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## GENERAL NOTICE

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### NOTICE 974 OF 1997

#### DEPARTMENT OF HOUSING

##### PROPOSED LEGISLATION ON NATIONAL HOME BUILDERS REGISTRATION COUNCIL

The Department of Housing hereby publishes the draft National Home Builders Registration Council Bill for public information, discussion and comment.

Comments should be sent to: The Director-General, Department of Housing, Private Bag X644, Pretoria, 0001, for the attention of Mr R. Thatcher, **on or before 28 July 1997.**

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**NATIONAL HOME BUILDERS REGISTRATION COUNCIL BILL, 1997**

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**BILL**

To provide for the designation of the National Home Builders Registration Council as the national registration council for home builders; to make provision for all new homes to be constructed by home builders registered with the Council and for home builders to comply with Standards and Guidelines in the construction of homes; to make provision for new homes to be enrolled with the Council; to make provision for a fund to be established under the Council and to vest the funds of the National Home Builders Registration Council Fund in the Council; to make provision for new homes to be constructed or sold with the benefit of a Standard Home Builders Warranty; and to provide for matters connected therewith.

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**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:

## CHAPTER I INTRODUCTION

### Definitions

1. In this Act, unless the context indicates otherwise -
  - "contractor" means a home builder who undertakes the physical construction of homes;
  - "Council" means the National Home Builders Registration Council designated under section 2;
  - "developer" means a home builder who does not undertake the physical construction of homes itself but who concludes contracts with contractors for this purpose, and who either undertakes to construct a home for a home owner or who sells an erf on which a home has been constructed to a home owner;

**"fund"** means the fund referred to in section 9;

**"fund advisory committee"** means the committee appointed in terms of section 9;

**"home"** means any new structure constructed or to be constructed for human habitation the selling price or contract price of which is not less than an amount prescribed by the Minister from time to time, and including any structure prescribed by the Minister, on recommendation of the Council, by notice in the *Government Gazette* from time to time for purposes of this definition;

**"home builder"** means a person -

- (a) who constructs or undertakes to construct a home for a home owner;
- (b) who constructs or undertakes to construct a home for any other person;
- (c) who constructs a home for purposes of sale or otherwise disposing of such home;
- (d) who sells a new home in his or her capacity as a principal; or
- (e) who conducts such other activity as may be prescribed by the Minister, on recommendation of the Council, by notice in the *Government Gazette* from time to time for purposes of this definition;

**"home owner"** means a person who is in the process of acquiring or has acquired a home and includes such person's successors in title;

**"inspector"** means an inspector appointed by the Council under section 14;

**"major structural defect"** means a defect resulting from a deviation by the home builder from the Standards and Guidelines which give rise or which may give rise to damage of the severity that it affects or is likely to affect the structural integrity of the home, and which arises and is notified to the home builder during the period contemplated in section 8(2)(a), subject to such limitations, qualifications or exemptions as may be prescribed by the Council from time to time;

**"prescribe"** means prescribed by regulation by the Minister, on recommendation of the Council, in the *Government Gazette*, or by the Council in the Rules, the Standards and Guidelines, the Standard Warranty, or a circular, as the case may be;

**"Minister"** means the Minister of Housing;

**"registered home builder"** means a home builder registered with the Council;

**"Rules"** means the Rules of the Council for the time being prescribed by the Council under section 11;



**"Standards and Guidelines"** means the Standards and Guidelines for the time being prescribed by the Council under in section 10;

**"Standard Warranty"** means the Standard Home Builders Warranty for the time being prescribed by the Council under section 8;

**"this Act"** includes any regulation, the Rules, the Standards and Guidelines, and the Standard Warranty.

## CHAPTER II THE NATIONAL HOME BUILDERS REGISTRATION COUNCIL

### **Designation, objects and powers of the National Home Builders Registration Council**

2. (1) The National Home Builders Registration Council (association incorporated under section 21) which has been registered in terms of the Companies Act, 1973 (Act No. 61 of 1973), under registration number 95/08647/08, is hereby designated as the national registration council for home builders having the objects, powers and functions conferred upon it by this Act and set out in the memorandum and articles of association of the Council from time to time.

