

# HOUSING CONSUMERS PROTECTION MEASURES ACT 95 OF 1998

## GENERAL REGULATIONS REGARDING HOUSING CONSUMER PROTECTION MEASURES

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The Minister of Housing has, after consultation with the National Home Builders Registration Council, under [sections 1](#), [7\(2\)](#) and [27](#) of the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998), made the regulations in the Schedule.

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### SCHEDULE

#### 1. Definitions

- (1) In these rules any word or expression to which a meaning has been assigned in the Act shall bear that meaning, and unless the context otherwise indicates -

**“Agrément certificate”** means a certificate confirming the acceptability of a non standardised design and the conditions pertaining thereto issued by the Board of Agrément South Africa;

**“associate”** means any person or body that exercises substantial ownership or management influence in respect of the home builder including the holding of shares or interests of not less than 20 percent of issued shares or total interest;

**“Board of Agrément South Africa”** means a body operating under the delegation of authority of the Minister of Public Works;

**“Council's registered address”** means Fernridge Office Park, 5 Hunter Street, Ferndale, Randburg;

**“day”** excludes any day falling within the building industry recess period;

“**notify**” means to serve as contemplated in [section 24](#) of the Act;

“**the Act**” means the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998).

- (2) For the purposes of the definition of “home” in [section 1](#) of the Act, “home” does not include -
  - (a) 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 percent of the floor area designed for residential purposes;
  - (b) any temporary residential structure, including a shack or caravan;
  - (c) any home constructed as contemplated in the exclusion paragraphs (i) and (ii) of the definition of “business of a home builder” in [section 1](#) of the Act; and
  - (d) until the commencement of [section 14\(2\)](#) of the Act, a home forming part of a project, contemplated in [section 5\(4\)\(c\)](#) of the Act.
- (3) For the purposes of a claim in terms of [section 17](#) of the Act, “home” -
  - (a) includes -
    - (i) the private drainage system from the structure up to the municipal connection or the access pit connection;
    - (ii) any garage or storeroom;
    - (iii) any permanent outbuilding designed for residential purposes or for a purpose ancillary to residential purposes; and
    - (iv) 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;
  - (b) includes, in the case of a sectional title unit, the common property in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986); and
  - (c) does not include any fence, pre-cast fencing, temporary structure, swimming pool, tennis court, lift, mechanical ventilation or air conditioning system, household appliance, stable or workshop.
- (4) For the purposes of the category of homes for enrolment in terms of [section 14\(1\)](#) of the Act, “home” includes all homes as defined in the Act or these Regulations, but does not include a home forming part of a project, contemplated in [section 5\(4\)\(c\)](#) of the Act.
- (5) For the purposes of the definition of “business of a home builder” in [section 1](#) of the Act, the

business of a home builder includes the activity conducted by a legal entity of buying land and developing such land and constructing homes on such land and the subsequent sale of the legal entity owning the land rather than the land itself.

## **2. NHBRC technical requirements for structural strength and stability**

- (1) A home and any structural element or component thereof must be designed and constructed to provide strength and stability for the lifetime of the structure in accordance with accepted standards of good practice at the time of design and construction .
- (2) Foundations must be designed and constructed to transmit loads from super-structures to soil horizons safely and without causing excessive movement or distress in the elements which they support.
- (3) Foundations must be designed and constructed to resist differential displacement and to prevent the passage of moisture to the interior of the home.
- (4) Floors and stairways must be designed and constructed to safely carry their own dead loads in addition to any live loads which they are likely to be subjected, without undue deformation and distress.
- (5) Walls must be designed and constructed to safely withstand any load to which they are likely to be subjected without impairing weather tightness and without undue deformation and distress.
- (6) Roofs and their components must be designed and constructed to safely resist any forces to which they are likely to be subjected and without the roof construction becoming detached from its respective supporting structure.

