

National Home Builders Registration Council Recommended Standard Home Warranty

(14 October 2002)

Preamble

The Housing Consumers Protection Measures Act (Act 95 of 1998) makes provision for the protection of housing consumers through the establishment of the National Home Builders Registration Council (NHBRC) and a warranty scheme. The Act prohibits any person from carrying out the business of a home builder, or receiving any consideration in terms of an agreement with a housing consumer in respect of a sale or construction of a home unless that person is a registered home builder.

The scheme requires that Home Builders, subject to specific exclusions, rectify and / or repair specified defects at their own cost within prescribed time limits. Should they, for whatever reason, fail to do so they will be deregistered and a fund established by the NHBRC, subject to certain limitations, will be called upon to make good.

The NHBRC has a code of conduct that reads as follows:

The parties to the provision of housing under the auspices of the NHBRC shall, in their dealings with each other, and, insofar as is relevant, in the interests of the public at large:

- *Discharge their duties and obligations timeously and with integrity.*
- *Behave equitably, honestly and transparently.*
- *Comply with all applicable legislation, regulations and by-laws.*
- *Act so as not to prejudice the interests of, or damage the reputation of, another party without good cause.*
- *Comply with all relevant responsibilities laid down by the NHBRC.*
- *Comply with the codes of conduct and ethics of organisations to which they are affiliated or with whom they are associated.*

Examples of breaches by home builders and housing consumers are as follows:

By the home builder:

- *Failing to complete the construction of a home in accordance with the NHBRC's technical requirements.*
- *Offering or accepting any gifts, favours or other considerations, of anything more than token value to or from any other party to the process.*
- *Failing to observe the provisions of the Home Building Manual.*
- *Failing to conform to non-compliance notices.*
- *Failing to enrol homes timeously.*
- *Failing to renew registration timeously.*
- *Failing to conform to statutory requirements relating to labour laws, skills development, taxes, levies etc.*
- *Failing to honour contractual requirements with other parties to the process.*
- *Breaching the codes of conduct and ethics of the organisations to which they are affiliated, or with whom they are associated.*
- *Failing to comply with requirements of the Construction Industry Development Board Act.*

By the housing consumer:

- *Failing to make a payment due to the home builder in terms of a contract.*
- *Offering any gifts, favours or other considerations, of anything more than token value to any other party to the process.*
- *Failing to honour contractual obligations with other parties to the process.*
- *Making frivolous and fraudulent claims against the NHBRC and/or the home builder.*

The warranty to rectify defects is linked to the enrolment certificate issued by the National Home Builders Registration Council. This certificate cannot be cancelled after the occupation date, but can be cancelled during construction and prior to the occupation date. The Act makes provision for the cancellation or suspension of enrolment of a home prior to the occupation date of the home if:

- *the home is not being constructed in accordance with the NHBRC Technical Requirements.*
- *the home builder fails to complete the construction of that home and another home builder continues that construction without notifying the NHBRC and making appropriate undertakings.*
- *the granting of an order by a court for the provisional liquidation or the sequestration of a home builder.*
- *on the withdrawal of the registration of the home builder.*
- *on the suspension of the registration of a home builder.*

Should enrolment not be reinstated, the NHBRC is obliged to repay the enrolment fees less the reasonable costs incurred.

The warranty does not cover the housing consumer's contractual risk associated with the construction of the home.

STANDARD HOME WARRANTY

1 Precedence of documents

The Housing Consumers Protection Measures Act (Act 95 of 1998) and Regulations relating thereto shall have precedence in the interpretation of any ambiguity or inconsistency between it and the Standardised Home Warranty.

2 Definitions

For the purposes of this Standard Home Warranty, the following definitions apply:

Act: the Housing Consumers Protection Measures Act (Act 95 of 1998)

Council: the National Home Builders Registration Council established in terms of the Housing consumers Protection Measures Act (Act 95 of 1998).

Dolomitic Zone Designation: geographical areas underlain by dolomite or limestone rock directly or at shallow depth that are designated as having a common development risk exposure in accordance with the provisions of the Part 1 of the Home Building Manual.

Enrolment: the submission by a Home Builder of a request for a particular home to be entered into the records of the Council and the completed acceptance thereof by the Council in terms of section 14(1) or (2) of the Act.

Expected Damage: an approximation of the probable damage that may occur in the masonry walls and concrete floors of a Home as described in terms of Part 1 of the Home Building Manual issued in terms of the Act.

