



INTRODUCTION TO THE HOUSING CONSUMERS PROTECTION MEASURES ACT 95 OF 1998

MANDATE OF NHBRC

1. The Housing Consumers Protection Measures Act (“the Act”) provides for the establishment of the National Home Builders Registration Council (“NHBRC or Council”).
2. The objects of the NHBRC include representing the interests of housing consumers by providing warranty protection against defects in new homes, regulation of the home building industry, the provision of protection to housing consumers in respect of the failure of home builders to comply with their obligations in terms of the Act, to establish and promote ethical and technical standards in the home building industry, to improve structural quality in the interests of housing consumers and the home building industry, to promote consumer rights and to provide housing consumer information.
3. Acting Judge Ponnann observed in *Hubbard v Cool Ideas* 1186 CC that: “The broad thrust of the Act is obviously to protect home consumers, the vast majority of whom will undoubtedly be poor and unsophisticated, against shoddy and unsafe houses at the hands of unskilled, unregistered and perhaps even unscrupulous home builders.”
4. The Act requires the registration as a home builder of every person who carries on the business of a home builder, or who receives any consideration in terms of any agreement with a housing consumer in respect of the sale or construction of a home, or who constructs a home.

5. A home builder who fails to comply with the registration requirements of sections 10(1) and (2) is precluded from claiming consideration.
6. The NHBRC may withdraw the registration as a home builder of a person who has been found guilty by the disciplinary committee on a charge that such home builder has:
 - 6.1. failed to comply with any provision of or obligation in terms of the Act and fails to comply with a notice from the Council requiring rectification of that failure;
 - 6.2. consistently failed to comply with any one or more provision of or condition or obligation in terms of the Act –
 - 6.2.1. (i) where the Council has notified the home builder of its intended withdrawal of the home builder’s registration with the council, and has requested the home builder to provide reasons as to why the Council should not withdraw the home builder’s registration with the Council; and
 - 6.2.2. (ii) where the Council is not satisfied that the home builder will comply with any particular provision of or condition or obligation in terms of the Act.
 - 6.3. failed to comply with a notice from the Council requiring the home builder to pay amounts due to the Council on account of any fee, charge or levy or any costs incurred or expended by the Council related to the failure of the home builder to comply with section 13(2)(b)(i);
 - 6.4. contravened the code of conduct made under the Rules prescribed by the council under section;
 - 6.5. failed to respond to correspondence from the Council.
7. A home builder may not commence the construction of a home falling within any prescribed category of home unless the home builder has submitted the prescribed enrolment documents, information and fee to the NHBRC in the prescribed

manner, the NHBRC has accepted the submission contemplated in section 14(1)(a), and has entered it in its records, and has issued a certificate of proof of enrolment to the home builder.

CONCLUSION OF AGREEMENT AND IMPLIED TERMS

8. A home builder may not receive from a consumer any deposit for the construction or sale of a home unless an agreement has been concluded between the home builder and the consumer in terms of sections 13(1) and (2); and any consideration (other than a deposit) unless the provisions of section 14(1) and (2) have been complied with.
9. A home builder must provide the housing consumer with a copy of the certificate contemplated in section 14(1)(c) or (2)(c) of the Act.
10. The enrolment of a home with the Council may be cancelled or suspended by the Council prior to the occupation date of the home if the Council, on reasonable grounds, is not satisfied that the home has been constructed in accordance with the NHBRC's Technical Requirements to the extent that it may apply to that home, or the home builder, having commenced construction in respect of a home, has failed to complete the construction of that home and another home builder continues that construction without complying with the provisions of section 14(7).
11. The enrolment of a home with the Council shall automatically be deemed to have been cancelled by the Council where an order is granted by a court for the provisional liquidation or the sequestration of a home builder, or the registration of the home builder with the Council is withdrawn or suspended and this order, withdrawal or suspension occurs prior to the occupation date.
12. The Council may appoint inspectors who may, for the purpose of inspecting a home during its construction, enter and inspect the premises constituting the site of the construction at any reasonable time.
13. For the purposes of an investigation, an inspector may require the production of the drawings and specifications of a home or any part of a home, require

information from any person concerning any matter related to a home or any part of a home, and make any examination, test or inquiry that may be necessary to ensure compliance with the Home Building Manual published by the Council.

14. If the council is of the opinion that a home builder does not comply with the Act, the council may at any time on notice to the home builder apply to court for an order to direct that home builder to comply with the relevant provision, to stop construction of a home, or to grant any other assistance that may be appropriate in the circumstances.
15. The home builder must ensure that the agreement concluded between the home builder and a housing consumer for the construction or sale of a home by that home builder shall be in writing and signed by the parties, sets out the material terms, including the financial obligations of the housing consumer, and has 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.
16. The agreement between a home builder and a housing consumer for the construction or sale of a home is deemed to include warranties enforceable by the housing consumer against the home builder that:
 - 16.1. the home is (or will be) constructed in a workmanlike manner, is (or shall be) fit for habitation, is (or will be) constructed in accordance with the NHBRC Technical Requirements and the terms, plans and specifications of the agreement;
 - 16.2. the home builder shall (subject to applicable limitations and exclusions that may be prescribed by the Minister) at the cost of the home builder and upon demand by the housing consumer, 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;

- 16.3. the home builder shall rectify non-compliance with or deviation from the terms, plans and specifications of the agreement or any deficiency related to design, workmanship or material notified to the home builder by the housing consumer within a period which shall be set out in the agreement and which shall not be less than three months as from the occupation date;
- 16.4. the home builder shall repair roof leaks attributable to workmanship, design or materials occurring and notified to the home builder by the housing consumer within a period which shall be set out in the agreement and which shall not be less than 12 months as from the occupation date.
- 16.5. The home builder must explain the meaning and consequence of material clauses of the agreement to the consumer and furnish the consumer with a copy of the signed contract.

CLAIMS AND RECOURSE

- 16.6. The council may in certain circumstances pay an amount for rectification out of the fund established for that purpose, namely where:
- 16.7. within five years of the date of occupation, a major structural defect has manifested itself in respect of a home as a result of non-compliance with the NHBRC Technical Requirements and the home builder has been notified accordingly within that period;
- 16.8. within 12 months of the date of occupation, a roof leak attributable to workmanship, design or materials has manifested itself in respect of a home and the home builder has been notified accordingly within that period;

- 16.9. the home builder is in breach of the home builder's obligations regarding the rectification of such defect;
- 16.10. the relevant home was constructed by a registered home builder, had been enrolled with the council and, at the occupation date, the home was enrolled with the council;
- 16.11. the home builder no longer exists or is unable to meet his or her obligations;
- 16.12. in the case of a home that has been enrolled with the council on a project basis, the application has been made by the MEC pursuant to an agreement.