

HOUSING CONSUMERS PROTECTION MEASURES ACT 95 OF 1998

NATIONAL HOME BUILDERS REGISTRATION COUNCIL RULES

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The National Home: Builders Registration Council has under [section 7\(1\)](#) of the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998) made the rules in the Schedule.

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SCHEDULE

1. Definitions

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 indicates otherwise -

“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;

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

“conciliation deposit” means the refundable deposit prescribed by the Council in [rule 5\(1\)](#) of the Rules promulgated by Government Notice No. R 1407 of 1 December 1999;

“conciliation fee” means the fee applicable to requests for conciliations prescribed by the Council in [rule 5\(2\)](#) of the Rules promulgated by Government Notice No. R 1407 of 1 December 1999;

“committee” means the disciplinary committee contemplated in [section 5\(1\)\(b\)](#) of the Act;

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

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

“enrolment fee” means the enrolment fee prescribed by the Council in [rule 2](#) of the Rules promulgated by Government Notice No. R 1407 of 1 December 1999;

“fees of the arbitrator” means the fees of the arbitrator prescribed by the Council in [rule 5\(3\)](#) of the Rules promulgated by Government Notice No. R 1407 of 1 December 1999;

“internal complaints deposit” means the deposit prescribed by the Council in [rule 5\(4\)](#) of the Rules promulgated by Government Notice No. R 1407 of 1 December 1999;

“inspectorate” means the inspectors appointed or contracted by the Council to assist home builders to comply with the NHBRC technical requirements;

“late enrolment fee” means the late enrolment fee prescribed by the Council in [rule 3](#) of the Rules promulgated by Government Notice No. R 1407 of 1 December 1999;

“Minister's Regulations” means the Regulations promulgated by [Government Notice No. R 1407](#) of 1 December 1999;

“notify” means to serve in accordance with [section 24](#) of the Act;

“phased sectional title development” means a sectional title scheme undertaken in phases as contemplated in [section 25](#) of the Sectional Titles Act, 1986 (Act No. 95 of 1986);

“selling price” means, 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 in the budding contract, together with the price at which the serviced erf has been acquired;

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

“**VAT**” means Value Added Tax in terms of the Value Added Tax Act, 1991 (Act No. 89 of 1991).

[Rule 1 corrected by GN R1516/99]

2. Procedures for Registration and expiration of registration

- (1) A home builder wishing to apply for registration must make application to the Council at the Council's registered address by the completion and submission of an application for registration in the form of [Annexure 1](#) and payment of the application fee prescribed by the Minister.
- (2) The Council shall issue a registration certificate in the form of [Annexure 2](#) where the Council has determined that the home builder meets the requirements set out in [section 10](#) of the Act and the terms and conditions set out in the Minister's Regulations promulgated by Government Notice No. R.....of1999.
- (3) The Council must cancel the registration of a home builder on the written request from the home builder.
- (4) If a home builder's registration is withdrawn, cancelled or not renewed, such home builder must -
 - (a) refrain from purporting that the home builder is a registered home builder;
 - (b) immediately return to the Council any registration or enrolment certificates or promotional material referring to the Council or implying a registration status awarded by the Council; and
 - (c) refrain from providing any enrolment certificate or any other material to a housing consumer or any other person on an enrolled home that has not been occupied without the express written consent of the Council.
- (5) Notwithstanding withdrawal of registration or failure to renew registration, a home builder must -
 - (a) continue to comply with these rules in respect of any homes constructed by the home builder;
 - (b) discharge any actual or contingent liability that the home builder has incurred to the housing consumer or to the Council;
 - (c) pay the Council any amount payable under these rules whether it fell due before or after the effective date of non-renewal or withdrawal.
- (6) Where a home builder wishes to cease conducting the business of a home builder, for whatever reason, the home builder may request the Council to assume the home builder's responsibilities in terms of [section 13\(2\)\(b\)\(i\)](#) on homes enrolled with the Council.

- (7) The home builder must inform the Council under the circumstances contemplated in subrule (6) of any complaints received by the home builder on homes constructed by it.
- (8) If the Council is prepared to assume the obligations contemplated in subrule (6), it will notify the home builder of the amount of any prescribed payment it requires to meet any potential claims for rectification.

3. Enrolment Process

A home builder must -

- (a) submit the home for enrolment to the Council 15 days prior to the commencement of construction and confirm that the home is available for inspection by the Council inspectorate throughout the construction process;
- (b) confirm that the necessary steps have been taken by the home builder as required in the Home Building Manual prior to the commencement of construction;
- (c) provide a soil classification confirmed by a competent person to ensure the correct foundation type is used in the construction of a home; and
- (d) where necessary, as required in the Home Building Manual, provide proof of the involvement of a competent person in foundation design, rational design non-standardised construction or investigation of dolomitic or limestone conditions.