(2) The main objects and main business of the Council shall be -

- (a) to improve the structural integrity of new homes constructed in the Republic;
- (b) to improve ethical and technical standards in the home building industry;
- (c) to regulate home builders; and
- (d) to provide protection to home owners generally and specifically in respect of major structural defects in homes constructed by registered home builders enrolled with the Council.

(3) The Council shall have the ancillary objects in pursuance of its main object -

- (a) to assist home builders from historically disadvantaged backgrounds to achieve technical standards in the home building industry; and
- (b) to develop products and services of benefit to home builders and home owners.

(4) The powers of the Council shall include the power -

- (a) to register and deregister home builders in accordance with criteria prescribed by the Council;

- (b) to enrol new homes and to issue the Standard Home Builders Warranty on behalf of the home builder to the home owner;
- (c) to prescribe Rules applying to registered home builders;
- (d) to prescribe the form of the Standard Warranty referred to in section 8 or such other standard warranties as may be prescribed by the Council from time to time;
- (e) to prescribe Standards and Guidelines referred to in section 10 to be complied with by registered home builders in the construction of homes;
- (f) to establish, maintain and administer a fund or funds referred to in section 9 to provide assistance for rectification of major structural defects in homes;
- (g) to establish, maintain and administer funds for such other purposes as may be appropriate in the pursuance of the objects of the Council;
- (h) to prepare a code of conduct referred to in section 12 for registered home builders;
- (i) to assist in the conciliation of disputes between registered home builders and home owners;
- (j) to engage in undertakings for the purpose of improving communications between registered home builders and home owners and promoting the improvement of construction quality;
- (k) to prescribe fees for registration of home builders, the enrolment of new homes and other fees;
- (l) to keep a record of persons holding such qualifications and professional indemnity insurance for purposes of ensuring appropriate design and construction of homes, with such functions as may be prescribed by the Council;
- (m) generally to do all things necessary to pursue its objects and the objectives of this Act; and
- (n) generally to exercise the powers of the Council as set out in the memorandum and articles of association of the Council.

### **Governance of Council**

3. (1) The Council shall have a board of directors, a chairman and a managing director as provided for, subject to the provisions of this Act, in the memorandum and articles of association of the Council from time to time.

(2) The chairperson of the Council shall be appointed by the Minister on recommendation of the Council for such period and on such conditions as the Minister may determine.

(3) Subject to the provisions of this Act, the Council may from time to time amend its memorandum and articles of association.

(4) Notwithstanding the provisions of section 32 of the Companies Act, 1973, (Act No. 61 of 1973) and the memorandum and articles of association of the Council upon the commencement of this Act, the members of the Council shall be -

(a) the Government of the Republic of South Africa, represented by the Minister or the Minister's appointee, which shall have three votes in a general or annual general meeting of the Council;

(b) the Council of Construction of South Africa, a voluntary association ("COCOSA"), and in the event of that association ceasing to exist or to function as a national organisation representative of the interests of home builders and home building industry stakeholders, such other organisation as may be prescribed by the Minister for this purpose by notice in the *Government Gazette*, which entity shall have two votes in a general or annual general meeting of the Council;

(c) the Council of South African Banks, a voluntary association ("COSAB"), and in the event of that association ceasing to exist or to function as a national organisation representative of the interests of banks, such other organisation as may be prescribed by the Minister for this purpose by notice in the *Government Gazette*, which entity shall have one vote in a general or annual general meeting of the Council; and

(d) the Housing Consumer Protection Trust, a trust registered as such, and in the event of that entity ceasing to exist or to function as an organisation representative of the interests of housing consumers, such other organisation as may be prescribed by the Minister for this purpose by notice in the *Government Gazette*, which entity shall have one vote in a general or annual general meeting of the Council.

(5) Notwithstanding the memorandum and articles of association of the Council, the directors of the Council shall be :-

(a) three persons appointed by the member contemplated in subsection 4(a);

(b) two persons appointed by the member contemplated in subsection 4(b);

(c) one person appointed by the member contemplated in subsection 4(c);

(d) one person appointed by the member contemplated in subsection 4(d);

(e) the Chairman of the Council; and

(f) the Managing Director of the Council, appointed by the directors of the Council.

### CHAPTER III REGISTRATION OF HOME BUILDERS

#### Registration of home builders

4. (1) No person shall conduct the business of a home builder unless such person is registered as a home builder by the Council under this Act in accordance with the Rules.

