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DEPARTMENT OF HOUSING

No. 71 **1 February 2008**

National Home Builders Registration Council
Code of Conduct for Home Builders

The National Home Builders Registration Council, has under section 7(1) (a) (ix) of the Housing Consumers Protection Measures Act, 1998 (Act No.95 of 1998, drawn up the following Code of Conduct for Home Builders.

REPEAL

The Code of Conduct for Home Builders as published in *Gazette* No. 29689 of 16 March 2007 is hereby repealed and replaced with the Code of Conduct as set out hereunder.

SCOPE

- The Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998) makes provision for the protection of housing consumers and regulation of the home building industry. The Act in this regard enables the National Home Builders Registration Council *(NHBRC)* to establish, promote technical and ethical standards in the home building industry.
- Section 7 (1) (a) (ix) of the Act provides that the Council may make rules prescribing a Code of Conduct.
- This Code of Conduct has been drawn up to provide the minimum standards to be maintained by all NHBRC Home Builders.
- All NHBRC Home Builders shall observe this Code of Conduct.
- The Home Builders are required to have signed an undertaking that they have received a copy of this Code of Conduct as a condition of Membership.
- Changes to the Code of Conduct will be issued from time to time.

CHAPTER ONE

DEFINITIONS

The purpose of this chapter is to define words to which a meaning is attached which expands on the dictionary meaning of the word.

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Definitions

1. In this Code of Conduct, unless the context otherwise indicates-

(a) "Additional Costs" means any costs not included in the contract price and which are or may be payable under a fixed cost building contract or sale agreement, such as costs for:

Soil testing
Engineer's service
Plan drawing
Plan approval
Transfer (including transfer duty and bond registration)
Inspections
Electrical cable connection
Sewerage connection and other service connections

(b) "Advance payment" means any amount of money paid by a housing consumer (in relation to a Building Contract) to a home-builder before completion of work equal in value to the advance. This shall include other amounts the housing consumer may have paid to the home-builder for the construction of a home.

Note:
"Advance payments" exclude additional costs or any deposit.

(c) "Building Contract" means an agreement concluded between a home builder and a housing consumer for the construction of a home.

(d) "Business Document" means a document containing the following particulars of a home builder:

-full name;
-company or close corporation's registration number;
-names of all directors of company or members of close corporation;
-physical and contact address where the home builder can be contacted;
-business telephone number;
-business fax number (if any), e-mail address (if any).

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The name of the contact person for the housing consumer NHBRC registration number.

(e) **"Contract Price"** means the amount payable by a housing consumer to a home-builder for the construction of a home in terms of a building contract or sale agreement.

(f) **"Cost-plus building contract"** means a contract where the housing consumer pays the actual costs of all the services, labour and materials needed to build the home and a percentage or fixed sum as a fee to the home builder.

(g) **"Deposit"** means monies paid by a housing consumer to a home- builder before the home builder starts building or land is registered in the housing consumer's name.
(excluding additional costs)

(h) **"Fixed Cost Building Contract"** means a contract where the home-builder pays for all the material, labour needed for the building of a home, subject to additional costs.

(i) **"Housing Consumer"** means a person who is in the process of acquiring or has acquired a home and includes such persons' successor in title.

(j) **"Home Builder"** means a person who carries on the business of a homebuilder.

(k) **"Instalment Sale"** means a sale agreement that is a "contract" as defined in the Alienation of Land Act, 1981 (Act No. 68 of 1981)

(l) **"NHBRC"** means National Home Builders Registration Council as established by the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998).

(m) **"Sale agreement"** means an agreement in which a home- builder sells land to a housing consumer on which a home-builder has built - or is to build a home or an agreement in terms of which a homebuilder sells one or more sectional title units to the housing consumer..

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(n) **"The Act"** means the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998), including any regulation, the rules, the Home Building Manual and any circular prescribing any matter that a home-builder has to comply with in terms of the Act.