## **3. NHBRC technical requirements for serviceability**

- (1) Any home and any structural element or component thereof must be durable, resist water penetration and prevent condensation which may adversely affect fitness for habitation, and withstand any loads to which they are likely to be subjected without undue deflection, distortion or cracking over the lifetime of the structure.
- (2) Walls must be designed and constructed to resist the penetration of water into the interior of homes.
- (3) Roofs must be designed and constructed to resist rain penetration and to avoid the accumulation of rain water thereon.

## **4. NHBRC technical requirements for fire**

The combustibility and fire resistance characteristics of all floors, walls, roofs and the ceiling assembly must be appropriate to the location and use of such elements.

## **5. NHBRC technical requirements for materials**

Materials used in the construction of homes must be sufficiently durable and of a suitable quality for the purpose for which they are to be used.

## **6. NHBRC technical requirements for drainage**

Drainage installations must be designed and constructed so that the installation is capable of carrying the hydraulic design load, of being easily maintained, and does not result in leakage which may detrimentally affect the structural integrity of a home.

## **7. NHBRC technical requirements for stormwater disposal**

Suitable means, preferably of a fail-safe nature, must be provided for the control and disposal of stormwater in a manner which -

- (a) does not result in soil erosion or flooding which may detrimentally affect the structural integrity of the home; and
- (b) reduces the risk of stormwater entering the home.

## **8. Satisfying the NHBRC technical requirements for design**

The NHBRC technical requirements prescribed in Regulations 2, 3, 4, 5, 6 and 7 must be regarded as having been complied with where a home builder has -

- (a) complied with the guidelines prescribed by the Council under [section 12\(1\)\(b\)](#) of the Act; or
- (b) obtained a rational design based on engineering principles in accordance with the relevant requirements determined by the Council under [section 12\(2\)](#) of the Act; or
- (c) obtained Agrément certification in accordance with the relevant requirements determined by the Council under [section 12\(2\)](#) of the Act.

## **9. Satisfying the NHBRC technical requirements for construction**

The NHBRC technical requirements prescribed in regulations 2, 3, 4, 5, 6 and 7 must be regarded as having been complied with where a home builder has -

- (a) complied with the guidelines prescribed by the Council under [section 12\(1\)](#) of the Act; or
- (b) has achieved the construction standards and specifications referred to in an applicable rational design prepared by a competent person in terms of [section 12\(2\)](#) of the Act; or
- (c) has complied with the relevant requirements for construction set out in an applicable Agrément certificate.

## **10. Compliance in respect of materials**

- (1) A home builder may be required by the Council to satisfy the Council that materials used or to be used by the home builder in the construction of a home comply with the requirements relating to materials and the guidelines in relation thereto prescribed by the Council under [section 12\(1\)\(b\)](#) of the Act, or the requirements specified by a competent person in terms of [section 12\(2\)](#) of the Act, or the relevant requirements set out in an applicable Agrément certificate.

- (2) The tests which the Council may apply on materials are the relevant tests applied by the South African Bureau of Standards, as contemplated in the Standards Act, 1993 (Act No. 29 of 1993) or relevant industry based institutions, such as the Cement and Concrete Institute (an association incorporated under [section 21](#) of the Companies Act, 1973 (Act No. 61 of 1973, with the registration number 05111756/08), or the Council for Scientific and Industrial Research, as contemplated in the Scientific Research Council Act, 1988 (Act No. 46 of 1988).
- (3) The Council may require a home builder, on demand, to make samples of materials and components available for testing.
- (4) Any notice relating to the cancellation or suspension of the enrolment of a home as contemplated in [section 14\(4\)](#) of the Act, or for the recovery of any costs of any examination or test in terms of [section 19\(4\)](#) of the Act, must -
  - (a) state those aspects of such material or component thereof which do not comply with requirements;
  - (b) prohibit the home builder from using such material or component; and
  - (c) demand that the home builder remove and replace at the home builder's own cost any such materials or components that have been used or would have been used in the construction of the relevant home.