4. Competent persons

- (1) When requested by the Council, a competent person must complete a questionnaire in the form of [Annexure 3](#) and provide proof of his or her registration in terms of the Engineering Professions of South Africa Act, 1990 (Act No. 114 of 1990), or in terms of section 11 of the Natural Scientific Professions Act, 1993 (Act No. 106 of 1993).
- (2) The amount required to be held by way of professional indemnity insurance by a competent person is an amount not less than R500 000.
- (3) The Council may require a competent person annually to provide it with details and proof of its indemnity insurance.

5. Methods of Payment of Enrolment Fees

- (1) Depending on the circumstances, payment of enrolment fees may be effected by -
 - (a) payment of the full enrolment fee directly to the Council as set out in rule 6;
 - (b) with the agreement of the housing consumer and the financial institution, payment to the Council from monies owed to the home builder by the housing consumer as a first progress payment under the mortgage loan as set out in rule 7; or
 - (c) payment of the enrolment fee in stages by a home builder constructing a sectional title complex as set out in rule 8.

- (2) All payments in respect of enrolment fees must be made to:

The National Home Builders Registration Council
Account No. 4045581790
Absa Bank,
Braamfontein Branch,
Branch Code: 630605.

6. Direct and full payment by bank guaranteed cheque or cash bank transfer.

- (1) A home builder must pay the enrolment fee in the full amount payable directly to the Council by way of a bank guaranteed cheque or cash bank transfer -
- (a) where the consideration for the acquisition or construction of the home is payable in cash without the registration of a mortgage loan;
 - (b) where homes are built in speculation of sale; or
 - (c) in the case of the late enrolment of a home in terms of rules 14 and 15.
- (2) Payment may also be made in the manner contemplated in subrule (1) in the case of sectional title homes, homes constructed in terms of a building contract, or by any other form of agreement.

7. Payment by mortgage lender as first progress payment

- (1) A home builder may, subject to subrule (4), make payment of the enrolment fee where the housing consumer authorises the mortgage lender to make payment to the Council from the proceeds of money owing to the home builder by the housing consumer in respect of the construction of the home.
- (2) Where the housing consumer has consented to a financial institution which has an agreement with the Council to effect such payment, the home builder must submit to the Council the documents contemplated in rule 12(1), together with the authorisation in the form of [Annexure 4](#).
- (3) Payment in accordance with subrule (1) may only be used where a building contract has been concluded between the housing consumer and the home builder in respect of the construction of a home.
- (4) Payment in accordance with subrule (1) may not be made where the home is a sectional title unit or is constructed in speculation of sale or in the case of the late enrolment of a home.
- (5) The enrolment fee must be paid directly to the Council by the financial institution at the time of the financial institution advancing the first progress payment in respect of the mortgage loan or in a manner agreed between the Council and the financial institution.
- (6) The Council must, from time to time, publish the names of the financial institutions with agreements with the Council to facilitate payment as contemplated in this rule.

8. Sectional title phased payment

In the case of a sectional title development or a phased sectional title development, a home builder may make a direct and full payment in terms of rule 6 or make a phased payment of the enrolment fee by -

- (a) paying twenty percent of the enrolment fee of all homes comprising -
 - (i) a sectional title development; or
 - (ii) a phased sectional title development; upon submission of the enrolment form in the form of [Annexure 5](#); and
- (b) a bank guarantee for the remaining 80 percent of the enrolment fee for the development or the phase to be submitted with the enrolment form in the form of [Annexure 5](#), to be called upon by the Council -
 - (i) in the case of a sectional title development on the opening of the sectional title register or six months from the date of payment of the 20 percent of the enrolment fee whichever is the earlier; or
 - (ii) in the case of a phased sectional title development, upon registration of the sectional title plan of extension in terms of [section 25](#)(11) of the Sectional Titles Act, 1986 (Act No. 95 of 1986), or six months from the date of payment of the 20 percent of the enrolment fee, whichever is the earlier,

together with the payment of any outstanding balance relating to any difference between the actual and the expected selling prices arising from rule 12(4) on or before the relevant conditions set out in paragraph (b)(i) or (ii) have been met.

