermines the HOA's authority and could lead to **widespread rule violations**.
- **Aesthetic and Design Risks:** The property might not **comply with estate architectural guidelines**, affecting the **uniformity and value** of the estate.
- **Financial Impact:** If an owner has **unpaid levies, penalties, or fees**, it sets a precedent for other homeowners to default.
- **Legal and Insurance Risks:** The HOA could be drawn into **legal disputes** or **insurance liabilities** if an unapproved structure poses a risk to neighbours.

Responsibilities to Seek Compliance:

- **Withhold Estate Clearance Approval** until all estate requirements are met.
- **Restrict Access to Estate Services**, such as security clearance, estate amenities, and HOA-managed utilities.
- **Engage the Municipality** to ensure that no occupation occurs without legal approvals.
- **Take Legal Action if Necessary**, such as enforcing **contractual obligations** in the HOA constitution or estate rules to remove non-compliant owners from occupation.

Conclusion:

The property owner is at the highest risk legally and financially, but both the municipality and HOA must actively enforce compliance to maintain regulatory control. Collaborative enforcement (municipality + HOA) is the best approach to ensure compliance with building laws and estate rules while maintaining the integrity of the Golf Estate.

Regards



K. Rasepae
Building Control Officer