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SUMMARY OF THE HOUSING CONSUMER PROTECTION ACT

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(Signed into law on 29 January 2025 but not yet commenced. Commencement is expected to be around 2027)

(Para 14.3 below is what you are probably looking for!)

An article in the Property Professional's May 2026 publication relating to this legislation appears to have agents abuzz. Herewith a summary of the Act.

To protect housing consumers; provide for the continuance of the National Home Builders Registration Council (NHBRC); for the registration of homebuilders; provide for warranties against defective building work

1. **Some important definitions:**

1.1 **"build"**, <u>in relation to the structural integrity of a home,</u> means the establishment; installation; repair; renovation; alteration; or extension, of a home, and "construction" and "construct" have the same meaning.

1.1.1 So basically, <u>ANY</u> new RESIDENTIAL property or any even any improvements to an existing RESIDENTIAL property in relation to the structural integrity.

1.1.2 **In the old act there is no definition of "build".**

1.2 **"home"** means <u>a permanent structure intended to provide protection against the natural elements</u> and to be occupied for <u>residential purposes</u> or <u>partially for residential purposes</u> by the housing consumer <u>or leased out by any person</u>, and includes

1.2.1 the private drainage system from the home up to the municipal connection or up to and including a conservancy or septic tank;

1.2.2 water services in relation to a home, excluding the supply of water services from the point of supply to the point of discharge at fixtures and appliances;

1.2.3 any buildings ancillary to a home, including but not limited to storerooms, covered walkways, garages and common facilities;

1.2.4 any retaining wall necessary to ensure the structural integrity of the home;

1.2.5 any building or wall or swimming pool on common property adjacent to the home, but only if it has the potential to cause a major structural defect to the home;

1.2.3 **Under the old act, "home" was simply a dwelling unit for residential purposes – finished.**

AS SUCH - A MUCH WIDER DEFINITION NOW

1.3 **"homebuilder" (which replaces the definition of "business of a home builder") means a person who**

1.3.1 builds or undertakes to build a home or to cause a home to be built for any person, including himself or herself;

1.3.2 builds a home for the purposes 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.

1.3.3 **Under the old act a home built by a person for occupation by that person did not require registration.**

1.3.4 **So you are deemed to be a home builder if you build ANY home for ANY purpose now.**

1.4 "**major structural defect**" means a defect as determined in the Home Building Manual which gives 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 has a corresponding meaning.

1.4.1 **The only difference here is the addition of reference to the Home Building Manual. The old Act however also makes reference to such a Manual which is the source for technical specifications so in essence the definition is unchanged.**

1.5 "**Developer**" – **this is a new addition.** "A person … who initiates or executes …a project with the aim to provide one or more homes to housing consumers…"

2. **What and who does it apply to?**

The provisions of this Act apply to:

2.1 the building of a new home (as defined), AND

2.2 <u>any addition to, alteration, renovation or repair</u> of an existing home (as defined) <u>in so far as</u> it necessitates the submission of building plans to a municipality in terms of the National Building Regulations and Building Standards Act, 1977.

3. **Registration of homebuilders and homes:**

3.1 A homebuilder **or developer (new addition)** who intends to undertake or to commission the building of a home, must apply for registration as a homebuilder or a developer before he/she/it may commence any building work. The home must also be registered.

3.2 Failure to register does not affect that person's liability and obligations in terms of this Act. You remain subject to the Act, regardless.

3.3 **FAILURE TO REGISTER:**

3.3.1 If a homebuilder or developer has not registered and the NHBRC finds out, they may demand that construction stops until they have approved continuation.

3.3.2 The NHBRC may even demand that the home builder/developer provides a financial guarantee to the amount prescribed by it in relation to that home's compliance with the applicable technical standards.

3.3.2 Council may also demand that any defects discovered, be remedied.

4. **Home warranty fund**

A home warranty fund (as exists currently) to protect homeowners, will continue to exist to compensate consumers for claims submitted, where the home builder or developer has not or cannot meet his obligations in terms of the Act.

5. **Commencement date and duration of <u>NHBRC warranties</u>**

5.1 In relation to a <u>major structural defect, five years</u> after the finalisation of the construction of a home, calculated as from 90 days after final date of inspection, whether occupied or not. So if the home builder leaves it vacant and sells it 5 years and 91 days after the final inspection and it is riddled with defects, the warranty will not apply.

5.2 In relation to a <u>roof leak occurring in a home, two years</u> **(old act is 12 months)** calculated as from 90 days after final date of inspection.

5.3 If the final inspection reveals non-compliance with technical issues, then the time starts 90 days as from when the inspector certifies compliance.

6. **How to go about claiming:**

6.1 NB – The NHBRC is not liable to pay out of the home warranty fund in respect of any claim if the home was not enrolled.

6.2 A housing consumer may institute a claim against the home warranty fund where:

6.2.1 there is a major structural defect, or a roof leak, that is attributable to non-compliance with the Technical Requirements;

AND

6.2.2 the homebuilder or the developer is unable, or fails to rectify a structural defect within the period prescribed by the Council, OR if the homebuilder or developer no longer exists or cannot be traced.

