

# HOUSING CONSUMER PROTECTION BILL [B10B-2021]

## (SUMMARY FOR PUBLIC HEARING)

### 1. BACKGROUND

- (a) The Housing Consumer Protection Bill, seeks to repeal the Housing Consumer Protection Measures Act (Act 9 of 1998).
- (b) The Act came into effect on 4 June 1999 and has been amended at least three times by the Housing Consumers Protection Measures Amendment Act 27 of 1999, the Housing Amendment Act 4 of 2001 and the Housing Consumer Protection Measures Amendment Act 17 of 2007.

### 2. PURPOSE OF BILL

The purpose of the Bill is amongst other to -

- **ensure** adequate protection of Housing consumers and effective regulations of the home builders industry;
- **strengthening** the protection of housing consumers;
- **introduce** effective enforcement mechanisms;
- **prescribe** appropriate penalties or sanctions;
- **transformation** of the industry by the introduction of warranty fund surplus;
- **create** an enabling environment for new entrants into the home building industry;
- **align** with Public Finance Management Act and the Promotion of Administrative Justice Act, 2000.

### 3. DEFINITIONS WORTH NOTING

“**build**” in relation to the structural integrity of a home, means the -

- establishment;
- installation;
- repair;
- renovation;
- alteration;
- extension;

of a home, and **construction** and **construct** have the **same meaning**;

*\*Disclaimer*

*This document has been manually compiled, it contains a concise extract, it is advisable to always refer to relevant Act itself.*

May 2023

**“developer”** means a person or organ of state who initiates or executes, or both initiates and executes; a project with the aim to provide one or more homes to housing consumers, including but not limited to -

- any other delivery agent as defined in section 1 of the Social Housing Act;
- a social housing institution defined in section 1 of the Social Housing Act; or
- any Agent acting on behalf of that person, organ of state, other delivery agent or social Housing institution;

**“home”** a permanent structure intended to provide protection against natural element and is suitable to be occupied for residential purposes or partially for residential purposes by the housing consumer or leased out by any person.

**“home builder”** means a person who -

- builds or undertakes to build a house or to cause a home to be built for any person, including himself or herself; or
- builds a home for the purpose of sale, leasing, renting out or otherwise disposing of such a home

irrespective of whether or not that person is registered in terms of this Act;

**“housing consumer”** means a person who has acquired, or is in the process of acquiring, a home for the purpose of owning that home, including but not limited to -

- a co-owner of a home;
- the owner of a section registered in terms of sectional title Act, 1986; the holder of a housing interest as defined in section 1 of the Housing development scheme for Retired persons Act, 1988;
- the beneficiary in terms of a subsidy housing program contemplated in the National Housing Code;
- the beneficiary of the Housing development as contemplated in section 1 of the Social Housing Act, including that person’s successor in title.

**“major structural defect”** means a defect as determined in the Housing Building Manual, which give rise or is likely to give rise to damage of such severity that it affects or is likely to affect the structural integrity of a home, and which requires complete or partial rebuilding of the home, or extensive repair work to it, and a structural defect shall have a corresponding meaning.

## CHAPTER 1

### 4. APPLICATION OF THE ACT

- The provisions of this Act **apply** to the building of a new home and any addition, alteration, renovation or repair of a home and the submission of building plans to the municipality in terms of the National Regulations and Building standards Act, 1977.
- This Act does not apply to dwelling unit that does not have its own bath room or kitchen, any temporary building, a shack or caravan any structure forming part of an informal settlement, a hotel or motel.
- The powers and duties of the Board and the Council must be exercised subject to the Public Finance Management Act.