(2) No home builder shall construct a home unless such home builder is registered with the Council.

(3) The Council shall not register a home builder unless the home builder has shown to the Council's satisfaction that -

- (a) the home builder will in conducting the business of a home builder perform the home builder's obligations as contemplated in this Act, the Standard Warranty, the Standards and Guidelines and the Rules;
- (b) the home builder will act responsibly in conducting the business of a home builder; and
- (c) the home builder has appropriate financial, technical and management capacity to conduct its business as a home builder.

(4) Registration of a home builder shall be subject to such terms and conditions to give effect to the purposes of this Act as may be prescribed by the Council or as may be imposed by the Council in any particular case.

(5) Without detracting from the generality of subsection (4), the Council may require such surety ships, guarantees, indemnities or other security as the Council may in its discretion consider necessary to satisfy itself in respect of the requirements set out in subsection (3) and section 9(5) of the Act and may, without detracting from the generality of the foregoing, register a home builder provisionally on such conditions as the Council may consider appropriate.

(6) The Council may register a home builder as a contractor or a developer, or both a contractor and a developer.

(7) A developer registered with the Council shall be obliged, for purposes of the physical construction of homes, to appoint a contractor registered with the Council.

(8) Where the Council is of the intention to refuse to register a homebuilder, the Council shall notify the home builder of its intention, together with written reasons therefor.



(9) A home builder contemplated in subsection (8) shall be entitled to make representations to the Council in response to any issue raised by the Council.

(10) The Council shall, if on receipt of such further representations, it is of the view that the home builder has not satisfied the Council regarding the requirements of subsection (3), notify the home builder accordingly.

(11) A home builder contemplated in subsection (10) may request the Council within thirty days of receipt of a notification referred to in subsection (10) to present its case to a registration committee established by the Council for that purpose, whose decision shall be the decision of the Council and which shall, subject to the provisions of section 6, be final.

(12) The procedures and the constitution of the registration committee shall be prescribed by the Council.

(13) Should the home builder fail to exercise its rights under subsection (11), the decision in subsection (10) shall, subject to the provisions of section 6, be final.

(14) Unless specifically agreed to the contrary on such conditions as the Council may determine, registration of a home builder shall not be transferable to any other person.

#### **Refusal to renew registration, withdrawal and suspension of registration**

5. (1) The Council may refuse to renew or may withdraw registration of a home builder

(a) where the registered home builder is in breach of or has a record of non-compliance with the Rules, the Standards and Guidelines, the Standard Warranty, a term or condition of registration, or the provisions of this Act, including its obligations under section 7; or

(b) where the Council is not satisfied, on reasonable grounds, that the registered home builder will conduct or continue to conduct its business as a home builder in compliance with the obligations contemplated in paragraph (a);

(c) where the registered home builder fails to pay amounts due to the Council on account of any fee, charge or levy or any cost incurred or expended by the Council related to the failure of the home builder to comply with the Standard Warranty;

(d) where the Council is satisfied, on reasonable grounds, that the home builder is bringing the Council and the home building industry into disrepute in the manner in which it is conducting its business as a home builder.

(2) Where the Council is of the intention to refuse to renew a registration or is of the intention to withdraw registration of a home builder, the Council shall notify the registered home builder of its intention, together with written reasons therefor.

(3) The provisions of subsection (10) to subsection (13) of section 4 shall apply *mutatis mutandis* to a refusal to renew registration or the withdrawal of the registration of a home builder.

(4) Where it appears to the Council that there may be reasonable grounds to act in terms of subsection (1), the Council may -

- (a) suspend the registered home builder's registration for such time as appears to the Council to be necessary to investigate the matter or until such time as the registered home builder has complied with its obligations; and
- (b) notify the registered home builder of the suspension and request the home builder to provide the Council with such information as the Council may require to investigate the matter or to comply with the obligations set out in such notice.

(5) The Council may refuse to enrol any homes submitted for enrolment by a home builder during the period of suspension.

#### Review

6. Without derogating from the constitutional right of any person to gain access to a court of law, the proceedings of the Council may be brought under review before any division of the High Court having jurisdiction under the Supreme Court Act, 1959 (Act No. 59 of 1959).