## 11. Terms and conditions for registration

- (1) For the purpose of evaluating an application in terms of [section 10](#) of the Act, the Council may have regard to the information set out in the application form prescribed by the Council.
- (2) The Council may require additional information from the home builder or any other person and may conduct the investigations, that it may consider necessary to assess the application.
- (3) The Council, or any persons contracted by it, must treat any financial information provided by an applicant as part of his application to the Council with the strictest confidence.
- (4) Where the Council receives an application from a home builder, who in the opinion of the Council -
  - (a) has limited capital, fixed assets or active trading history; or
  - (b) appears not to have the ability to meet its obligations to housing consumers and to the Council,the Council may require personal suretyships, indemnities and guarantees, as the case may be, as contemplated in [section 10\(5\)](#) of the Act from the home builder, the partners, directors, members, shareholders or trustees of the home builder or those of its associates.
- (5) The Council may, where it receives an application from a home builder in respect of which there exists an associate, require security from such associate.

- (6) The Council may undertake, within its discretion, a technical assessment of the home builder by means of -
  - (a) a technical interview to determine the ability of a home builder to meet and to comply with the guidelines set out in the Home Building Manual;
  - (b) undertaking site visits or inspections to examine homes or other forms of construction already completed or under construction by the home builder.
- (7) The Council may require, as a precondition for registration -
  - (a) the satisfactory rectification of previous construction related problems; or
  - (b) the satisfactory resolution of financially related problems, such as the rescinding of court judgements.
- (8) If the Council decides -
  - (a) to make the home builder's registration subject to conditions; or
  - (b) to amend, add to or cancel the conditions, to which a home builder's registration is already subject; the Council must notify the home builder accordingly.
- (9) A decision notified in terms of subregulation (8) takes effect -
  - (a) on receipt of written acceptance of any conditions from the home builder; or
  - (b) 30 days after it has been notified to the home builder, unless the home builder exercises its rights under section 10(9) of the Act, to make written representations to the Council.
- (10) The Council may, where a home builder has been registered with conditions or provisionally -
  - (a) limit the number of homes a home builder may enrol;
  - (b) require the home builder to notify the inspectorate of key stages of construction determined by the Council in sufficient time to allow the Council to arrange for inspection at its discretion; and
  - (c) apply any other reasonable condition that the Council considers appropriate, until the home builder is able to demonstrate its capacity to meet the obligations of a registered home builder.
- (11) Where the Council has determined that a home builder meets the requirements of [section 10](#) of the Act, the Council must issue a registration certificate to a home builder where it has received at its registered address -
  - (a) written acceptance of any conditions;

- (b) any suretyships, indemnities or guarantees requested, duly signed and completed; and
  - (c) payment in respect of the registration fee.
- (12) The registration of a home builder remains effective for one year.
- (13) A home builder must immediately notify the Council if that home builder -
- (a) changes its address registered with the Council, its office premises or telephone or telefax numbers;
  - (b) ceases trading or resolves to do so,
  - (c) is a sole trader and any person acquires a financial interest in the home builder;
  - (d) is in partnership and there is a change in the composition of the partnership;
  - (e) is a company and there is a change in the board of directors or any person acquires more than ten percent of the issued shares of the company;
  - (f) is a close corporation and there is a change in the membership of the close corporation or the membership interest holding;
  - (g) is a trust and there is any change in the composition of the board of trustees or the ultimate beneficiary; or
  - (h) is no longer in a position to meet its obligations under the Act.
- (14) A notification in terms of subregulation (13) must include the full name, identity number and addresses of any person acquiring a financial interest as well as any other information that the Council may require.
- (15) The Council may at any time of its own accord, or on information received, or at the request of the home builder, review the home builder's registration having regard to the home builder's performance as a home builder during the period of registration and any changes in the ownership of the home builder.
- (16) The Council may, when acting in term of subregulation (15), take account of any complaints received from housing consumers, any notices of non-compliance received by the home builder from the inspectorate, the enrolment history of the home builder and any other relevant matter.
- (17) The Council may, pursuant to the re-evaluation contemplated in subregulation (15), decide to change the registration status of the home builder or the conditions attached to such registration after having notified, in terms of subregulation (8) and (9), the home builder of its decision and the reasons for any decision.

