



Stupel &  
Berman Inc

## WHAT DOES THE LAW SAY ABOUT ELECTRIC FENCES

### OCCUPATIONAL HEALTH AND SAFETY ACT NO 85 of 1995 ("THE ACT") REGULATION 12(4)

*Every user or lessor of an electric fence system shall have an electric fence system certificate in respect of such electric fence system*

In a country burdened by crime, there is an apparent need to take extra security measures to protect oneself and property. With this in mind, electric fences seem to have become an established norm for many home owners. A new buyer might breathe a sigh of relief when there is already an electric fence installed. However, our legislation would caution otherwise.

Regulation 12(4) of the regulations to the Act ultimately provides that no one can use an electrical fence system unless it is certified as safe and compliant with the regulated standards. What does this mean for sellers and purchasers? In this regulation, there is no express obligation for a seller on which an electric fence system exists to provide such certificate to the purchaser. Furthermore, there is no prohibition on the transfer of ownership of such property without such certificate.

#### CAUTION

A reading of **Section 22** of the **Act** may render the sale of immovable property on which an electrical fence system exists unlawful if such system is not certified.

#### Section 22

*If any requirement...in respect of any article... or for the use or application thereof has been prescribed, no person shall sell... in any manner whatsoever such article ... unless it complies with that requirement*

However, **Regulation 12(5)** of the Act makes a distinction between properties with existing electrical fences owned before and after **1 October 2012**.

- Before: s22 does not apply. No obligation to obtain certificate. Property can be sold freely without certification.
- After: s22 will apply to new owners. A Certificate will need to be obtained.

The fact that an existing owner can freely sell his property without certification does not mean that the purchaser of that property will be permitted to use the electrical fence system without certification. This means that the purchaser cannot use the electrical fence system until and unless it has been certified. As such the purchaser will have to bear the cost.

#### NOTE

#### TO

#### ESTATE AGENTS

- Agents are ethically bound to inform the purchaser of this risk.
- When it becomes clear to the purchaser that there may be a compliance issue relating to the electrical fence certification, this may be an issue of interest and negotiation at the time of sale.
- It is permissible for the seller and the purchaser to agree that the purchaser will assume the legal responsibility of ensuring compliance with the regulation in respect of the property. As such, this clause may be included in the sale agreement of the property placing an obligation on the purchaser to cause the electrical fence system to be certified as compliant at the purchaser's cost.

#### STUPEL & BERMAN INCORPORATED

Attorneys • Notaries • Conveyancers

[www.stupelberman.co.za](http://www.stupelberman.co.za) | [ana@stupelberman.co.za](mailto:ana@stupelberman.co.za) / [nandi@stupelberman.co.za](mailto:nandi@stupelberman.co.za)

011 776 3000

**SECTIONAL TITLES:** You may be wondering whether the regulations apply to the sale of sectional title units if there is an electrical fence system situated on the common property. The Regulations do not distinguish between normal free-standing properties and sectional title properties.

When a sectional title unit is sold, it is both the unit and an undivided share in the common property which are being transferred. Consequently, as electrical fence systems are situated on the common property, the seller would be selling part ownership of the fence system. This has the effect of triggering the application of the Fence regulations. However and for the sake of practicality, it is suggested that the Body Corporate should take the step to ensure compliance. Should the Body Corporate refuse, it may be worthwhile to pay for the certification to avoid liability.

**GROUP HOUSING COMPLEXES (Home Owner's association):** Where there is a large piece of land that has been subdivided into anumber of individual erven and where a perimeter wall on which an electric fence is established has been built around all erven - one does not have to focus on the electric fence regulations unless an individual within the complex has chosen to install a fence system on their own erf.

#### **IN SUMMARY**

- The matter of who will be responsible for the electrical fence certification should be addressed in every prior to any agreement of sale of immovable property being entered into.
- The issue of costs is negotiable between the seller and the buyer
- Inform the seller and the buyer that the issue of certification is negotiable as it would be unethical to allow either of the parties to believe that they have an unalterable obligation to bear the costs associated with the certification.

| <b>Certificate Required</b> | <b>Legislation Applicable</b>                                                                           | <b>Reason for Certificate</b>                                     | <b>Validity</b>  | <b>May Buyer Waive?</b> | <b>Issued By:</b>                                                                                   | <b>When Required:</b>                  |
|-----------------------------|---------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------|------------------|-------------------------|-----------------------------------------------------------------------------------------------------|----------------------------------------|
| <b>Electrical Fence</b>     | Occupational Health and Safety Act, 1993<br><br>- Regulation 12 of the Electrical Machinery Regulations | Safety of the electrical installation of an electric fence system | <b>Two Years</b> | Yes                     | A registered person in terms of Regulation 9 or 11 of the Electrical Installation Regulations, 2002 | <b>Before registration of transfer</b> |

Contact us for more information and comprehensive legal advice.

#### **STUPEL & BERMAN INCORPORATED**

Attorneys • Notaries • Conveyancers

[www.stupelberman.co.za](http://www.stupelberman.co.za) | [ana@stupelberman.co.za](mailto:ana@stupelberman.co.za) / [nandi@stupelberman.co.za](mailto:nandi@stupelberman.co.za)

011 776 3000