### CHAPTER IV PROTECTION FOR HOME OWNERS

#### Contractual obligations of home builder in favour of home owner

7. (1) The contract between a home builder and a home owner for the construction or sale of a home -

- (a) shall be in writing;
- (b) shall set out the financial obligations of the home owner and all other material terms; and
- (c) shall have attached as annexures plans reflecting the dimensions and measurements of the home, and the specifications pertaining to materials to be used in construction of the home.

(2) The contract between a home builder and a home owner for the construction or sale of a home shall be deemed to include warranties enforceable by the home owner in any competent court, that -

- (a) the home, depending on whether it has been constructed or is to be constructed -
  - (i) is or shall be constructed in a workmanlike manner;
  - (ii) is or shall be fit for habitation; and
  - (iii) is or shall be constructed in accordance with -
    - (AA) the National Building Regulations made under the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977) or any substituting legislation applying at the time of construction of the home;
    - (BB) the Standards and Guidelines as applicable at the date of enrolment of the home with the Council; and
    - (CC) the terms, plans and specifications of the contract concluded with the home owner as contemplated in subsection (1);
- (b) without detracting from the provisions of paragraph (a) (iii) (CC) of subsection (2) and the provisions of section 8, that the home builder shall -
  - (i) repair roof leaks attributable to workmanship, design or materials in respect of the home arising within a period of twelve months as from the occupation date; and
  - (ii) rectify non-compliance with or deviation from the terms, plans and specifications of the contract or any deficiency related to design, workmanship or materials within a period of 90 days as from the occupation date.

### **The Standard Home Builders Warranty**

8. (1) The Council may, subject to the provisions of subsection (6), prescribe a standard warranty, to be known as the Standard Home Builders Warranty, which shall be deemed to form part of every contract concluded between a home builder and a home owner for the sale or construction of a home.

(2) The Standard Warranty may contain such provisions as the Council considers necessary or expedient for implementing the purposes of this Act including, in particular -

- (a) provisions prescribing obligations on the part of a home builder, including the obligation on the home builder to rectify at its cost major structural defects in the home for a period of not less than five years as from the date of occupation by the first home owner, or such other date as may be prescribed by the Council;

- (b) provisions specifying exclusions from any obligations prescribed as contemplated in paragraph (a);
- (c) provision for procedures by which complaints may be made by any home owner who alleges that a home builder has failed to comply with any obligation prescribed as contemplated in paragraph (a);
- (d) provision for the resolution of any dispute relating to any alleged breach of an obligation prescribed as mentioned in paragraph (a) or otherwise relating to the parties' rights or obligations under the Standard Warranty.

(3) The Standard Warranty prescribed under this section may at any time be amended or substituted by the Council.

(4) The Council shall notify home builders of any amendment or substitution of the Standard Warranty, and any such amendment or substitution shall, in addition, be published for general information in the *Government Gazette*.

(5) The Council may prescribe different standard warranties for different categories of homes or for specific situations or for different purposes.

(6) Any reference in this Act to the Standard Warranty shall also include a reference to standard warranties prescribed under subsection (5).

#### The fund

9. (1) The Council shall, subject to the provisions of this Act, establish, maintain and administer a fund for the purposes of providing assistance to home owners under circumstances where home builders fail to meet their obligations under the Standard Warranty.

(2) The Council may, within the ambit of subsection (1), establish different funds for different situations, purposes or standard warranties.

(3) The National Home Builders Registration Council Fund (association incorporated under section 21), which has been registered in terms of the Companies Act, 1973 under registration no. 96/03550/08, is hereby dissolved and the Registrar of Companies shall remove the name of the company from the register of companies referred to in section 5 of the Companies Act, 1973.

(4) The funds of the National Home Builders Registration Council Fund, referred to in subsection (3), shall, upon the commencement of this Act, vest in the Council for the purposes contemplated in subsection (1).

(5) The Council shall take prudent measures to manage the risks pertaining to the business of the Council and the fund and to secure that the fees, levies or charges payable by home builders to the Council are prescribed at levels which will be sufficient, in aggregate, to meet the obligations conferred on it by this Act.



