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## HOUSING CONSUMERS PROTECTION MEASURES ACT

1. The main objective with the Housing Consumers Protection Measures Act ("Act") are as follows:
  - 1.1 to represent the interests of housing consumers by providing warranty protection against defects in new homes
  - 1.2 to regulate the home building industry
  - 1.3 to provide protection to housing consumers in respect of the failure of home builders to comply with their obligations in terms of this Act
  - 1.4 to establish and to promote ethical and technical standards in the home building industry through training and inspections
  - 1.5 to improve structural quality in the interests of housing consumers and the home building industry
  - 1.7 to communicate with and to assist home builders to register in terms of this Act
  
2. The National Home Builders Registration Council ("Council") is established under the Act and has the power to:
  - 2.1 establish an industry advisory committee, the funds advisory committee, a registration committee and a disciplinary committee and may establish any other committee that it considers appropriate for the functioning of the Counciland shall:
  - 2.2 keep a register of home builders and register and reregister home builders
  - 2.3 enrol and inspect the homes
  - 2.4 provide assistance to housing consumers under circumstances where home builders fail to meet their obligations as set out in the Act
  - 2.5 assist in the resolution of disputes between registered home builders and housing consumers
  - 2.6 provide information to financial institutions, conveyancers, provincial housing development boards and any other interested person in order to assist them to comply with their obligations in terms of this Act
  - 2.7 establish grading categories and criteria in respect of home builders with a view to encourage good building practice and discourage bad building practice
  - 2.8 determine criteria to be applied in the grading of home builders in different categories for the purposes of differentiated enrolment fees

### 3. The Council may make rules

- 3.1 regulating the conduct of registered home builders
- 3.2 prescribing procedures for the registration of home builders and the expiration of registration
- 3.3 prescribing enrolment fees in respect of homes and other fees
- 3.4 prescribing procedures for enrolment and cancellation of enrolment
- 3.5 prescribing procedures for the consideration of applications for assistance by housing consumers from its fund
- 3.6 prescribing the procedures for resolution of disputes
- 3.7 prescribing procedures to be complied with by housing consumers relating to the lodgement of complaints with the Council
- 3.8 recommending terms to be included in or excluded from agreements between home builders and housing consumers in respect of the construction or sale of homes
- 3.9 prescribing a code of conduct; and
- 3.10 prescribing forms for the purposes of the Council

### 4. Access to Information

- 4.1 The Council shall keep up and provide access to an information database on the home builders registered, suspended and deregistered in terms of this Act
- 4.2 The database shall include:
  - 4.2.1 the names and identity numbers of the directors, members, trustees or partners of such companies, close corporations, trusts, partnerships or sole traders
  - 4.2.2 the number of homes enrolled by such home builders
  - 4.2.3 the number of complaints, considered valid by the Council received from housing consumers
  - 4.2.4 the grading of those home builders; and
  - 4.2.5 any other information deemed appropriate by the Council to assist housing consumers to assess the track record of a home builder
- 4.3 The Council shall provide access to the information database free of charge where this access is for the use of such information by a housing consumer and free of charge to mortgagees, conveyancers and provincial housing development boards to assist them to meet their legal enforcement obligations

## 5. Registration of a Home Builder

Section 10 (1) of the Act provides –

- 5.1 No person shall carry on the business of a home builder or receive any consideration in terms of any agreement with a housing consumer in respect of the sale or construction of a home, unless that person is a registered home builder.
- 5.2 No home builder shall construct a home unless that home builder is a registered home builder
- 5.3 The Council shall register a home builder
  - 5.3.1 on application in the prescribed form and manner
  - 5.3.2 if the Council is satisfied that the home builder meets the terms and conditions for registration the criteria
  - 5.3.3 will comply with the home builder's obligations in terms of this Act; and
  - 5.3.4 has appropriate financial, technical, construction and management capacity for the specific business carried on by the home builder in order to prevent housing consumers and the Council from being exposed to unacceptable risks
- 5.4 The registration of a home builder is not transferrable

## 6. The Council may withdraw the registration of a home builder where

- 6.1 The home builder has been found guilty by the disciplinary committee on a charge that such home builder has failed to comply with any provision of or obligation in terms of this Act and fails to comply with a notice from the Council requiring rectification of that failure;
- 6.2 has consistently failed to comply with any one or more provision, or condition or obligation in terms of this Act
- 6.3 has contravened the code of conduct made under the Rules; or
- 6.4 has failed to respond to correspondence from the Council

## 7. The Council shall, for the purposes of this Act, publish a Home Building Manual containing

- 7.1 The NHBRC Technical Requirements; and
- 7.2 guidelines prescribed by the Council to comply with the NHBRC Technical Requirements, with which registered home builders shall comply