9. Competent person certification of soil classification

- (1) With every enrolment, a home builder must submit a soil classification for the plot, duly certified and signed by a competent person in the form of Section C Appendix B3 and Section D of either -
 - (a) the residential unit enrolment form in the form of [Annexure 6](#); or
 - (b) the sectional title enrolment form in the form of [Annexure 5](#), as the case may be.
- (2) The soil classification must be in the categories published by the Council in the Home Building Manual as applicable at the time of enrolment.
- (3) Where the home is a home other than a single storey masonry home constructed on soil classification C, H, R or S, as prescribed by the Council in the Home Building Manual, the home builder must ensure that a competent person also certifies and signs Appendix B 1 of the relevant form.
- (4) Where the soil type is of a dolomitic or limestone nature and classified as D 1, D2, D3 or D4, or the site falls within a geographical area of known dolomitic, limestone or other conditions as identified in the Home Building Manual, a home builder must comply with the Council's procedures for the technical investigation of such sites and their enrolment as

prescribed in the Home Building Manual.

- (5) If during the course of a development, it emerges that the original classification of the subsoil conditions of the site by the original soil tests or as originally assessed by the competent person requires revision, the home builder is required, as a condition of enrolment, to notify the Council immediately on the form for notification of change in site class in the form of [Annexure 7](#).
- (6) The home builder must, under the circumstances contemplated in subrule (5), ensure that the design of foundations for a home constructed on such a site is amended to conform to the revised soil classification.

10. Rational Design and Agrément certified systems

- (1) For the enrolment of a home, additional information is required where a home -
 - (a) involves elements of rational design; or
 - (b) is using Agrément certified non-standardised building components, elements or systems.
- (2) In the instances contemplated in subrule (1), the home builder must submit to the Council the respective forms -
 - (a) for the appointment of a competent person in the form of [Annexure 8](#) or in the case of a sectional title development by the completion of the relevant part of the sectional title enrolment form in the form of [Annexure 5](#), duly completed and signed by a competent person specifying the scope of the proposed rational design; or
 - (b) the accreditation of a contractor offering Agrément certified non-standardised construction in the form of [Annexure 9](#), with a copy of the relevant Agrément certificate for building systems
- (3) Where the Council appoints a competent person registered in terms of the Engineering Profession of South Africa Act, 1990 (No 114 of 1990) to carry out further investigations that competent person must be regarded as having been appointed for the purposes of legal proceedings.

11. Non- Agrément certified building systems

- (1) Home builders using non-standardised components, elements or systems that do not have an Agrément certificate must approach the Council for technical assessment of their system as an interim measure by completion of the building system registration form in the form of [Annexure 10](#) and submission of the relevant documentation.
- (2) The Council must consider such application and may -
 - (a) approve the system;
 - (b) approve the system with conditions;

- (c) refer the application back to the home builder for further information to be supplied; or
 - (d) reject the application.
- (3) When requested by the Council, the home builder must submit Agrément certification within a specified period.
- (4) Where the Council appoints a competent person registered in terms of the Engineering Profession of South Africa Act, 1990 (No 114 of 1990), to carry out further investigations that competent person shall be deemed to have been appointed for the purposes of legal proceedings.
- (5) Once a system is approved by the Council, the home builder may submit an application for enrolment for homes to be constructed using the approved system.
- (6) An application for enrolment in terms of subrule (5) must include a form for certification by a competent person in respect of non-Agrément approved non-standardised construction in the form of [Annexure 11](#).

12. Submission of enrolment documentation and payment to NHBRC

- (1) In the case of a home built with the registration of a mortgage bond, built for cash or built in speculation of sale, the home builder must submit -
- (a) the residential unit enrolment form in the form of [Annexure 6](#), duly completed by the home builder and the competent person in terms of rules 5 and 9;
 - (b) proof of the selling price;
 - (c) payment in the form required in terms of rule 5 or if a cash bank transfer is made, proof of payment in the form of the submission to the Council of the bank deposit slip; and
 - (d) any other competent person certificates required in terms of rules 9, 10 and 11 and duly completed and signed by the competent person.
- (2) In the case of a sectional title development or a phased sectional title development, the home builder must submit to the Council -
- (a) the sectional title enrolment form in the form of [Annexure 5](#);
 - (b) payment of the enrolment fee in the form required in terms of rule 6 or 8;
 - (c) proof of the estimated selling price in the form of the feasibility study for the development or phase of the development; and
 - (d) any other competent person certificates required in terms of rules 9, 10 and 11
- (3) Upon receipt of the documents specified in subrule (2), and if they are found to be in order, the Council will issue a sectional title phased payment form in the form of [Annexure 12](#) to the home builder as proof of having accepted the home in the records of the Council.

- (4) In the case of a sectional title development or a phased sectional title development the home builder must comply with rule 8(b) and return the sectional title phased payment form with payment of the outstanding amount by bank guaranteed cheque, cash, or evidence of cash or bank guaranteed cheque bank transfer declaring the difference between actual selling prices compared with expected selling prices and make payment of the difference.