(6) There shall be paid into the fund, subject to the provisions of subsection (13)

- (a) any fees, levies or charges payable by home builders as may be prescribed by the Council from time to time;
- (b) any fees or deposits payable by home owners as may be prescribed by the Council from time to time; and
- (c) any amount received by the Council from any other source.

(7) There may be paid out of the fund -

- (a) any amount required to be expended by the Council in respect of the failure by a home builder to comply with the Standard Warranty; and
- (b) any amount required to meet the operational costs of the Council in accordance with budgets approved by the Council from time to time.

(8) The funds comprising the fund may be invested in accordance with the policies approved by the Council, subject to the provisions of subsection 13, with -

- (a) a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);
- (b) in securities listed on the Stock Exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
- (c) in financial instruments as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);
- (d) in commercial paper, the issuers of which have been approved by the Council on advice of the fund advisory committee;
- (e) in such other non-equity investment instruments as may be approved by the Council on the advice of the fund advisory committee.

(9) If at any time the funds of the Council are insufficient to meet the costs referred to in paragraph (b) of subsection (1) or future financial demands on the Council and the fund, the Minister may, without derogating from the power of the Council to determine fees, levies or charges, on recommendation by the Council acting on the advices of the fund advisory committee, prescribe an additional levy to be imposed on home builders to meet any shortfall.

(10) Without detracting from the power of the Council to appoint any committees, the Council shall appoint a committee to be known as the fund advisory committee comprising of not less than three and not more than seven persons having expertise in respect of fund management or appropriate financial or risk management expertise.

(11) The Managing Director of the Council shall *ex officio* be a member of the fund advisory committee.

(12) The Council may, on recommendation of the fund advisory committee, appoint professional fund managers, on such terms and conditions as may be approved by the Council, to manage the fund and to report to the fund advisory committee.

(13) The fund advisory committee shall advise the Council on the prudent management of the fund and the risks pertaining to the fund and shall develop procedures and policies for approval and implementation by the Council, relating to -

- (a) funds to be paid into the fund;
- (b) funds to be paid out of the fund generally and specifically for the purposes of subsection 7(a) and (b) respectively;
- (c) the administration of the fund;
- (d) the investment of funds in the fund;
- (e) the management of the risks pertaining to the fund; and
- (f) the insurance of the fund and reinsurance for the fund.

(14) Without derogating from the obligations of the Council under its memorandum and articles of association and the provisions of the Companies Act, 1973 (Act No. 61 of 1973), the Council shall keep accounting records in order to fairly present the financial condition of the Council and the fund and to explain the transactions of the Council and the fund.

(15) The accounting records of the Council and the fund shall be kept at the registered office of the Council and shall at all times be open to inspection by the Directors of the Council, the Minister or any person authorised by the Minister.

(16) The fund advisory committee shall report quarterly to the Council on the status of the fund and shall, where necessary, make recommendations to the Council in respect of the fees, levies and charges of the Council and the need for any levy contemplated in subsection (9).

(17) The Council may from time to time, on recommendation of the fund advisory committee, prescribe the minimum and maximum amounts which may be expended on a home pursuant to the failure of the home builder to meet its obligations under the Standard Warranty.

(18) A home builder shall be obliged, in the event of the Council having incurred costs pursuant to the failure of the home builder to meet its obligations under the Standard Warranty, on demand by the Council to reimburse the Council with all costs incurred or expended by the Council in relation to the failure of the home builder.

(19) In the event of the failure of a developer to meet its obligations under the Standard Warranty, the contractor having constructed a home in terms of a contract with such developer shall be liable to perform the obligations of the developer under the Standard Warranty or to reimburse the Council in respect of the costs contemplated in subsection (18) where the Council, after having obtained judgment against the developer, or after insolvency proceedings having been instituted against the developer by any person have been unable to obtain settlement of its claim against the developer.

(20) In the event of the Council having incurred costs or expenditure where a home builder has failed to meet its obligations under the Standard Warranty, the Council shall be entitled to institute any action which the home owner or home builder may have or would have had in contract or in delict against any person for having caused or contributed to the failure of the home builder in respect of his obligations under the Standard Warranty.

