

# Legal rights of property owners when dealing with illegal buildings

By [Chantelle Gladwin](#) and [Tenielle Combrink](#)

2 Nov 2016

This article examines the legal rights of property owners and occupiers when dealing with illegal buildings, which are buildings that are built contrary to the approved plans on file at the municipality, or buildings that are built in contravention of any zoning, town planning, or title deed condition or restrictive covenant.



© Romolo Tavani – [123RF.com](#)

## The law

This issue is regulated by the National Building Regulations and Building Standard Act 103 of 1977 (“NBS”), the Promotion of Administrative Justice Act 3 of 2000 (“PAJA”), the Constitution of the Republic of South Africa (as amended) 108 of 1996, and our common law (made up of judgments).

## Responsibility for enforcement

In terms of the NBS, it is the responsibility of the local authority (i.e. the municipality) to enforce compliance with the relevant statutory building laws. This essentially means that when you are faced with a situation where you would like to prevent the continued construction of an illegal building, or obtain demolition of that illegal building, you should first approach the building department at the applicable municipality for assistance. It is its duty to enforce the relevant statutory laws and ensure that illegal building is dealt with in terms of same. If the illegal building continues despite warnings given by the municipality to stop (or to demolish), then the municipality is empowered to approach a court for a demolition order or an order preventing further illegal building.

To the extent that the municipality fails or refuses to take action, or is simply not taking adequate action, or is too slow in taking that action, it is legally possible for owners to approach a court themselves for an order enforcing compliance with the building legislation.

Regardless of whether the local authority or the neighbour personally approached the court, the type of order normally sought would be either an interdict preventing the offending builder from continuing to build illegally, or an order requiring the demolition of the illegal building works. It has been assumed for many years that courts are reluctant to grant demolition orders on the basis that it will cause severe financial harm to the owner of the property being demolished. Van der Walt , however, argues that from an analysis of the relevant case law it appears that this is not true, and more often than not when a proper case is made out for a demolition order of illegal building works, the court will grant these types of orders. Van der Walt explains that similarly, the idea that a court will not grant a demolition order of an illegal building that has already been completed has not found favour in our law; and in fact was expressly struck down by our courts. There is thus good reason to believe that where you are seeking a demolition order, provided you are legally entitled to same, you should be able to obtain it from the courts.

## **What if I am unhappy with the approved building plans?**

If you only become aware of building works that you believe violate your rights as a neighbour after the plans for those building works have already been approved, and the offending builder is building in accordance with the approved plans, your only recourse is to approach the courts for an order declaring that the municipality's decision to approve those building plans was legally flawed and should be set aside. When the plans are set aside as having been wrongfully approved, there will be no approved building plans in place for the building in question, which will render it an illegal building in terms of which you can seek a demolition order.

## **What if I am happy with the approved building plans, but the building is not built in line with them?**

If there are approved plans but the building is not being built in accordance therewith, or has already been built contrary to these plans, you would complain to the municipality and require it to enforce the relevant building laws to deal with the illegal building, failing which you would approach a court for an interdict to stop the illegal building (if construction is ongoing) or to demolish the illegal works.

## **An amicable alternative**

It is possible to approach the builder or owner of an illegal building with a view to coming to an agreement that measures will be put in place to relieve the impact of the illegal building. Where this happens the aggrieved neighbour may be satisfied that he is no longer being affected by the illegal building works; but this does not change the nature of the illegal building works – they remain illegal because they are not compliant with the relevant building laws. The neighbours' consent to the illegal building works does not render those building works lawful. It is thus no defence to claim that building works are not illegal because the neighbour knew about them and consented to them, or knew about them and did not complain about them.

Enforcing compliance with building and town planning laws can be tricky if the municipality does not come to your aid satisfactorily. In this case you will need the assistance of an attorney to advise you on the matter and to guide you to the best solution for your particular needs. There is no "one size fits all" solution and every case must be dealt with on its unique facts. Approaching a court for relief is often your only viable option, and it is necessary to ensure that when doing this you are obtaining the best legal advice as court action can be very expensive and in order to be successful it is

necessary for your legal representative to be well and truly versed in all of the laws pertaining to the topic.

## ABOUT THE AUTHOR

Chantelle Gladwin is a partner, and Tenielle Combrink is a candidate attorney at Schindlers Attorneys.

For more, visit: <https://www.bizcommunity.com>