## 8. Protection of housing consumers

- 8.1 A home builder shall ensure that the agreement concluded between the home builder and a housing consumer for the construction or sale of a home
  - 8.1.2 shall be in writing and signed by the parties
  - 8.1.2 shall set out all material terms, including the financial obligations of the housing consumer: and
  - 8.1.3 shall have attached to the written agreement as annexures, the specifications pertaining to materials to be used in construction of the home and the plans reflecting the dimensions and measurements of the home, as approved by the local government body provided that provision may be made for amendments to the plans as required by the local authority

- 8.2 The agreement between a home builder and a housing consumer for the construction or sale of a home shall be deemed to include warranties enforceable by the housing consumer against the home builder in any court, that
- 8.2.1 the home is or shall be constructed in a workmanlike manner
  - 8.2.2 is or shall be fit for habitation; and
  - 8.2.3 is or shall be constructed in accordance with the NHBRC Technical Requirements; and
  - 8.2.4 construction of the home shall be in line with the NHBRC technical requirements applicable at the time of construction and in line with the terms, plans and specifications of the agreement concluded with the housing consumer
- 8.3. the home builder shall at his costs and upon demand by the housing consumer
- 8.3.1 rectify major structural defects in the home caused by the non-compliance with the NHBRC Technical Requirements and occurring within a period which shall be set out in the agreement and which shall not be less than five years as from the occupation date, and notified to the home builder by the housing consumer within that period
  - 8.3.2 rectify non-compliance with or deviation from the terms, plans and specifications of the agreement or any deficiency related to design.
  - 8.3.3 the home builder shall repair leaks attributable to workmanship, design or materials where the housing consumer notified the home builder within a period of not less than 12 months from date of occupation
- 8.4 Where a housing consumer has sold/ disposed of his home to another housing consumer within the 5 year period within which major structural defects are covered, the selling housing consumer shall be deemed to have ceded his rights to the buying housing consumer and this shall apply to every subsequent sale within the 5 year window period from occupation.
- 8.5 any provision in an agreement which waives or excludes this provision shall be null and void
- 8.6 a home builder may not demand a deposit unless the requisite agreement has been concluded in writing may not receive consideration unless the home builder has a certificate of enrolment

## 9. Enrolment

- 9.1 A home builder shall not commence the construction of a home unless
- 9.1.2 the home builder has submitted the prescribed documents, information and fee to the Council in the prescribed manner, and
  - 9.1.3 the Council has accepted the submission and
  - 9.1.4 the Council has issued a certificate of proof of enrolment to the home builder.
- 9.2 A home builder shall provide a housing consumer with a copy of his enrolment certificate and the enrolment of a home may be cancelled or suspended by the Council for reasons as set out in sections 14 (4) and (5) which home may also be re-instated under certain circumstances

10. Funds of the National Home Builders Registration Council
  - 10.1 The funds of the council will consist of – fees payable – interest derived from investments and money from other sources
  - 10.2 and payment will be made from the fund an amount for rectification where
    - 10.2.1 major structural defects manifested in the home within the 5 year period from occupation, as a result of non-compliance with the NHBRC technical requirements
    - 10.2.2 the home builder is in breach of his obligations in terms of the Act re the rectification of such defect
    - 10.2.3 the home builder no longer exists or is unable to meet his or her obligations
11. Legal Enforcement and obligations imposed upon Mortgagees and Conveyancers
  - 11.1 No financial institution shall lend money to a housing consumer against the security of a mortgage bond registered in respect of a home unless that institution is satisfied that
    - 11.1.1 the home builder is registered in terms of this Act and
    - 11.1.2 that the home is or shall be enrolled with the Council and
    - 11.1.3 that the prescribed fees have been or shall be paid
  - 11.2 Any conveyancer attending to the registration of a mortgage bond in favour of an institution contemplated in 11.1 above shall ensure that the home builder
    - 11.2.1 is registered in terms of this Act
    - 11.2.2 has enrolled the home with the Council and
    - 11.2.3 has paid the prescribed fees in respect of that enrolment
12. Inspectors
  - 12.1 The Council shall for the purposes of this Act appoint inspectors for the inspection of homes
  - 12.2 No person shall hinder, obstruct, interfere with or withhold information from an inspector, or attempt to do so, in the exercise of a power or performance of a duty in terms of this Act
13. Offences and Penalties
  - 13.1 Any person who knowingly withholds information required in terms of this Act or furnishes information that he or she knows to be false or misleading or
  - 13.2 fails to register as a home builder, or
  - 13.3 demands or receives a deposit prior to the conclusion of a written agreement, or
  - 13.4 receives consideration even though no enrolment certificate has been issued, or
  - 13.5 extends mortgage loans even though the home builder is not registered, the home is not enrolled and fees have not been paid
  - 13.6 hinders or obstructs or deceives a home inspector, and

every director, member, trustee, managing member, officer of the home builder who permits a contravention shall be guilty of an offence and liable upon conviction of a maximum fine of R25 000 or a maximum imprisonment period of one year per charge