13. Issuing of enrolment certificates

- (1) Where the Council has received enrolment documentation and where the application for enrolment is not complete, the Council may enter the application into the records of the Council but will record such an application as “pending”.
- (2) The Council will notify the home builder in writing as soon as practically possible of the information required or the reasons for the application not being accepted.
- (3) If the relevant information is not received, the Council will maintain the application as “pending” on its records for a period of not less than three months.
- (4) If the home builder has failed to provide the information or failed to comply with enrolment procedures within the period contemplated in subrule (3), the Council may reject the application, and notify the home builder of the reasons for such rejection.
- (5) The Council prescribes the enrolment certificate in the form of [Annexure 13](#), for the purposes of [section 14\(1\)\(c\)](#) of the Act.

14. Late enrolments

- (1) Where a home builder in contravention of [section 14](#) of the Act submits an application for the enrolment of a home to the Council after construction has started, the Council must require the home builder to satisfy the Council that the construction undertaken at the time is in accordance with the NHBRC technical requirements so as to take prudent measures, contemplated in [section 16\(1\)](#) of the Act, to manage the risks pertaining to the fund.
- (2) In the case of late enrolment, the home builder must supply the Council with the following duly completed documents -
 - (a) an enrolment form in the form of [Annexure 5](#) or [6](#) as the case may be.,
 - (b) proof of the estimated selling price;
 - (c) payment of the enrolment fee by direct and full payment in terms of rule 6;
 - (d) certification by a competent person of -
 - (i) the soil classification in terms of rule 9;
 - (ii) the design of foundations in terms of rule 9(3) and, where applicable, rule 9(4);
 - (iii) rational design in terms of rule 10(1)(a); and

- (iv) satisfactory completion of structural work by submitting a duly completed and signed completion certificate by competent persons: satisfactory completion of structural work in the form of [Annexure 14](#) from a competent person.
- (3) The home builder must at the request of the Council, pay an additional prescribed late enrolment fee in an amount determined by the Council for a special inspection to be undertaken by the Council to enable the inspectorate to determine compliance with the NHBRC technical requirements, prior to the acceptance of enrolment.
- (4) Should any defects be detected during the course of inspection that may influence the structural integrity of the home or if it is established that there is substantial non-compliance with the NHBRC technical requirements, the Council must, prior to the acceptance of the enrolment, request rectification of such defects or such non-compliance to be undertaken as may be necessary at the home builder's cost and under the supervision of the competent person appointed by the home builder.
- (5) Where an inspector is unable to determine compliance with the NHBRC technical requirements, for whatever reason, the Council may require the home builder to appoint a competent person -
 - (a) to inspect the home; and
 - (b) to complete the competent person late enrolments report in the form of [Annexure 15](#) to confirm compliance with the NHBRC technical requirements.
- (6) Any work that needs to be exposed to enable the competent person to respond to the questions raised in terms of subrule 5(b), must be undertaken by and at the cost of the home builder.
- (7) The Council may request any surety, guarantee, indemnity or other security considered reasonable by the Council to satisfy its obligations under [section 16](#) (1) of the Act.

15. Non-declared Late Enrolments

- (1) Where a home builder does not declare the fact that construction has commenced at the time of enrolment and late enrolment is detected by the Council, the Council, if it has reason to believe that such non-declaration was a deliberate attempt to avoid enrolment, or the inspection process, must require the home builder to appoint a competent person -
 - (a) to inspect the home; and
 - (b) to complete the competent person late enrolments report in the form of [Annexure 15](#) to confirm compliance with the NHBRC technical requirements.
- (2) Any work that needs to be exposed to enable the competent person to respond to questions raised in terms of rule 14(2)(d) must be undertaken by and at the cost of the home builder.
- (3) Rules 14(2) to (7) apply, with the necessary changes, to homes enrolled in terms of subrule (1) and specifically the Council must charge the late enrolment fee contemplated in rule 14 (3).