(O) **"Non-standardised building methods"** means any form of home building

which uses building systems, methods, materials, elements or components which are not fully covered by existing standards and specification or Codes of practice; and/or are not described in the "deemed to satisfy" rules of the National Building Regulations).

CHAPTER TWO

GENERAL DUTIES OF HOME BUILDERS

The purpose of this chapter is to outline the general duties of home builders.

2. A Home- builder must:

(a) give service and conduct business affairs in a competent, honest and fair manner taking into account the standard of services and conduct expected of home builders in general.

(b) honour all the obligations and statutory warranties imposed on a home builder in terms of the Act and comply with all the duties of a home builder set out in the Act.

(c) comply with all laws that apply to the home building industry:

(i) the National Building Regulations and Building Standards Act, 1977. (Act No. 103 of 1977)
(ii) laws concerning the health, safety and welfare of housing consumers, the Alienation of Land Act, 1981 (Act No. 68 of 1981)

(d) respect the copyright on building plans, whether or not approved by a Municipality.

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(e) treat all consumers fairly, regardless of their race, gender, sex, marital status, ethnic or social origin, sexual orientation, age, disability, religion, conscience, belief, culture or language, unless any law permits otherwise

(f) apply sound business administration systems and conduct financial affairs in such a way to meet all obligations to housing consumers.

(g) explain a building contract and the terms thereof to a housing consumer on request of such housing consumer.

CHAPTER THREE

DUTY TO DISCLOSE

3. A home builder must, before asking or permitting a housing consumer to sign a Building Contract:

(a) explain all the facts pertaining to the home and land of which he/she is aware or should reasonably be aware, which may affect the housing consumer;

(b) give the housing consumer five (5) calendar days to examine the contract and other relevant documents provided that this provision will not apply to building contracts or sale agreements in terms whereof the contract price exceeds the sum of R250 000,00 (two hundred and fifty thousand rand);

(c) ensure that the agreement contains all representations and promises made to the consumer.

CHAPTER FOUR

EXCLUSIONS FROM CONTRACT

The Building Contract / Sale Agreement shall not contain terms which have the effect of taking away the consumer's common law or statutory rights, save for such terms as are generally and ordinarily applied in respect of building contracts or contracts for the sale of land. Any term in the building contract / sale agreement which have the effect of taking away the housing consumer's common law or statutory rights, and which is not ordinarily and generally applied in building contracts or sale agreements, shall be of no force and effect.

CHAPTER FIVE

DUTIES BEFORE CONSTRUCTION

5.1 (a) A home-builder may begin building a home for a housing consumer only

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when the relevant Local Authority has approved the building plans or granted permission for building work to commence prior to the approval of the building plans, in terms of the applicable provisions of the National Building Regulations and Building Standards Act, No 103 of 1977.

(b) A home–builder must submit details of the home for enrolment to the Council 15 (fifteen) days prior to the commencement of construction and confirm that the home is available for inspection by the Council Inspectorate throughout the construction process.

5.2 A home-builder may begin building a home prior to the registration of transfer of the land on which the home is to be built for the housing consumer, if:

(a) the housing consumer has acquired the land in terms of an instalment sale agreement;

or

(b) the home builder has agreed in the Building Contract to:

(i) accept all risks, which may ensue, should the land not ultimately be transferred to the housing consumer; and

(ii) to repay all amounts received from a housing consumer in terms of the building contract, should transfer of the property not be given to the housing consumer by the date specified in the building contract or, if no such date is specified, within a reasonable time. Where the building contract specifies that the transaction is a speculative building contract or where the housing consumer purchased the land from someone other than the home builder, then the building contract need not provide for such repayment.

CHAPTER SIX

DUTIES IN RESPECT OF FINANCIAL MATTERS

6.1 A home builder may not, prior to the actual commencement of construction, accept payment from a housing consumer except:

(a) a deposit and/or;

(b) additional costs;

6.2 Where the housing consumer requires finance a written confirmation must have been received from a third party, confirming that finance will be provided.