Fund: the fund established in terms of Section 15 (4) of the Act which is intended to provide assistance to Housing Consumers under circumstances where a Home Builder fails to meet his or her obligations in terms of the Act.

Home Enrolment Certificate: the certificate of proof of enrolment of a Home issued by the Council in terms of Section 14 (1) c of the Act.

Home: any dwelling unit constructed or to be constructed by a Home Builder for residential purposes or partially for residential purposes including:

- i) the private drainage system from the structure up to the municipal connection or the cess pit connection, any garage or store room, any permanent outbuilding designed for residential purposes or for a purpose ancillary to residential purposes, and any retaining wall necessary to ensure the structural integrity of the Home, constructed or acquired under the agreement between the Housing Consumer and the Home Builder; and
- ii) in the case of sectional title units, the common property.

Note: The regulations to the Act exclude the following from a definition of a home:

- i) boarding houses, hostels, institutional facilities such as hospitals, prisons, orphanages and other welfare accommodation, time share accommodation, hotels or any residential structure which is constructed with less than 75% of the floor area designed for residential purposes;
- ii) any temporary residential structure, including a shack or caravan;
- iii) any fence, pre-cast fencing, temporary structure, swimming pool, tennis court, lift, mechanical ventilation or air conditioning system, household appliance, stable or workshop.

Home Builder: a natural or juristic person who carries on the business of a home builder as contemplated in the Act and who is appropriately registered with the National Home Builders Registration Council.

Home Building Manual: the document published by the Council in terms of section 12 of the Act which contains:

- (a) the Council's Technical Requirements; and
- (b) guidelines prescribed by the Council to comply with the NHBRC Technical Requirements.

Housing Consumer: a natural or juristic person who is in the process of acquiring or has acquired a home and includes such person's successor in title.

Inspector: a natural or juristic person appointed by the Council to perform inspections in terms of Section 19 of the Act.

Major Structural Defect: a defect which gives rise or which is likely to give rise, to damage of such severity that it affects, or is likely to affect, the structural integrity of a home and which requires complete or partial rebuilding of the Home or extensive repair work to it, subject to the limitations, qualifications or exclusions that are prescribed.

Occupation Date: the date on which the housing consumer first acquiring the Home accepts the home as reflected in a document confirming such acceptance and, in the event of such document not having been received by the Council or the Council for any reason not being able to determine such date, the date reflected in the certificate of occupancy issued by the relevant local government body contemplated in section 14 of the National Building Regulations and Building Standards Act. 1977 (Act No. 103 of 1977);

Regulations: regulations that are issued in terms of the Act.

Risk Management Plan: a comprehensive programme of action to be implemented by a responsible group, who have a direct interest in the sustainability of a specific housing development that is in a dolomitic area which addresses all aspects of good governance on such land including storm water management, pro-active maintenance, monitoring and emergency reaction planning.

Selling price: in the case of a deed of sale, the total selling or package price as determined by the deed of sale, including VAT, and in the case of a building contract, the contract price, including VAT, as determined by the building contract, together with the price at which the serviced erf has been acquired.

Site Class: areas that are designated as having common foundation and engineering characteristics in accordance with the provisions of Part 1 of the Home Building Manual issued in terms of the Act.

VAT: Value Added Tax in terms of the Value Added Tax Act (Act 89 of 1991)

3 Limitations, qualifications and exclusions

3.1 General

The limitations, qualifications and exclusions to the warranty in respect of which a Home Builder is not liable for loss, damage, destruction or threat of collapse are:

- i) wilful acts or wilful omissions of the Housing Consumer or persons residing in the home;
- ii) fire, explosion, lightning or damage caused by a third party;
- iii) storm, flood or earthquake or any other convulsion of nature;
- iv) structural alterations, repairs, modifications or alterations to the Home as originally constructed and which affected the original structure of the Home;
- v) inadequate maintenance or abnormal use of the Home or the imposition of any load greater than that for which the structure of the Home was designed or the use of the Home for any purpose other than that for which it was designed;
- vi) subsidence or landslip from any cause not related to non-compliance with the Council's technical requirements;
- vii) any change in colour, texture, opacity or staining or other aging process;
- viii) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds or the impact of aircraft or other aerial devices or articles dropped or falling there from;