(21) No home owner shall have a claim against the Council under this Act save to the extent that -

- (a) the home builder is in breach of the home builder's obligations under the Standard Warranty;
- (b) the home was constructed by a registered home builder and the home had been enrolled with the Council;
- (c) the home builder no longer exists or is unable to meet its obligations;
- (d) the funds available in the fund would permit the Council to accept such liability, having regard to future financial demands on the Council and the fund, the nature of the claim and the circumstances of the particular matter; and
- (e) the Council has specifically accepted liability in the particular case.

(22) The Minister may at any time instruct an external audit of the fund and the Council to be undertaken.

(23) The Council shall submit an annual report to the Minister comprising -

- (a) the externally audited financial statements of the Council;
- (b) a report on the affairs of the Council during the relevant financial year;
- (c) a report on the administrative efficiency of the Council; and
- (d) a report on the financial position of the fund.

(24) The Minister shall lay upon the Table in Parliament a copy of the annual report within thirty days after receiving it if Parliament is then in session, or, if Parliament is not then in session, within thirty days after the commencement of its next ensuing session.

## Standards and Guidelines

10. (1) The Council shall, for the purposes of this Act, prescribe Standards and Guidelines relating to, or for purposes connected with, the design and construction of homes to be adhered to and to be complied with by registered home builders.

(2) Without detracting from the generality of subsection (1), the Standards and Guidelines may require plans and associated documents to be approved by competent persons, contemplated in section 2(4)(l), and different requirements may be prescribed in relation to different categories of homes or different types of building techniques or materials.

(3) The Standards and Guidelines prescribed under this section may at any time be amended or substituted by the Council.

(4) The Council shall notify home builders of any amendment or substitution of the Standard Warranty, and any such amendment or substitution shall be published for general information in the *Government Gazette*.

(5) The Council may refuse to enrol or suspend or withdraw the enrolment of a home prior to occupation if it is satisfied, on reasonable grounds, that the home has not been constructed in accordance with the Standards and Guidelines.

## Rules

11. (1) The Council may make Rules -

- (a) regulating the conduct of registered home builders;
- (b) requiring registered home builders to comply with any circular issued by the Council in terms of the Rules;
- (c) prescribing procedures for the registration of home builders and the expiration and renewal of registration;
- (d) prescribing terms and conditions of registration;
- (e) prescribing the fees payable on application for registration or renewal of registration;
- (f) prescribing procedures for the enrolment of homes;
- (g) prescribing the fees payable by home builders to the Council in respect of the enrolment of a home or any category of home;
- (h) governing the relationship between the Council and a home builder;



- (i) prescribing procedures for claiming and determining claims under the Standard Warranty;
- (j) prescribing the procedures for conciliation or arbitration of disputes and providing for the payment and refunding of fees for such conciliation or arbitration;
- (k) prescribing different categories of homes for purposes of this Act;
- (l) prescribing terms to be included in or excluded from contracts between home builders and home owners in respect of the construction or sale of homes;
- (m) to ensure the performance of home builders' obligations to the Council;
- (n) prescribing any matter required or permitted to be prescribed under this Act;
- (o) prescribing forms for the purposes of the Council; and
- (p) prescribing procedures generally to be complied with by home owners or home builders lodging complaints with the Council and any fees or deposits payable by home owners in respect of such complaints.

(2) The Rules prescribed under this section may from time to time be amended or substituted by the Council.

(3) The Council shall notify home builders of any amendment or substitution of the Standard Warranty, and any such amendment or substitution shall, in addition, be published for general information in the *Government Gazette*.

#### **Obligations of home builder regarding enrolment of homes**

12. (1) A home builder shall enrol a home to be constructed by it with the Council.

(2) A home builder shall provide the home owner with proof of enrolment of the home with the Council.

(3) A home builder shall not commence the construction of a home until the home builder has notified the Council thereof, has enrolled the home with the Council and has provided the Council with such particulars as are prescribed and has paid to the Council the prescribed fee.

(4) In the event of a registered home builder failing to complete the construction of a home, no home builder shall complete the construction of the home without informing the Council and without assuming the obligations under the Standard Warranty in respect of such home in the manner prescribed by the Council in the Rules.

(5) The enrolment of a home shall be automatically suspended upon the granting of an order for the provisional liquidation or sequestration of a home builder where such provisional liquidation or sequestration is granted prior to the date of occupation of the home by the home owner.

(6) The Council may reinstate an enrolment contemplated in subsection (5) within its discretion.