6.3 Any deposit paid in respect of a sale agreement which is not an instalment sale

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shall be kept in trust by an attorney or an estate agent as defined in Section 1(iv)(a) of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), until the land or sectional title unit, as the case may be, is registered in the name of the housing consumer or the contract is validly cancelled, in which case the deposit will be dealt with as specified in the clauses in the contract relating to cancellation.

6.4 The home-builder must:

(a) immediately issue a receipt for all payments made to him/her by the housing consumer; and

(b) issue such receipt on a business document;

(c) issue statements which are clear, contain all information and are understandable to the housing consumer.

6.5 The provisions in clause 6.3 shall not:

(a) apply to money received by a home builder from Provincial Housing Departments for housing subsidy payments.

6.6 Except as expressly stated in a Building Contract or sale agreement, a home builder may not:

(a) require a housing consumer to pay any deposit or advance monies;

(b) require a housing consumer to pay for labour and/or materials supplied at various stages during the construction of a home;

(c) vary the contract price unless the contract specifically stated so initially and was agreed to by parties.

CHAPTER SEVEN

RESTRICTIONS ON HOME BUILDERS

7.1 A home builder shall not require a housing consumer to sign any acknowledgement of debt in connection with a contract if:

(a) the housing consumer is not, at the time, in arrears in respect of any of the payments owed by the housing consumer under the contract; or

(b) the home is to be financed by a bank or third party.

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7.2 Save for the deposit specified in the building contract and/ or the sale agreement, and any agreed extras, a home builder shall not demand payment from a housing consumer unless all suspensive conditions as contained in the Building Contract have been complied with.

7.3 A home-builder shall not accept final payment under a Building Contract unless the financial institution providing mortgage finance, the NHBRC or the architect supervising the building work or the local municipal building inspector, has certified in writing that the work has been completed in accordance with the NHBRC's prescribed minimum standards and guidelines or the National Building Standards, or any standards laid down by Agrément South Africa, where applicable.

CHAPTER EIGHT

DUTY NOT TO DECEIVE

8.1 **Marketing and advertising**

When marketing or advertising homes or services, a home-builder must act honestly and with the highest integrity, and may not mislead or deceive a housing consumer.

8.2 **Expertise**

A home-builder must not falsely claim to be an expert or to have any skill knowledge or capabilities in respect of the construction of a home.

8.3 **Misrepresentation**

A home-builder may not mislead a housing consumer about any aspect of a home or the land or make any other misrepresentation that misleads any person.

8.4 **False statements**

8.4.1 A home-builder must not:

(a) make or sign any false statement;

(b) prepare or maintain false accounts or records;

(c) assist any other person in doing so.

8.5 **Show Houses and Brochures**

A home-builder may not falsely create an impression that a home is or will be similar to a home viewed by a housing consumer or shown in a brochure.

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8.6 **Influencing Housing Consumers**

8.6.1 A home-builder may not compel any housing consumer to use or not to use:

(a) services of any financial institution;

(b) financial assistance offered by any person;

(c) the service of another home builder.

Unless it is for the benefit of the housing consumer and such benefit is disclosed.

8.7 **Fronts**

A home-builder may not use a Company, Close Corporation or third party to do anything which is not permissible of a home builder to do.

CHAPTER NINE

POWER OF ATTORNEY

A home-builder may not require a housing consumer to give a home-builder authority to sign any document on behalf of the housing consumer in general.

CHAPTER TEN

QUALITY OF MATERIAL AND WORKMANSHIP

10.1 A home-builder shall ensure that all building materials used and workmanship (whether by the home builder or any subcontractor) comply with the Act and the home builder's manual or the National Building Regulations in force at the time.

10.2 If the Act or Home Building Manual or the National Building Regulations in particular are not specific in this aspect, the home builder shall ensure that materials and workmanship are:

(a) of a proper standard and quality; and

(b) fit for the purpose intended.