16. Disciplinary measures for late enrolment

- (1) The Council may, subject to the provisions of [section 11](#)(1)(b) and section 11(3) of the Act, where a home builder makes itself guilty of consistent late enrolment, withdraw the registration or suspend the enrolments of the home builder.
- (2) If the Council determines that a late enrolment was an attempt to avoid enrolment or the inspection process, the Council may, after notice to the home builder, suspend further enrolments in terms of [section 11](#) (3) of the Act until any corrective work has been completed on late enrolment of homes not declared to the Council.
- (3) If the Council needs, in terms of [section 14](#)(4)(a) of the Act, to cancel a late enrolment not declared to the Council or reject a late enrolment declared to the Council due to non-compliance with the NHBRC technical requirements, the Council must -
 - (a) seek to inform the housing consumer and the relevant financial institution or provincial housing development board, in terms of [section 14](#)(5) of the Act, of the cancellation and seek to notify the housing consumer of the options available to the housing consumer;
 - (b) institute disciplinary proceedings against the home builder in terms of [section 11](#) of the Act; and
 - (c) consider the prosecution of a home builder in terms of [section 21](#) (1) of the Act.

17. Notice of Non-Compliance

- (1) In the event of any such non-compliance with any requirement of the Act, the Council shall give a home builder a notice of non-compliance in the form of [Annexure 16](#), instructing the home builder to comply with the NBBM technical requirements or any other requirement of the Act.
- (2) Within seven days of receiving a notice contemplated in subrule (1), the home builder must-
 - (a) commence with the work or action specified, together with any additional work or action necessary in order to ensure the home complies with the NHBRC technical requirements or other requirements of the Act; or
 - (b) inform the Council in writing that the home builder disputes that the work or action is necessary for the reasons set out therein, and inform the Council whether it wishes the dispute to be dealt with through the Council's internal complaints procedures in terms of [section 22](#)(3) of the Act.
- (3) Where the Council appoints an engineer registered in terms of the Engineering Profession of South Africa Act, 1990 (No 114 of 1990), to carry out further investigations that engineer must be regarded as having been appointed for the purposes of legal proceedings.

18. Responsibilities of housing consumer and home builder regarding complaints

- (1) A housing consumer and a home builder must seek to resolve their differences in a reasonable manner prior to referring a complaint to the Council.

- (2) A housing consumer must, prior to submitting a complaint to the Council, notify the home builder in writing of his or her complaint, listing all the items requiring attention.
- (3) A housing consumer must keep a copy of the letter of complaint and proof of the date it was sent to the home builder.
- (4) A housing consumer must allow the home builder reasonable access to effect rectification.
- (5) A housing consumer must ensure that he or she has met his or her financial obligations to the home builder prior to reporting a complaint to the Council.
- (6) Within 21 days of receiving a complaint from a housing consumer relating to the three month non-compliance period or the five year structural defects period, the home builder must in writing-
 - (a) confirm whether the home builder denies or accepts liability for the complaint;
 - (b) confirm when any rectification work will commence and finish; and
 - (c) where necessary, request access to effect the rectification.
- (7) Within seven days of receiving a complaint from a housing consumer relating to a roof leak within the one year roof leak period, the home builder must in writing-
 - (a) confirm whether the home builder denies or accepts liability for the complaint;
 - (b) confirm when any rectification work will commence and finish; and
 - (c) where necessary, request access to effect the rectification.
- (8) A home builder or a housing consumer, as the case may be, may refer a complaint to the Council -
 - (a) in the case of any complaint, if the home builder does not respond within the specified period; or
 - (b) if the home builder fails to honour its obligations, or
 - (c) if there is a dispute which cannot be resolved between the home builder and the housing consumer regarding the extent of the home builder's liability to carry out rectification.

19. Acceptance of complaint

- (1) It is not necessary for a housing consumer to employ the services of an attorney or other professionals, including engineers, to lodge a complaint with the Council and costs incurred by the housing consumer for such services are not recoverable from the Council.
- (2) On receipt of a complaint the Council will carry out a preliminary assessment of the complaint based on the information provided by the housing consumer and may request

further information from the housing consumer to assist it in considering the complaint.

- (3) A complaint must be lodged on a complaint form in the form of [Annexure 17](#).
- (4) Where the housing consumer holds retention monies, the Council may request that such monies be deposited with the Council until such time as the recommendation of the Council is issued.
- (5) The Council may make it a condition of accepting a complaint that the housing consumer must honour any finding of the Council regarding retention monies.
- (6) The Council will accept a complaint from a home builder where the home builder has obtained the written consent of the housing consumer thereto and the home builder pays a conciliation fee.