#### **Obligations of mortgage lenders and conveyancers**

13. (1) No financial institution shall lend money to a home owner, against the security of a mortgage bond registered in respect of a home, with a view to enabling the home owner to purchase the home from a home builder, unless that person is satisfied that the home builder is registered under this Act and that the home is or shall be enrolled with the Council and that the prescribed fees have been paid or shall be paid.

(2) Any conveyancer attending to the registration of a mortgage bond in favour of a person contemplated in subsection (1) shall ensure that the home builder is registered under this Act, has enrolled the home with the Council and has paid the prescribed fee in respect of such enrolment.

### **CHAPTER V ENFORCEMENT**

#### **Inspectors**

14. (1) The Council shall appoint inspectors for the purposes of this Act.

(2) An inspector may, for the purpose of inspecting a home during its construction, enter into or upon and inspect the premises constituting the site of the construction at any time.

(3) For the purposes of an investigation, the inspector may -

(a) require the production of the drawings and specifications of a home or any part of a home, including any plans and specifications prescribed by the Rules or the Standards and Guidelines, for inspection and may require information from any person concerning any matter related to a home or any part of a home;

(b) be accompanied by any person who has special or expert knowledge of any matter in relation to a home or part of a home; and

(c) alone or in conjunction with such other person or persons possessing special or expert knowledge, make such examinations, tests or enquiries, at the cost of the home builder, as are necessary for the purposes of the inspection.

(4) No person shall hinder, obstruct, interfere with, withhold information from an inspector or attempt to hinder, obstruct, interfere with or withhold information from an inspector in the exercise of a power or performance of a duty under this Act.

### **Interdicts**

15. Where it appears to the Council that any home builder does not comply with this Act, the Rules, or the Standards and Guidelines, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights the Council may have, the Council may at any time apply to any competent court for an order, irrespective of whether any other remedy is available to the Council or not -

(a) to direct such home builder to comply with such provision;

(b) to stop construction of a home; and

(c) to grant such other assistance as may be appropriate in the circumstances.

### **Offences**

16. Every person who -

- (a) knowingly withholds or furnishes or false information under this Act; or
- (b) contravenes the provisions of sections 4(1), 4(2), 12, 13(1), or 14(4),

and every director, trustee, managing member or officer of a home builder who knowingly concurs in such furnishing or contravention, shall be guilty of an offence and liable on conviction to a fine not exceeding twenty five thousand rand, or to imprisonment for a period not exceeding one year, or to both such fine and such imprisonment on each charge.

## **CHAPTER VI MISCELLANEOUS**

### **Notices**

17. Any notification or document required by this Act may be served or given personally or by registered post addressed to the person to whom notice is to be given at the person's registered address with the Council and, where notices are served or given by post, the service shall be deemed to have been made on the fourteenth day after the day of posting unless the person to whom the notice is given establishes that the person, acting in good faith, through absence, accident, illness or other cause beyond the person's control, did not receive the notice, or did not receive the notice until a later date.

### Certificate of evidence

#### 18. A statement as to -

- (a) the registration or non-registration of any home builder or the enrolment or non-enrolment of any home; or
- (b) any fact relating to any matter which is apparent from the records or the information technology system of the Council,

purporting to be certified by the chairperson or managing director of the Council is, without proof of the office or signature of the chairperson or managing director, receivable in evidence as *prima facie* proof of the facts stated herein for all purposes in any proceeding or prosecution.

### Delegation

19. (1) The Council may delegate any of its powers, obligations or duties in terms of the Act to either the chairperson or the managing director, or to a committee of the Council.

(2) The managing director may delegate any power, obligation or duty delegated by him or her to the Council to an official in the employ of the Council.

(3) Delegation in terms of subsection (1) or (2) shall not preclude the delegator from exercising such power, obligation or duty him or herself.

(4) The Council may contract any specific expertise or services to assist the Council or to perform on behalf of the Council any specific power; provided that the powers contemplated in sections 8, 9, 10 and 11 shall be exercised by the Council itself.

### Regulations

20. (1) The Minister may, on recommendation by the Council, make regulations under this Act in respect of any matter which is required to be prescribed by the Minister or which are necessary or desirable in order to achieve the objectives of this Act and any such regulation may create offences and provide for penalties in respect thereof.