## CHAPTER 2

### 5. (Clauses 4 – 22) NATIONAL HOME BUILDING REGULATORY COUNCIL

*\*Disclaimer*

*This document has been manually compiled, it contains a concise extract, it is advisable to always refer to relevant Act itself.*

May 2023

- The National Home Builders Registration Council established in terms of section 2 of the Housing Consumer Protection Measures Act continues to exist as a juristic person, known as the **National Home Building Regulatory Council**.
- The Council must act independently and report in accordance with the Public Finance Management Act.
- The **objectives** of the Council, **amongst other** is to-
  - **represent** the interest of all housing consumers,
  - **regulate** the home building industry,
  - **promote** consumer rights.
- The affairs of the Council **must** be **overseen by a Board** and the Board **must appoint a Chief Executive Officer and a chief Financial Officer** as determined in terms of a job evaluation system approved by the Board to ensure the Council meets its objectives.
- The Council **may only** be **disestablished** by an Act of Parliament and the Council may not be declared insolvent in terms of the Insolvency Act (Act 34 of 1936).

### CHAPTER 3

#### ☛ 6. (Clauses 23 – 28) REGISTRATION OF HOMEBUILDERS

- The Council **must** establish and maintain a **register** of home builders to amongst other facilitate -
  - risk management in the tendering process in relation to the building of a home;
  - assessment of a performance of a home builder or a developer in the execution of home building contracts and provide performance record of home builders and developers; provide performance records of home builders and developers;
  - the regulation of the conduct of home builders and developers;
  - the register must be accessible to the public;
  - home builders and developers must be registered;

### CHAPTER 4

#### ☛ 7. (Clauses 29 – 33) ENROLMENT

- The Council must establish and maintain a register of enrolment of homes and the purpose of the register amongst other is the identification of enrolled homes, cost effective procurement process, and inspection of enrolled homes.
- A homebuilder or developer may not commence with the construction of a home unless that home is enrolled with the Council.
- A homebuilder or developer who fail to enrol must immediately upon being notified by the Council or otherwise become aware of such failure, apply for enrolment and where construction has commenced, immediately stop the construction until given approval by Council to proceed with such construction.
- A MEC or MMC or his or her delegate must ensure, through oversight compliance in relation to a subsidy or social housing project.

*\*Disclaimer*

*This document has been manually compiled, it contains a concise extract, it is advisable to always refer to relevant Act itself.*

May 2023

## CHAPTER 5

### ☛ 8. (Clauses 34 - 44) FINANCIAL MATTERS

- The funds of the Council consist of –
  - any fee or any interest on a fee or any penalty on a fee which becomes payable in terms of the Act.
  - interest derived from investments;
  - surplus to the warranty fund;
  - money appropriated by parliament;
  - any money which may accrue to the Council from any other source.

## CHAPTER 6

### ☛ 9. (Clauses 44 - 58) COMPULSORY INFORMATION AND CONTRACTUAL MATTERS

- The minister must prescribe the information to be required in terms of the Public Finance Management Act or Local Government Municipal Finance Act and legislation as contemplated in section 217 of the Constitution of the Republic of South Africa, 1996.
- An employer or housing consumer may not instruct continuation of the Building process or effect payment where an inspection indicates that the building works do not comply with the technical requirements.

## CHAPTER 7

### ☛ 10. (Clauses 59 – 78) ENFORCEMENT AND ALTERNATIVE DISPUTE RESOLUTIONS

- This Act **must be enforced** in terms of the administrative enforcement procedure and systems as prescribed by the Minister.
- The Council **may determine** the penalty in relation to an administrative non-compliance.

## CHAPTER 8

### ☛ 11. (Clauses 79 – 94) MISCELLANEOUS

- **Clauses 79 – 94** deals with **transitional matters** and makes provision for amongst other –
  - the Home Building Manual;
  - making of rules by the Board on recommendation of the Council and of regulations by the Minister;
  - the recovery of fees;
  - vicarious liability;
  - personal liability of the members, directors, trustees of a homebuilder;
  - duties of estate agents;
  - the code of conduct for the members of the Board, homebuilders, developers and other industry role players.

*\*Disclaimer*

*This document has been manually compiled, it contains a concise extract, it is advisable to always refer to relevant Act itself.*

May 2023