10.3 In building a home a home-builder shall consider the building contract, the standard and quality generally acceptable in the home building industry.

10.4 A home-builder may not:

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(a) use materials of a lesser quality than those specified, unless the housing consumer agrees thereto in writing;

(b) specify materials unsuitable for the construction of the home.

10.5 A home-builder may not vary any of the specification, or any of the agreed terms of the agreement relating to specifications or materials to be used, unless the variation and the amount by which the contract price is increased or deceased in consequence thereof are agreed to in a written document which shall be signed by the parties.

CHAPTER ELEVEN

CARE OF THE SITE

11.1 During construction of a home a home-builder shall:

(a) comply with the National Environmental Management Act, 1998 (Act No. 107 of 1998) in relation to the degradation of the environment;

(b) keep the building site in a clear and neat condition;

(c) take reasonable steps to provide adequate security on site.

CHAPTER TWELVE

RUBBLE REMOVAL

Unless agreed otherwise with the consumer, a home-builder must remove all rubble from the construction site before the occupation date of a home or if this is not practically possible in a particular case, rubble shall be removed within a reasonable period after occupation date.

CHAPTER THIRTEEN

PROVISIONAL SUMS/ PRIME COST ITEMS

A home builder must ensure that amounts specified for provisional sums or prime cost items are fair and reasonable, having regard to the specifications of the home.

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CHAPTER FOURTEEN

NON-STANDARDISED MATERIALS

14.1 When non-standardised building materials or methods are being used in the construction of a home, the home builder must before signing the contract:

(a) advise the housing consumer in writing;

(b) provide the housing consumer with certificates prescribed by the Act.

CHAPTER FIFTEEN

DUTIES IN RESPECT OF CONTRACTS

15.1 **Duty to Explain Contract**

Before entering into a Building Contract with a housing consumer, a home - builder has a duty to explain the Building Contract to the housing consumer. In particular, the home builder must :

(a) explain the meaning and consequence of material clauses and;

(b) if required, allow the housing consumer to consult an advisor.

15.2 **Copy of the contracts**

Upon the conclusion of a Building Contract or Sale agreement, the home-builder must give the housing consumer a copy of the signed contract.

15.3 **Compliance**

The home-builder must comply with all the obligations under a Building Contract he enters into.

15.4 **Claims regarding accreditation**:

If a home builder makes claims regarding his / her accreditation by an organisation or body, he/she shall attach the relevant certificate of approval to any contract relating to the home.

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15.5 **Requirements for signing a Building Contract**

A home builder must ensure that the following requirements are met before allowing a housing consumer to sign a Building Contract or Sale agreement:

(a) all the terms agreed upon between the home-builder and the housing consumer are in the contract;

(b) all terms reflect the intentions of the housing consumer and the home builder;

(c) all terms not applicable have been deleted;

(d) that the building contract contains the provisions referred to in Section 13 of the Act, 1998 (Act No. 95 of 1998).

15.6 **Changes to Building Contracts**

The home builder may not delete or change any clause of the Building Contract after signature by the parties unless the housing consumer agrees to and signs for the changes.

15.7 **Undue pressure to sign**

A home builder may not induce or persuade a housing consumer to sign a building contract by means of duress, misrepresentation, or by performing any act or making any statement which would constitute undue influence; provided that this clause shall not prevent the home builder from utilizing marketing and selling techniques which are commonly accepted and followed in the property development industry.