(2) The Minister shall not, in exercising his or her powers under subsection (1) be obliged to accept the recommendations of the Council but shall be obliged to consider such recommendations.

### Application of Laws

21. (1) The provisions of the Insurance Act, 1943 (Act No.27 of 1943) shall not be construed to apply to the Council, the fund, or the standard warranty insofar as it could be construed to require the compulsory registration of the Council or the fund under that Act.



(2) The provisions of the Maintenance and Promotion of Competition Act, 1979 (Act No. 96 of 1979), shall not be construed to render either the Council a monopoly which is not in the public interest or as having restrictive practices which are not in the public interest insofar as it relates to the activities of the Council as contemplated in this Act.

(3) The Council shall be exempt from the payment of income tax, donations tax, stamp duty and transfer duty.

(4) The Companies Act, 1973, subject to the provisions of this Act, shall apply to the Council.

(5) The provisions of the Insolvency Act, 1936 (Act No. 24 of 1936), and the provisions of sections 337 to 440 of the Companies Act, 1973, shall not apply to the Council and the Council may only be dissolved by an Act of Parliament.

#### **Status of documents issued by Council and prior actions and appointments of the Council**

22. (1) The Standard Warranty, the Rules and the Standards and Guidelines, as well as all other circulars or documents issued by the Council prior to the commencement of this Act, shall be deemed to have been prescribed in terms of this Act and shall remain binding on home builders until amended or substituted, as contemplated in this Act.

(2) Anything done by the Council, its members, directors or employees prior to the commencement of the Act, shall be deemed to have been done or made under the provisions of this Act.

#### **Short title and commencement**

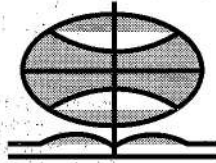
23. This Act shall be called the National Home Builders Registration Council Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the *Government Gazette*.

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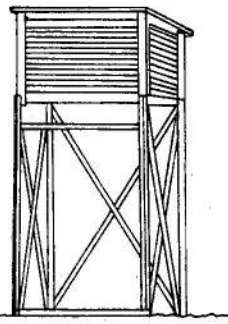
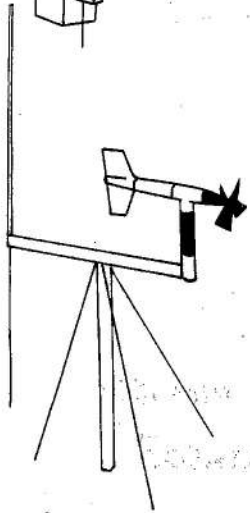


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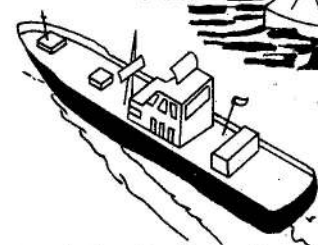
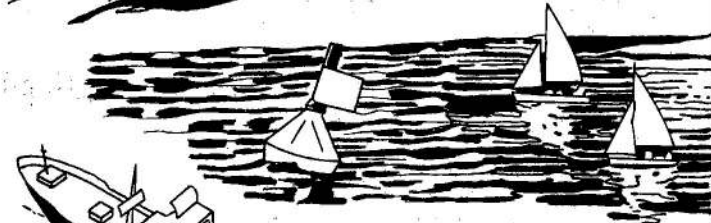
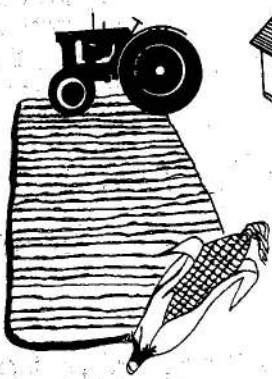
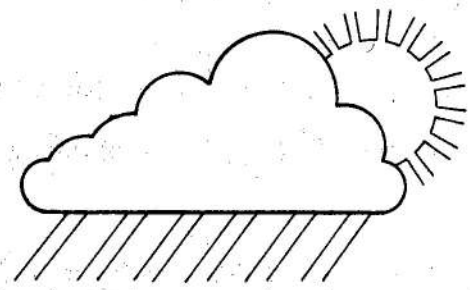
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