- ix) destruction of or damage to the Home or any loss of expense arising there from, or any liability of whatsoever nature related to ionising radiations or contamination by radio-activity from whatever cause or from nuclear weapons material;
- x) war, invasion, act of foreign enemy hostilities (whether declared or not), civil war, revolution, rebellion, insurrection or military or usurped power, strike, riot, civil commotion;
- xi) loss or damage to any finishes unless they must be repaired or replaced due to a Major Structural Defect in the residential structure;
- xii) wear and tear, deterioration caused by neglect or damage occasioned by the failure of the Housing Consumer timeously to notify a Home Builder of any defects;
- xiii) any costs, loss or liability for which compensation is provided by other legislation;
- xiv) anything which is of a petty nature which any reasonable Home Owner or Housing Consumer could be expected to rectify him or herself; and
- xv) misuse or abnormal use of private drainage system.

3.2 Amounts payable from the Fund

3.2.1 The maximum amount that may be expended by the Council in terms of the Act in the event that the Home Builder fails to meet its obligations is the selling price of the Home as declared by the Home Builder at the time of the enrolment of the Home, up to a maximum of R 500 000.

3.2.2 The maximum amount that may be expended may include:

- i) any professional fee incurred by the Council in investigating and determining a cost effective method of rectification;
- ii) the necessary cost for rectification of any Major Structural Defect and for making good any finishes necessarily damaged by the rectification process; and
- iii) reasonable accommodation costs where, in the opinion of the Council, it would be unreasonable for a Housing Consumer to remain in occupation of the property due to the extensive nature of the remedial works, prescribed at maximum daily rates by the Council up to a maximum of five percent of the selling price, or R25 000, whichever is the lesser.

3.2.3 No amount shall be paid out of the Fund in relation to:

- i) any limitation or exclusion identified in 3.1;
- ii) consequential or economic loss of any kind or description whatsoever, including damages and penalties for and losses due to delay, breach of contract, loss of rental income or default in mortgage loan repayments; and;
- iii) any costs, loss or liability for which compensation is covered under an insurance policy.

3.2.4 Should the costs of rectification, as estimated by the Council, in any particular case be less than five percent of the selling price of the Home or R4000, whichever is the lesser, the cost of such repairs is for the account of the Housing Consumer.

4 Home Builder's Obligations

The Home Builder undertakes to:

- i) enter into a written agreement with the Housing Consumer;
- ii) construct foundations and superstructures appropriate to the Site Class and degree of Expected Damage provided for in the Data to the Standard Home Warranty;
- iii) inform the Housing Consumer the contents of the Risk Management Plan where the site is underlain by dolomites;
- iv) ensure that the Home is constructed in a workmanlike manner and is fit for habitation;
- v) only subcontract the construction of the Home to a builder who is registered as a Home Builder with the Council;

- vi) satisfy the Council's technical requirements by constructing homes in accordance with the requirements of the latest edition of the Home Building Manual;
- vii) not proceed with the construction of the Home without obtaining the necessary Home Enrolment Certificate issued by the Council;
- viii) adhere to all conditions laid down by the Council associated with the granting of the Home Enrolment Certificate;
- ix) afford Inspectors all reasonable access to undertake inspections which are necessary to confirm compliance with the Council's requirements;
- x) respond in writing within 7 (seven) days of receiving a complaint relating to a roof leak and within 21 (twenty one) days of receiving any other complaint from a Housing Consumer, indicating whether or not liability is accepted or denied, and if accepted, confirm when the work will commence and finish;
- xi) seek resolution of differences with a Housing Consumer in a reasonable manner prior to referring the complaint to the Council;
- xii) rectify at his or her cost non-compliance with, or deviation from, the contract with a Housing Consumer or any deficiency related to design, workmanship or material within a 90 (ninety) day period from the Occupation Date, subject to the Housing Consumer notifying the Home Builder of such deficiencies within this period;
- xiii) rectify any Major Structural Defect in the Home caused by the non-compliance with the Council's technical requirements occurring within five years from the Occupation Date, subject to the provisions of 3.1 and the Housing Consumer notifying the Home Builder of such defects within this period;
- xiv) repair roof leaks attributable to workmanship, design or materials occurring with a Housing Consumer or any deficiency related to design, workmanship or material within a 90 (ninety) day period from the Occupation Date, subject to the Housing Consumer notifying the Home Builder of such deficiencies within this period;
- xv) lodge a complaint with the Council, in the event that differences cannot be resolved with a Housing Consumer, only after obtaining written consent of the Housing Consumer and payment of the prescribed conciliation fee; and
- xvi) respond to complaints raised by Housing Consumers within the following time frames and in the following manner:

Period commencing from the Occupation Date	Time period to respond from receipt of a complaint by the Housing Consumer	Written action by Home Builder
Three month non-compliance	Within 21 days	1) Confirm whether the home builder denies or accepts liability for the complaint. 2) Confirm when any rectification work will commence and finish. 3) Request, where necessary, access to effect the rectification.
Five year Major Structural Defects		
One year roof leakage	Within seven days	1) Confirm whether the home builder denies or accepts liability for the complaint; 2) Confirm when any rectification work will commence and finish. 3) Request, where necessary, access to effect the rectification.

5 Housing Consumer's Obligations

5.1 General obligations

The Housing Consumer undertakes to:

- i) fulfil all contractual obligations to the Home Builder;
- ii) retain a record and proof of all payments made to the Home Builder;
- iii) seek resolution of differences with a Home Builder in a reasonable manner prior to referring the complaint to the Council;
- iv) notify the Home Builder in writing of his or her complaint, listing all items requiring attention, prior to submitting a complaint to the Council;
- v) retain a copy of the letter of complaint and proof of the date that it was sent to the Home Builder;

- vi) afford the Home Builder reasonable access to effect rectification that may be required;
- vii) ensure that he or she has met his or her financial obligations to the Home Builder prior to reporting a complaint to the Council;
- viii) pay the prescribed refundable conciliation deposit should a complaint be lodged with the Council and the Council requires that such a deposit be paid;
- ix) ensure that the surface water drainage arrangements are not altered to the extent that water ponds within 1,5 metres of the perimeter of the Home;
- x) ensure that any leaks in plumbing and drainage pipes are repaired promptly;
- xi) ensure that garden beds in close proximity to the perimeter of the Home are not over watered;
- xii) ensure that trees and large shrubs are not planted closer to the perimeter of Homes than:
 - a) Class H1 sites: three quarters their mature height;
 - b) Class H2 sites: their mature height;
 - c) Class H3 sites: one and a half times their mature height;
 and
- xiii) where the site is underlain by dolomites, to adhere to the provisions of the Risk Management Plan pertaining to Housing Consumers and to ensure that:
 - a) backwash from swimming pools, where permitted, discharge into either the municipal stormwater or drainage system; and
 - b) no water from whatever cause is allowed to pond on the site.

5.2 Specific obligations relating to formal complaints submitted to the Council for resolution

The Housing Consumer must:

- i) lodge a complaint on an official complaint form;
- ii) deposit any retention monies with the Council when requested to do so;
- iii) honour any findings of the Council arising from a complaint relating to retention monies;
- iv) respond to requests by the Council for further particulars and reasonable proof to substantiate the claim.

6 The Council's obligations

The Council is required by the Act to:

- i) carry out a preliminary investigation on receipt of a complaint lodged by a Housing Consumer, provided that due process has been followed;
- ii) refund conciliation deposits once the complaint has been dealt with, unless the complaint is found by the Council to be frivolous;
- iii) accept the complaint, refer the parties to arbitration by a single arbitrator in terms of the Arbitration Act or refuse to deal with the complaint and refer the parties to their rights under section 13 (2) of the Act for the matter to be resolved through normal court proceedings.
- iv) refund conciliation deposits once the claim has been dealt with unless the claim is found to be frivolous.

7 Data
(to be completed by the Home Builder)

7.1 HOME ENROLMENT CERTIFICATE NUMBER:

7.2 ERF NUMBER:

7.3 TOWNSHIP:

7.4 SITE CLASS: (see Annex B) C / C1 / C2 / H / H1 / H2 / R / S / S1 / S2

7.5 DOLOMITIC ZONE DESIGNATION: (see Annex B) none/ D1 / D2 / D3

(Attach relevant extracts, if any, from the Risk Management Plan that are applicable to Housing consumers)

7.6 EXPECTED DAMAGE: (see annex A) all Site Classes 0 / 1
Site Classes C1 or C2 only 0 / 1 / 2

Housing Consumer:

Name Signature

Name and signature of witness
Date

Home Builder:

Name Signature

Registration number Capacity

(Insert name and address of organisation)

Name and signature of witness
Date

Annex A: Levels of expected damage

Levels of expected damage are in terms of the Home building Manual classified in accordance with the provisions of Tables A1 and A2.