## 14 VARIOUS FORMS

Download and print colour copies of required forms from [www.nhbrc.org.za](http://www.nhbrc.org.za)

### 14.1 The following documents will be required in order to complete the enrolment of the house with the Council

- 14.1.1 EF003 to be completed by the builder, owner and appointed structural engineer (need to include an original bar code sticker and soil details) with original signatures
- 14.1.2 B1 to be completed by the builder, owner and competent person with original bar code sticker with original signatures
- 14.1.3 Approved council plans
- 14.1.4 Signed building contract with price breakdown
- 14.1.5 Title deed/s of the property
- 14.1.6 Letter from transferring attorney that includes the land value and property details
- 14.1.7 Certified copy of the builders NHBRC registration certificate
- 14.1.8 Certified copy of the builder's identity document

In case of multi-storey building

- 14.1.9 Structural engineer drawing for foundation, storm water management and wet services

Additional (depending on circumstances)

If the soil on the site is deemed dolomitic

- 14.1.10 Full structural engineering drawings
- 14.1.11 Geotechnical report (completed by an independent Geotech engineer)
- 14.1.12 B4 certificate and CGS recommendations

If you are developing a sectional title scheme

- 14.1.13 Marketing brochures
- 14.1.14 Feasibility study
- 14.1.15 Geotechnical report (completed by an independent Geotech engineer)

All the documents must be handed in at the nearest NHBRC offices

Once the documents have been accepted you will pay an enrolment fee (calculated on a sliding scale on the value of your building project and land

Thereafter you will be emailed a form from the NHBRC building inspector verifying inspection visits

### 14.2 The following documents will be required for late enrolment of the house with the Council

If your builder did not enrol your property before building started (15 days before foundation excavation starts), your enrolment is deemed to be late and the process of enrolment attracts far more paperwork, tests, costs, time and potential fines

- 14.2.1 EF003 to be completed by the builder, owner and appointed structural engineer (need to include an original bar code sticker and soil details) with original signatures
- 14.2.2 B1 to be completed by the builder, owner and competent person with original bar code sticker with original signatures

- 14.2.3 Appendix D1 for all completed stages of construction to be completed by the builder and structural engineer (competent person who will need to include an original bar code sticker and soil details) with original signatures
- 14.2.4 Annexure 15 to be completed by the structural engineer as the competent person  
Supplied by builder and owner
- 14.2.5 Approved council plans
- 14.2.6 Signed building contract with price breakdown
- 14.2.7 Title Deed/s of the property
- 14.2.8 Letter from the transferring attorney that includes land value and property details
- 14.2.9 Certified copy of the builder's NHBRC registration certificate
- 14.2.10 Certified copy of builder's identity document
- 14.2.11 Full Geotechnical report (including stand specific Geotech report) done by a Geotech engineer
- 14.2.12 Test results undertaken by SANAS accredited Lab in respect of soil samples taken from at least three 3 meter pits on site
- 14.2.13 Full set of engineering drawings and details which must include (depending on how far along you are with the build)
  - 14.2.13.1 timber roof design drawings and A19 certificate
  - 14.2.13.2 storm water layout
  - 14.2.13.3 subsurface drains
  - 14.2.13.4 foundation design, underfloor compaction results
  - 14.2.13.5 waterproof installation confirmation (including DPM underfloor slabs and DPC in masonry work)
  - 14.2.13.6 super structure drawings
  - 14.2.13.7 concrete test results and core test results (from SANAS accredited concrete contractor)
  - 14.2.13.8 drawing register (table indexing all site drawings, revisions)
  - 14.2.13.9 Photographs of current construction status

Exceptionally, the following additional documents

- 14.2.14 B4 certificate and CGS recommendations

If you are developing a sectional title scheme

- 14.2.15 Marketing brochures
- 14.2.16 Feasibility study

All the documents must be handed in at the nearest NHBRC offices

Once the documents have been accepted you will pay an enrolment fee (calculated on a sliding scale on the value of your building project and land

Once you have attended to the above, paid for the extra soil tests and the enrolment fee you have to wait for the inspection of documents and the site visit

The NHBRC will estimate the value of all work that was not inspected and you will have to provide a guarantee to cover that value for 5 years from occupation, as the NHBRC cannot insure what they could not inspect

By way of example, if the NHBRC deem the value of the completed works to be R500 000, you have to either pay the NHBRC R500 000 to keep for the five year period as a guarantee against future structural failure or you have to take out insurance from an Insurance company to cover that amount calculated as a percentage of the NHBRC insurance

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