



East Cape Master Builders Association

Summary of significant changes to the NHBRC legislation introduced in the new Housing Consumer Protection Act, (Act No. 25 of 2024) Published in Government Gazette No 52007 of 29 January 2025.

1. DEFINITIONS

1.1 “Build” - this is a new definition as there was no reference to “build” in the previous Act.

The introduction of this definition broadens the legislation’s impact to cover installation, repair, renovation, alteration and extensions to home that are deemed to relate to the structural integrity of the home and will have far reaching affects for those contractors required to register in terms of the Act.

1.2 “Competent Person” – this definition is significantly “watered down” from the original Act which required the competent person to be registered in terms of the Engineering Professions of South Africa Act.

The provision simply refers to someone being qualified by virtue of education, training, experience and contextual knowledge.

1.3 “Developer” – this is a new definition and is obviously aimed at including developers under the umbrella of the NHBRC. This has been implemented by the HHBRC before but on a clumsy basis.

1.4 “Home” – this definition has also been significantly broadened and simply refers to “*a permanent structure intended to provide protection against the natural elements suitable for occupation for residential purposes*” whereas the former definition referred to a dwelling unit constructed by a home builder.

The definition also goes on to specifically define nine different types of structures included in the definitions of home being social housing, sectional title, housing programmes by organs of state and even retaining walls thus broadening the impact of the legislation quite considerably.

This will broaden the types of contractors that might need to be registered with the NHBRC going forward but will also provide an advantage to those already registered.

1.5 “Home Builder” – the home builder definition now includes a builder who is building a home for himself whereas the previous Act simply referred to someone “*carrying on the business of a home builder*” and also provided for the exemption of an owner builder.

1.6 “Home Building Contract” – this is introduced for the first time although it may have been included in the regulations previously.

1.7 “Home Warranty Fund” – previously simply referred to “Fund”.

1.8 “Housing Consumer” – the housing consumer definition is simply a one liner in the previous Act but has been significantly broadened to include co-owners, holders of housing interests in retirement schemes and beneficiaries of subsidy housing programs amongst others.

1.9 “Informal Settlements” – this is a new definition and defines non-permanent structures.

1.10 “National Regulator for Compulsory Specifications Act” – this is a new definition.

1.11 “Person” – the definition of a person has been expanded to include a Trust. The trust will therefore become the housing consumer in terms of the Act.

2. APPLICATION

2.1 Clause 2 (1) (b) expands the influence of the Act to include additions and alterations and renovations or repairs of a home insofar as they require a submission of building plans to a local authority.

2.2 Clause 2 (4) refers to converting of commercial buildings or part thereof into a home.

3. NHBRC

3.1 Name

A subtle change to the Name of the NHBRC has been made but same acronym applies.

Focus has shifted from registration to regulation.

3.2 Clause 5 - Objectives

The objectives of the Council have been revised.

4. REGISTRATION

4.1 Clause 23 - Register of Home Builders and Developers

Developers have been included in the heading and in the content of this section.

4.2 Clause 24 - Contents of the Register

The contents of the register refers to a grading category of a home builder or developer.

The original Act also referred to the grading of contractors with a commensurate reduction in the home owners enrolment fee based on the performance record and grading of the contractor. This was never done and I presume it is now the intention for the NHBRC to finally undertake this.

5. CONTRACTUAL

5.1 Clause 48 (2) – Sale of a home – Property Practitioner

Refers to the contract for construction or sale of a home and it is also noted that under a later (clause 81) the property practitioner (estate agents) are also given certain obligations relating to the enrolment of the home.

5.2 Clause 48 (3) - Accommodation

Where the housing consumer has already moved into the home and major structural defects have been identified, the homebuilder /developer will be liable for the cost of relocation and alternative accommodation.

5.3 Clause 51 - Prohibition of Conditional Payment Provisions

Prohibits contractual provisions making payment conditional upon receiving payment from a third party, excluding Mortgage lenders like banks.

5.4 Clause 54 - Right to Suspend Performance

The right to suspend the works if payment is not received. This is normally covered in most standard Building Contracts

6. MISCELLANEOUS

6.1 Clause 80 – Liability of the Homebuilder

The provision introduces personal liability of a principal member/director.

6.2 Clause 81 – Property Practitioners (Estate Agents, etc.)

This clause pulls the property practitioners into the policing chain who must advise the prospective buyer if the house has not been enrolled.

7. TRANSITION

7.1 Clause 92 – Existing regulations

Existing regulations remain in place until repealed

7.2 Clause 93 (9) – Alterations & Additions

The Act commences on a date determined by the Minister (Human Settlements) and from that date “a homebuilder that undertakes repairs, alterations and additions to a home where the construction thereof commences after the commencement date of this Act, must be registered as a homebuilder.”