## **12. Terms and conditions for renewal of registration**

- (1) A home builder must annually, prior to the renewal date, apply for the renewal of its registration.

- (2) The Council must notify a home builder of the home builder's obligation to renew the home builder's registration one month prior to its expiration.
- (3) The Council must thereafter, if necessary, issue two further notices to serve to remind the home builder of the need to renew.
- (4) From the date of expiration of a home builder's annual registration, the Council may suspend enrolments in terms of [section 11](#)(3) of the Act until such time as the home builder has renewed its registration.
- (5) The notice requiring renewal may request the home builder to confirm the accuracy of the data maintained by the Council on the database referred to in [section 9](#) of the Act and in relation to homes enrolled with the Council in the previous year or other years.
- (6) The Council may in respect of the failure of the home builder to renew its registration, withdraw the registration of the home builder after instituting disciplinary proceedings in terms of [section 11](#) of the Act.
- (7) The failure to renew annual registration or the withdrawal of registration pursuant to [section 11](#) of the Act does not affect the obligations of the home builder at the time in respect of housing consumers or in respect of the Council.
- (8) If a home builder has been registered with the Council but has failed to renew his annual registration and wishes to re-register, the home builder may make application to the Council for registration.
- (9) The Council must, in the circumstances contemplated in subregulation (8), consider the home builder's registration against the requirements of registration in terms of [section 10](#) of the Act having regard to the previous registration history of the home builder.

### **13. Minimum and maximum amounts payable from Fund**

- (1) The maximum amount that may be expended by the Council under [section 17](#)(1) in respect of homes enrolled in terms of [section 14](#)(1) of the Act pursuant to a failure of a home builder to meet its obligations in terms of [section 13](#)(2)(b)(i) of the Act, 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 amount of R500 000.
- (2) The maximum amount that may be expended may include -
  - (a) any professional fee incurred by the Council in investigating and determining a cost effective method of rectification;
  - (b) the necessary cost for rectification of any major structural defect and for making good any finishes necessarily damaged by the rectification process; and
  - (c) 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) No amount shall be paid out of the fund in relation to -
  - (a) any limitation or exclusion in terms of regulation 14;
  - (b) 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
  - (c) any costs, loss or liability for which compensation is covered under an insurance policy.
- (4) The Council may in exceptional circumstances, instead of having a defect rectified, make a payment to the housing consumer in full and final settlement of any claim.
- (5) 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 R 4000, whichever is the lesser, the costs of such repairs is for the account of the housing consumer.

#### **14. Limitations, qualifications and exclusions from deemed warranty**

The limitations and exclusions contemplated under [section 13\(2\)\(b\)\(i\)](#) of the Act in respect of which a home builder is not liable for loss, damage, destruction or threat of collapse are -

- (a) willful acts or willful omissions of the housing consumer or persons residing in the home;
- (b) fire, explosion, lightning or damage caused by a third party;
- (c) storm, flood or earthquake or any other convulsion of nature;
- (d) structural alterations, repairs, modifications or alterations to the home as originally constructed and which affected the original structure of the home;
- (e) 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.,
- (f) subsidence or landslip from any cause not related to non-compliance with the NHBRC technical requirements;
- (g) any change in colour, texture, opacity or staining or other ageing process;
- (h) 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 therefrom; destruction of or damage to the home or any loss of expense arising therefrom, or any liability of whatsoever nature related to ionising radiations or contamination by radioactivity from whatever cause or from nuclear weapons material; 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;

- (k) loss of damage to any finishes unless they must be repaired or replaced due to a major structural defect in the residential structure;
- (l) 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;
- (m) any costs, loss or liability for which compensation is provided by other legislation;
- (n) anything which is of a petty nature which any reasonable home owner or housing consumer could be expected to rectify him or herself,
- (o) misuse or abnormal use of private drainage system.

#### **15. Obligation of conveyancer to ensure payment**

For the purposes of complying with the provisions of [sections 18](#)(1) and (2) of the Act, a conveyancer must accept an enrolment certificate issued in terms of [section 14](#)(3) of the Act as proof of payment of the prescribed enrolment fee.