6.3 The Council must reject a claim if it was caused by:

6.3.1 wilful acts or wilful omissions of the consumer or persons residing in the home;

6.3.2 fire, explosion or damage caused by a third party;

6.3.3 lightning storm, flood or earthquake or any other natural occurrence;

6.3.4 inadequate maintenance or abnormal use of the home;

6.3.5 subsidence or landslide;

6.3.6 pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds or the impact of aircraft or other aerial devices or articles dropped or falling therefrom;

6.3.7 damage related to ionising radiations or contamination by radioactivity from whatever cause or from nuclear weapons material;

6.3.8 war, invasion, act of a foreign enemy, hostilities (whether declared or not), civil war, revolution, rebellion, insurrection or military or usurped power, strike, riot or civil commotion;

6.3.9 anything which is of a maintenance nature; or

6.3.10 failure to undertake reasonable maintenance or abnormal use of that home's private drainage system.

6.4 The fund also does not cover consequential loss **(If the garage roof collapses onto the new 6 wheeler Merc Brabus – you are on your own.)**

7. **Amount of warranty** – Must still be prescribed by the Minister. Currently R500 000 max.

8. **Claims and recourse**

8.1 If the NHBRC makes any payment for a major structural defect or roof leak, the balance left from the amount that is set aside for such a claim, constitutes the amount of warranty cover for the enrolled home for the remainder of the warranty period. **(In other words if the problem resurfaces, the NHBRC's liability is limited to the balance)**

9. **Prohibition to continue building or effecting payment in certain circumstances**

9.1 A housing consumer <u>may not instruct continuation of the building process or effect payment where</u>:

9.1.1 An inspection indicates that the building works do not comply with the Technical Requirements to such an extent that the non-compliance may result in a major structural defect or roof leak; or

9.1.2 where a dispute arising from the outcome of the inspection was not resolved.

10. **Contract**

10.1 Contracts between a homebuilder or a developer and a housing consumer for the construction or sale of a "home" are deemed to include warranties that:

10.1.1 the homebuilder or the developer or both are registered;

10.1.2 the home is enrolled:

10.1.3 the home will be constructed in accordance with all prescribed technical specifications;

10.1.4 the home builder/developer will rectify non-compliance or defects that arise within the prescribed warranty periods (90 days; 2 years or 5 years); and

10.1.5 where the housing consumer has already moved into a home in relation to which a major structural defect is identified, and has to vacate that home and relocate to other suitable accommodation, then the homebuilder and/or developer, are jointly and severally liable for the reasonable cost of that relocation and accommodation.

11. **Adjudication of contractual disputes**

11.1 Either party to a contract may refer a dispute to the NHBRC for resolution.

11.2 **Here is a kicker:** Where an adjudicator has made a decision and either party to the dispute is not satisfied with that decision, that party may refer that dispute to arbitration or take any other legal action available in law. **HOWEVER:** Notwithstanding any intention to take the decision on arbitration or to court, <u>***the parties must give immediate effect to the adjudicator's decision after the delivery of the decision***</u>. **This is quote astounding because if this decision is that a homebuilder must remedy an alleged defect at huge expense, he must proceed to do this <u>even if the arbitrator or court might subsequently find otherwise</u>.**

12. **Fines**

Non-compliance can result in fines of up to a <u>MINIMUM</u> of R1 million. Minister must still prescribe this.

13. **Personal liability**

Where the homebuilder is a legal entity, the principal of that entity "may be held personally liable in terms of this Act". **This seems to create automatic personal liability should the entity not be able to pay for remedial work.**

14. **And FINALLY – What does this new law mean for Property Practitioners and Conveyancers?**

14.1 **Duty of property practitioner**

14.1 A property practitioner must, *before becoming involved in the sale of a home in his or her capacity as a property practitioner*, <u>take reasonable steps to determine</u> whether that <u>sale</u> relates to a home which has to be enrolled, or which is covered by the home warranty fund.

14.2 The property practitioner must determine whether the home concerned is enrolled and if not, must notify the NHBRC and inform any prospective buyer of this and of the consequences of that failure to be enrolled.

14.3 The NHBRC may report a property practitioner who does not comply to the PPRA.

HOW will this be applied? PP's will have to keep a close eye on when this Act commences, because as from THAT date, if any property is sold, and upon which a "home" was built, or upon which any work was carried out, and which falls within the definition of a "home", <u>and</u> which was constructed less than 5 years - and 90 days ago as from when a final inspection was carried out, (being the maximum warranty period) - then the Property Practitioner will need to check on this.

If you KNOW that this is a new build and younger than 5 years of course, then you have no choice.

How will the PP ever know whether this applies? One could ask for the occupancy certificate – this is the best source or proof because with any new home there should be one these days.

NB You need only take REASONABLE steps. The Act does not state that unless you are able to determine with 100% accuracy, that you may not take the mandate. But at least have proof on your file that you have tried to determine this – Cover Your Ass.

15. **Duty of financial institutions**

15.1 Financial institutions have to also check on enrolment.

15.2 If it is not enrolled the institution must notify the NHBRC accordingly.

15.3 The institution may not process any payments in terms of the mortgage bond until the home is enrolled.

16. **Duty of conveyancer**

16.1 A conveyancer must, before he or she finalises the transfer of a property, also determine the enrolment status and if it is not enrolled, the conveyancer must immediately inform the Council accordingly.

16.2 Failure to report may result in the Conveyancer being reported to the Legal Practise Council.

16.3 It does not appear that the conveyancer must then halt the transfer. It must only be reported it seems. I see conveyancers having to up their fees as this will now require further compliance work and time!

Kind Regards
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