

Check zoning rights before buying residential property for business use

How often do we see those adverts "perfect for home-office" or "ideal for business" on an estate agent's advertising platform and take it as a given that the said property is in fact 'ideal for business'?

But often these advertising statements are either loosely, incorrectly or deceitfully used in order to make a property more attractive to buyers.

PJ Veldhuizen, CEO of Gillan and Veldhuizen attorneys, who have a specialist conveyancing and property law division, warns both estate agents and buyers of the danger of not checking if a property you are buying or selling for commercial use is zoned correctly.

The Zoning Scheme Regulations laws are aimed at achieving systematic and rational development of land and land use in an area of jurisdiction.

The purpose naturally is to achieve a proper balance between competing rights and the interests of residents. Part III of the Zoning Scheme Regulations serves to determine use zones and the uses to which property in those zones may be put.

Regulation 3.11 allows for the practice of a profession or occupation from home. Professionals such as lawyers, doctors, dentists or architects often opt for this type of property as it is most suitable to their commercial needs.

In a recent case in Grahamstown, the court ruled that the owner of a day spa, who was operating her business from her home, was in contravention of the Zoning Scheme Regulations and interdicted her from using her property to trade as a business.

Commenting on the ruling, Veldhuizen said that it was reckless for Estate Agents to advertise such properties without checking with the town planning division on the zoning rights.

"Often estate agents will be told by the seller that the commercial rights are sound and will not do their own due diligence and check the facts. Estate agents and sellers could find themselves in trouble as a complaint could be laid at the Estate Agency Affairs Board and, furthermore, a claim may lie against the Seller due to a fraudulent misrepresentation."

Re-zoning of a residential property for business use is a specialised service which requires the assistance of a Town Planner and usually an attorney - the process is not a simple one, nor is it speedy, and business owners could find themselves unable to run their businesses while waiting for re-zoning approval.

Veldhuizen advises prospective buyers firstly to request the title deed of the property and secondly to check the zoning rights with the city's zoning map.

Gillan and Veldhuizen Press Release