Table A1: Classification of damage in masonry walls

Description of damage in terms of ease of repair and typical effects	Approximate maximum crack width in walls (mm)	Category and degree of expected damage
Hairline cracks less than about 0,25 mm width are classed as negligible.	< 0,25	0 Negligible
Fine internal cracks which can easily be treated during normal decoration. Cracks rarely visible in external masonry.	< 1 (isolated; localised)	1 Very slight
Internal cracks easily filled. Redecoration probably required. Recurrent cracks can be masked by suitable linings. Cracks not necessarily visible externally. Doors and windows may stick slightly.	< 5	2 Slight

NOTE :

1. Crack width is only one factor in assessing damage and should not be used on its own as a direct measure of damage. In assessing the degree of severity of damage, account must be taken of the location in the house where it occurs.
2. This classification is based on the ease of repair which may be considered under three headings representing a progression in difficulty of repair, viz. redecoration due to wear and tear, remedial work to reinstate functional efficiency and structural repair.
4. Where cracks less than 1 mm are widespread throughout the building, the damage may be regarded as being Category 2.

Table A2: Classification of damage with reference to concrete surface beds

Description of typical damage	Approximate maximum crack width in floor (mm)	Maximum deviation of any joint from a 3 m straight edge (mm)	Category and degree of expected damage
Hairline cracks, insignificant tilt of floor or change in level.	< 0,3	< 5	0 Negligible
Fine but noticeable cracks. Floor reasonably level.	< 1,0	< 8	1 Very slight
Distinct cracks. Floor noticeably curved or changed in level.	< 2,0	< 10	2 Slight

Annex B: Site class and dolomitic designations

Full descriptions of the site class and dolomitic designations are contained in Part 1 of the Home Building Manual. Tables B1 and B2 provide a summary of the tabulations contained in the Home Building Manual.

Table B1: NHBC site classification designations

SITE CLASS	TYPICAL FOUNDING MATERIAL	NATURE OF FOUNDING MATERIAL	EXPECTED DAMAGE RESULTING FROM GROUND MOVEMENTS IN CONCRETE SURFACE BEDS AND MASONRY WALLS IF NORMAL CONSTRUCTION METHODS FOR STABLE GROUND CONDITIONS ARE USED
R	Rocks	Stable	None
H	Clays, silty clays, clayey silts and sandy clays.	Expansive soils (i.e. the soil may in response to moisture changes either heave (swell) or shrink)	None
H1			Cracking in masonry walls and some concrete surface beds may occur.
H2			Wide spread cracking in masonry walls and some concrete surface beds will occur. Doors may stick. Cracks may be significant.
H3			Wide spread cracking in masonry walls and some concrete surface beds will occur. Doors will jamb. Cracks may be significant and structural repairs may be necessary.
C	Silty sands, sands, sandy and gravelly soils	Compressible and potentially collapsible soils (i.e. soil under load will decrease in volume and lead to gradual settlement, or upon wetting up will result in sudden settlement)	None
C1			Cracking in masonry walls and some concrete surface beds may occur locally.
C2			Severe cracking in masonry walls and some concrete surface beds may occur locally.
P	Contaminated soils, controlled fill, dolomitic areas, landslip, landfill, marshy areas, mine waste fill, mining subsidence, reclaimed areas, uncontrolled fill, very soft silts / silty clays.	Variable	Wide spread cracking in masonry walls and some concrete surface beds may occur. Cracks may be significant and structural repairs may be necessary. Walls and floors may noticeably tilt.
S	Clayey silts, clayey sands of low plasticity, sands, sandy and gravelly soils	Compressible soils (i.e. soil under load will decrease in volume and lead to gradual settlement)	None
S1			Cracking in masonry walls and some concrete surface beds may occur, typically on a line through a home
S2			Severe cracking in masonry walls and some concrete surface beds may occur on a line through the house.

Table B2: NHBC dolomitic designations

DOLOMITIC AREA CLASS	DESCRIPTION	SINGLE STOREY MASONRY HOUSE CONSTRUCTION TYPE
D1	No site and service precautionary measures required	As for site class R, H – H3, C – C2 and S – S2
D2	General site and service precautionary measures required	As for site class R, H – H3, C – C2 and S – S2
D3	Precautionary measures in addition to D2 are required	Special foundations e.g. fill mattresses and raft foundations, rafts spanning near surface pinnacles.