15.8 **Provisions in a contract**

(1) A Building Contract shall contain the following terms and conditions:

(a) the name of the home builder and the housing consumer;

(b) the contract price; (or in the case of a cost plus building contract the

percentage or amounts the housing consumer shall pay as the home builder's fee);

(c) the amount of any deposit or advance monies;

(d) when, where and how much, the housing consumer must pay;

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(e) the estimated date by which the home builder must begin building the home, together with a provision specifying that the housing consumer may resile from the contract if building does not commence within an agreed time from such estimated date, unless the parties have agreed in writing to the extension of such date;

(f) the estimated date by which (or the period within which) the home will be completed, together with a provision specifying that the housing consumer may resile from the contract if building does not commence within an agreed time from such estimated date, unless the parties have agreed in writing to the extension of such date;

(g) A description of the land on which the home is to be built, and the size thereof;

(h) in a case where a contract is for building a unit as defined in the Sectional Title Act, 1986 (Act, 1986), the latest date by which the unit will be registered in the housing consumer's name;

(i) confirmation that the home builder is or will be registered with the NHBRC prior to the registration of transfer of the land or sectional title unit in the deeds office or prior to the commencement of the building works in terms of the building contract.

(2) Where there is a contradiction between the abovementioned provisions and those contained in Section 6 of the Alienation of Land Act 68 of 1981, the Alienation of Land Act 68 of 1981 shall prevail.

CHAPTER SIXTEEN

AGREEMENT ON ADDITIONAL COSTS

16.1 Any agreement between a home-builder and a housing consumer relating to payment of additional costs by the housing consumer to the home builder, shall:

(a) be in writing and signed by both parties;

(b) state the nature of the additional cost;

(c) specify the amount payable;

(d) specify when, where and how each amount is to be paid;

(e) attach all annexures to a contract between the home builder and the housing consumer if any.

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CHAPTER SEVENTEEN

DUTY TO BEGIN AND END CONSTRUCTION WORK ON TIME

17.1 A home-builder who has concluded a (Housing Contract/) Building Contract shall:

(a) begin building the home on the date stated in the contract;

(b) proceed regularly with the building, until the home is completed;

(c) complete the home on or before the completion date as agreed in the Building Contract.

CHAPTER EIGHTEEN

EXTENSION OF TIME

The home builder is entitled to a reasonable extension of time for the completion of the home where any delay is due to circumstances beyond the home-builder's control.

CHAPTER NINETEEN

DUTY TO COMMUNICATE AND RETAIN RECORDS

A home-builder shall without delay, reply fully to any request for information by a housing consumer regarding a contract between themselves.

19.1 **Form of reply**

If the request was in writing, the reply shall be in writing on the home builders business document.

19.2 **Record retention**

A home-builder shall retain the contract and all related correspondence, documents and records for a period of six years from date of occupation of a home by the housing consumer.

19.3 **Duty to give access**

A home-builder shall, subject to the contract between himself and the housing consumer, grant access at all reasonable times to the following people:

(a) A housing consumer;

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(b) a person appointed by the housing consumer and whose identity has been disclosed to the home-builder by the housing consumer;
(c) a building inspector of a government body;
(d) any representative of a financial institution or other person financing the construction;
(e) any authorized representative of the NHBRC.

19.4 **Purpose for access**

Access shall only be granted for the purpose of :

(a) inspecting a home;
(b) assessing progress made with regard to construction.

19.5 **Vicarious liability**

A home-builder shall accept responsibility for all acts, omissions and / or representations of all persons whom he/she has appointed, where they act in the course and scope of their appointment in the construction or sale of a home by the home builder.

19.6 **Indemnity for housing consumers**

A home-builder shall indemnify a housing consumer against any claim arising out of personal injury or damage to property attributable to the negligence or other unlawful conduct of the home-builder in the construction of a home for the housing consumer.

CHAPTER TWENTY

HOUSING CONSUMER'S COMPLAINTS

20.1 A home builder shall:

(a) attend promptly to a housing consumer's complaint;

(b) attend any meeting arranged by a conciliation officer appointed by the NHBRC;

(c) adhere to all periods prescribed in the Act, Building Contract, and any correspondence.

CHAPTER TWENTY ONE

NAME OF THE CODE

This Code of Conduct shall be known as the Code of Conduct for Home Builders.