20. Processing complaints relating to section 13(2)(b)

- (1) For the purposes of considering a complaint relating to the deemed warranty obligations in terms of [section 13\(2\)\(b\)](#) of the Act, the housing consumer must submit to the Council -
 - (a) proof of the original occupation date of the home;
 - (b) proof of notification to the home builder within the applicable time periods set out in [section 13\(2\)\(b\)](#) of the Act; and
 - (c) a complete list of the items requiring attention notified to the home builder.
- (2) Where the Council is of the view that the complaint falls within the ambit of [section 13\(2\)\(b\)](#) of the Act, or where the Council is satisfied that the housing consumer has informed the home builder of his or her complaint, and the home builder has not responded as required in terms of rule 18, the Council must notify the home builder of -
 - (a) the complaint;
 - (b) the relevant provisions of the Act; and
 - (c) the specified period within which the Council requires a response to the complaint, and request the home builder's assistance in resolving the matter.
- (3) If the Council determines that the complaint does not fall within the ambit of [section 13\(2\)\(b\)](#) of the Act, it will notify the housing consumer of its decision and its reasons in respect thereof in writing.

21. Complaints relating to three month non-compliance period

- (1) If the nature of the complaint relates to matters contemplated in [section 13\(2\)\(b\)\(ii\)](#) of the Act which have been notified within three months of occupation, the Council will seek to resolve the complaint telephonically and through correspondence with the home builder.
- (2) Should a home builder fail to respond within one month of notification from the Council, the

Council may issue a request for conciliation in the form of [Annexure 18](#) to the housing consumer, requesting confirmation of the details of the complaint and payment of the prescribed conciliation fee.

22. Complaints relating to one year roof leak period

- (1) If a housing consumer experiences a roof leak in the home within one year of occupation and the home builder has failed to respond to the complaint notified to it by the housing consumer, the Council will notify the home builder and seek an immediate response from the home builder.
- (2) Should the home builder fail to respond within seven days of notification in terms of subrule (1), the Council may issue a request for conciliation in the form of [Annexure 18](#), requesting confirmation of the details of the complaint and may request payment of the prescribed refundable conciliation deposit by the housing consumer.
- (3) The conciliation deposit will be refunded once the complaint has been dealt with in terms of rules 25 to 31, unless the complaint is found by the Council to be frivolous.

23. Complaints relating to five year major structural defects period

- (1) Where a complaint from a housing consumer relates, in the opinion of the Council, to a possible major structural defect, the Council may seek the home builder's response but the Council may issue the housing consumer immediately with a request for conciliation in the form of [Annexure 18](#), and may request the prescribed refundable conciliation deposit from the housing consumer.
- (2) The conciliation deposit will be refunded once the complaint has been dealt with in terms of Rules 25 to 31, unless the complaint is found by the Council to be frivolous.

24. Contractual Disputes

- (1) If a housing consumer refers a complaint to the Council relating to a matter contemplated in [section 13](#)(1), 13(2)(a) or 13(6) of the Act the Council may -
 - (a) accept the complaint in terms of rule 19;
 - (b) refer the parties to arbitration in accordance with the procedures set out in rule 29; or
 - (c) refuse to deal with such dispute in terms of paragraph (a) or (b) and refer the parties to their rights under [section 13](#)(2) of the Act for the matter to be resolved through normal court proceedings.
- (2) The council may request the housing consumer for reasonable proof to substantiate the complaint.
- (3) Where the Council is of the view that the complaint falls within the ambit of subrule (1), and the Council is satisfied that the housing consumer has, where possible, informed the home builder of his or her complaint, and the home builder has not responded within 21 days, the Council will notify the home builder of -

- (a) the complaint;
 - (b) the relevant sections of the Act;
 - (c) the specified period within which the Council requires a response to the complaint, and request the home builder's assistance in resolving the matter.
- (4) Should the Council determine that the complaint does not fall within the ambit of subrule (1), it will notify the housing consumer of its decision and its reasons in respect thereof in writing.
- (5) Should the home builder fail to respond within 21 days of notification from the Council, the Council may issue a request for conciliation in the form of [Annexure 18](#), requesting confirmation of the details of the complaint.
- (6) If the Council receives a complaint in terms of [section 13\(7\)](#) of the Act, it may accept the complaint in terms of this rule: Provided that -
- (a) the home builder must respond to the Council within seven days; and
 - (b) the Council may, at its discretion, issue a request for conciliation immediately on receipt of such complaint.
- (7) The Council may request the prescribed -
- (a) conciliation deposit for complaints in relation to [section 13\(2\)\(a\)\(d\)](#) and section 13(6) and (7) of the Act; or
 - (b) conciliation fee for complaints relating to [section 13\(1\)](#) and 13(2)(a)(i) and (iii).
- (8) If the complaint accepted in terms of subrule (6) relates to [section 13\(7\)](#) of the Act and there are reasonable grounds for prosecution after investigation, the Council will consider taking legal action in terms of [section 21](#) of the Act.

25. Request for Conciliation

- (1) Where the Council, after having received a signed copy of the Request for Conciliation from the housing consumer or the home builder in the form of [Annexure 18](#) under the circumstances set out in rules 21, 22, 23 and 24 and the Council is of the view that it is necessary or desirable to carry out an on-site conciliation, the Council will propose three alternative dates and times for an on-site conciliation.
- (2) Should none of the dates suit the home builder, the conciliation inspection will proceed on a date convenient to the housing consumer.
- (3) The date and time will be notified by the Council to both parties.
- (4) Where the home builder is unable to attend, the home builder will be notified -
 - (a) of the date and time of the inspection;

- (b) that the home builder is entitled to have a representative attend the inspection;
- (c) that the home builder will be provided with a report of the inspection; and
- (d) that the home builder will be obliged to carry out any rectification recommended in the report within a specified period.

26. Investigation

- (1) The Council must on the date contemplated in rule 25(3), inspect the home and assess the complaint in terms of the Act.
- (2) Where further investigation is required to complete the report, the Council may request the home builder to do so within a specified period or the Council may carry out the investigations that may be necessary.
- (3) Where the Council appoints a competent person registered in terms of the Engineering Profession of South Africa Act, 1990 (No 114 of 1990) to carry out further investigations, that competent person must be regarded as having been appointed for the purposes of legal proceedings.

27. Report

- (1) Following the on-site conciliation and any further investigation undertaken, the Council will draw up a report -
 - (a) detailing the items that require rectification by the home builder to meet the home builder's obligations under the Act; and
 - (b) specifying the date by which such work must commence and be completed.
- (2) The contents of the report will be notified to both the housing consumer and the home builder, and the home builder must, subject to the provisions of [section 22](#) of the Act, effect the rectification specified in the report.

28. Requests for assistance from Fund

- (1) Subject to the provisions of [section 17](#) of the Act, the Council will pay for rectification only when -
 - (a) the report contemplated in rule 27 has been finalised and the contents notified, and
 - (b) a home builder or any person contemplated in [section 10\(5\)](#) of the Act have been required to meet their respective obligations and have failed to do so within the period determined by the Council; or
 - (c) the Council has confirmed that the home builder is no longer in existence.
- (2) If the home builder disputes the findings and recommendations of the report contemplated in rule 27 and declares a dispute in terms of [section 22\(1\)](#) or (3) of the Act, the Council will

proceed with the rectification of any major structural defect recommended in the said report, subject to the final determination of liability for the costs of rectification *which* shall be part of the dispute referred to in terms of section 22(1) or (3) of the Act.

29. Referral of complaint to arbitration

- (1) The Council may, subject to subrules (2), (3), (4) and (5), submit any complaint received by it in terms of [section 13](#) of the Act to arbitration.
- (2) A housing consumer and a home builder may, for purposes of resolving any dispute in terms of [section 13](#) of the Act, by written agreement between the parties refer the dispute to arbitration.
- (3) The nature of the dispute to be resolved must be specified in an agreement between the parties that will constitute a submission to arbitration by a single arbitrator in terms of and subject to the Arbitration Act, 1965 (Act No. 42 of 1965).
- (4) The parties may agree on an arbitrator or may request the Council to appoint an arbitrator.
- (5) Should the parties fail to agree on an arbitrator, the Council will appoint the arbitrator.
- (6) The fees of an arbitrator appointed by the Council will be in accordance with the tariffs determined by the Council from time to time.
- (7) An arbitrator, in conducting the proceedings, must be guided by the intention to provide an effective, speedy and affordable mechanism to resolve disputes between home builders and housing consumers.
- (8) An arbitrator may require the security that he or she may consider appropriate regarding the payment of costs, and may make any order as to the payment of costs as he or she may deem fit.
- (9) The parties may, by agreement in writing, instruct the arbitrator to limit the proceedings to an investigation and an expert opinion by the arbitrator in respect of the item complained of, which opinion shall be binding on the parties: Provided that -
 - (a) the parties agree in writing to be bound by such opinion; and
 - (b) that procedure must only be followed where there is agreement in writing between the parties and the arbitrator regarding the arbitrator's technical competence, experience and expertise pertaining to the matter under dispute so as to express an expert opinion on the matter.

30. Referral to internal complaints procedure, arbitration and Public Protector

- (1) A housing consumer or a home builder wishing to have a decision or action of the staff of the Council or its agents reviewed in terms of the Council's internal complaint procedure must notify the Council in this regard within 30 days of receiving notice of the relevant decision or action.
- (2) The notice referred to in subrule (1), must -

- (a) set out all the relevant details of the disputed action or decision; and
 - (b) indicate the basis on which the decision or action is disputed.
- (3) When notifying the Council, the housing consumer or the home builder must lodge a prescribed internal complaints deposit with the Council.
- (4) The housing consumer or the home builder may request that the decision or the action be reviewed by either -
 - (a) the chief executive officer of the Council; or
 - (b) the committee, depending on the nature of the matter.
- (5) Where a complaint is referred to the committee, the committee may request security for the cost of any such review.
- (6) Where the matter is reviewed by the chief executive officer, he or she must review the decision or action within 30 days of receipt of the request for a review.
- (7) Following the review contemplated in subrule (6), the chief executive officer must confirm, vary or reverse the decision or action, or where the matter falls within the scope of the activities of the committee, refer the matter to the committee.
- (8) Where the complaint is found to be valid, the internal complaints deposit shall be repaid to the housing consumer or the home builder, as the case may be.
- (9) The housing consumer and the home builder, or both, as the case may be, must be notified of the chief executive officer's decision.
- (10) The committee must consider any complaint as soon as practically possible and no later than three months from receipt thereof by the Council.
- (11) The committee may determine its own procedures for the purposes of considering a complaint.
- (12) The committee may confirm, vary or reverse the decision or action of the Council's staff or its agents without the complainant thereby having any recourse to the Council.
- (13) The committee may condone a failure to comply with the period of 30 days referred to in subrule (1) where it is satisfied that there are sound and substantial reasons for the failure.
- (14) The committee may make any order concerning the deposit and any other direct costs relating to the investigation, including those of the Council, in considering the matter.
- (15) Should a housing consumer or home builder be dissatisfied with the decision of the committee, the complainant may pursue his or her rights in terms of [section 22\(4\)](#) of the Act, within thirty 30 days of receipt of the committee's decision.
- (16) If the aggrieved person fails to exercise its rights in terms of [section 22\(4\)](#), within 30 days,

the decision of the committee, subject to section 22(1) of the Act, is final.

31. Arbitration in terms of section 22(4)(ii) of Act

- (1) Any dispute regarding a discretion exercised by the Council must be determined with reference to the rules of administrative justice.
- (2) The Council and a housing consumer or home builder may for purposes of resolving a dispute in terms of [section 22\(4\)\(ii\)](#) refer the dispute to arbitration.
- (3) The nature of the dispute to be resolved must be specified in an agreement between the parties that will constitute a submission to arbitration by a single arbitrator in terms of and subject to the Arbitration Act, 1965 (Act No. 42 of 1965).
- (4) Should the parties fail to agree on an arbitrator, the Director General : Department of Housing must appoint the arbitrator.
- (5) The arbitrator may require the security from the home builder or housing consumer that he or she may consider appropriate regarding the payment of costs and may make any order as to the payment of costs as he or she may deem fit.
- (6) An arbitration in terms of this rule shall be held in Randburg or any other place that may be agreed to between the parties.

32. Access to documentation

Any person may have access to rules pertaining to the Council, the Home Building Manual or any circular issued by the Council at the offices of the Council between 8h30 and 16h00, at the offices of the Council set out in [Annexure 19](#).

LIST OF ANNEXURES

- [Annexure 1 “Application for Registration -AR003”](#)
- [Annexure 2 “Registration Certificate - BR002”](#)
- [Annexure 3 “Competent Person Questionnaire - CP001”](#)
- [Annexure 4 “Authorisation for Contractor's Payment - PA003”](#)
- [Annexure 5 “Sectional Title Enrolment Form - ST003”](#)
- [Annexure 6 “Residential Unit Enrolment Form - EF003”](#)
- [Annexure 7 “Notification of Change in Site Class: Design of Foundations and Associated Structures - Appendix A1”](#)
- [Annexure 8 “Appointment of Competent Person: Rational Design – Appendix B1”](#)
- [Annexure 9 “Accreditation of Contractor Offering Agrément Certified Non-Standardised Construction - Appendix C1”](#)
- [Annexure 10 “Building System Registration Form - BS001”](#)
- [Annexure 11 “Certificate by Competent Person in respect of Non-Agrément Approved Non Standardised Construction - Appendix D2”](#)
- [Annexure 12 “Sectional Title Phased Payment Form - ST001”](#)
- [Annexure 13 “Residential Unit Enrolment Certificate - EC003”](#)
- [Annexure 14 “Completion Certificate by Competent Person: Satisfactory Completion of Structural Work - Appendix D1”](#)
- [Annexure 15 “Competent Person Late Enrolment Report”](#)

[Annexure 16 “Notice of Non-Compliance”](#)

[Annexure 17 “Complaint Form”](#)

[Annexure 18 “Request for Conciliation”](#)

[Annexure 19 “Offices of Council”](#)