

**DEPARTMENT OF HOUSING
DEPARTEMENT VAN BEHUISING****No. 233****16 March 2007****National Home Builders Registration Council
Code of Conduct for Home Builders**

The National Home Builders Registration Council, acting in terms of Section 7(1) (a) (ix) of the Housing Consumer Protection Measures Act 95 of 1998, has drawn up the following Code of Conduct for Home Builders.

SCOPE

- The Housing Consumers Protection Measures Act (Act 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 (*a person who carries on the business of a home builder*)
- 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.

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

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

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

-full name;

-company or close corporation's registration number;

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-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).

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 fixed cost building 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 as defined and also referred to in rules 8.8.10 and 8.8.11
- (i) "Housing Contract" means agreement entered into between a home builder/Developer and a housing consumer wherein a home builder undertakes to provide a housing consumer with a home for a specified fee.
- (j) "**Instalment** Sale" means a sale agreement that is a "contract" as defined in the Alienation of Land Act, 1981 (Act No. 68 of 1981)

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- (k) "NHBRC" means National Home Builders Registration Council as established by the Housing Consumers Protection Measures Act, 1998 (Act no. 95 of 1998)
- (l) "Sale agreement" means an agreement in which a home-builder sells land to a housing consumer on which a home-builder has built a home.
- (m) "The Act" mean the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998), including any regulation, the Tules, the Home Building Manual and any circular prescribing any matter that a home-builder has to comply with in terms of the Act.

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

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- (g) Explain on a building contract and the terms thereof only when the consumer does not have the technical qualifications, knowledge and practical experience needed to build the home. (or have someone else employed for that purpose or contracted for that purpose).

CHAPTER THREE

DUTY TO DISCLOSE

- 3. A home builder must, before asking or permitting a housing consumer to sign a housing 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 thirty (30) calendar days to examine the contract and other relevant documents.
 - (c) ensure that the agreement contains all representations and promises made to the consumer.

CHAPTER FOUR

EXCLUSIONS FROM CONTRACT

- 4(1) The Housing Contract/Sale Agreement shall not contain terms which have the effect of taking away the consumer's common law or statutory rights.
- 4(2) Any term in the contract which has the effect of taking away the consumer's right shall be taken as pro non-scripto (as if not pari of the agreement).

CHAPTER FIVE

DUTIES BEFORE CONSTRUCTION

- 5.1 A home-builder may begin building a home for a housing consumer only when:
 - (a) the relevant Local Authority has approved the building plans;

- (b) the land on which the home is to be built has been registered in the housing consumer's name/ and
- (c) a mortgage bond has been registered (where applicable)

5.2 A home-builder may begin building a home if:

- (a) the housing consumer has acquired the land in terms of an instalment **sale** agreement;
- (b) the home builder has agreed in the Housing Contract/Building Agreement to take all risks, which may result from non-registration of the land in the consumer's name,
- (c) the home builder has accepted liability for repayment of all amounts received from a housing consumer for the building contract, should the land not be registered in the housing consumer's name on or before commencement of construction unless if the building contract refers to a speculative build project.

5.3 In the event that the home builder begins building contrary to the "Building Code" the home builder has a duty to:

- (a) obtain a copy of the sale agreement;
- (b) reduce the assumption of risk by the home builder into writing which shall specify the date of registration of land in the housing consumer's name.

5.4 A home builder shall release the housing consumer from the building contract should the land not be registered in the consumer's name on the date referred to in the agreement.

5.5 A home builder shall not demand payment of a deposit of more than 10 percent of the contract price.

CHAPTER SIX

DUTIES IN RESPECT OF FINANCIAL MATTERS

6.1 A home builder may not accept payment from a housing consumer except:

- (a) a deposit and/or
- (b) additional costs

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- (c) where the housing consumer requires finance a written confirmation must have been received from a third party, confirming that the third party will provide finance.

6.2 Any deposit paid in respect of:

- (a) a contract and any advance payment, may be used only for the payment of labour and materials needed for the construction of that home
- (b) a sale agreement which is not an instalment sale 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 is registered in the name of the housing consumer.

6.3 The home-builder must:

- (a) immediately issue a receipt for all payments made to him 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.

6.4 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.

6.5 Except as expressly stated in a Housing Contract, 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 does not owe the builder at that time; or

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- (b) the home is to be financed by a bank or third party
- 7.2 A home builder shall not demand payment from a housing consumer:
 - (a) unless all suspensive conditions have been met;
 - (b) of more than 10 percent of the contract price of a fixed cost building contract.
- 7.3 A home-builder shall not accept final payment under a Building Contract unless the Bank, the NHBRC or competent person has certified in writing that the work has been completed according to NHBRC's prescribed minimum standards and guidelines.

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.

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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.

8.6 Influencing Housing Consumers

8.6.1 A home-builder may not encourage, persuade or influence any housing consumer to use or not to use:

- (a) services of any particular attorney, conveyancer or firm;
- (b) services of any financial institution;
- (c) financial assistance offered by any person.
- (d) 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:

- (a) all building materials used and workmanship (whether by the home builder or any subcontractor) comply with the Act and the home builder's manual in force at the time.

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

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- (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:

- (a) use materials of a lesser quality than those specified, unless the housing consumer agrees in writing
- (b) specify materials unsuitable for the construction of the home.

CHAPTER ELEVEN

COST SAVING

A home-builder must pass any cost savings as a result of variations to the works, on specifications or using different materials to the housing consumer.

CHAPTER TWELVE

CARE OF THE SITE

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

- (a) take care not to disturb the land or vegetation beyond what is reasonably necessary;
- (c) keep the building site in a clear and neat condition
- (c) Take reasonable steps to provide adequate security on site.

CHAPTER THIRTEEN

RUBBLE REMOVAL

Unless agreed otherwise with 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 FOURTEEN

PROVISIONAL SUMS/ PRIME COST ITEMS

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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.

CHAPTER FIFTEEN

NON-STANDARDISED MATERIALS

15.1 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.

(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 SIXTEEN

DUTIES IN RESPECT OF CONTRACTS

16.1 Duty to Explain Contract

Before entering into a Housing Contract with a housing consumer, a home - builder has a duty to explain the Housing 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

16.2 Copy of the contracts

Upon the conclusion of a Housing Contract, the home-builder must give the housing consumer a copy of the signed contract.

16.3 Compliance

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

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16.4 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.

16.5 Requirements for signing a Housing Contract

A home builder must ensure that the following requirements are met before allowing a housing consumer to sign a housing contract:

- (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) in the case of a building contract the contract contains the provisions referred to in Section 13 of Act 95 of 1998.

16.6 Changes to housing contracts

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

16.7 Undue pressure to sign

A home builder may not place undue pressure on a housing consumer to sign a Housing Contract with a home builder or not to sign a Housing Contract with another home builder.

16.8 Provisions in a contract

A Building Contract/Housing Contract must contain the following minimum clauses and all terms agreed upon:

- (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;

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- (d) when, where and how much, the housing consumer must pay
- (e) the date when the home builder must begin building the home;
- (f) the date when (or the period within which) the home **will** be completed;
- (g) description of the land and size
- (h) whether any retention monies may be kept and if so;
- (i) the fee payable by the housing consumer as retention money after completion of the home if any;
- (j) the amount thereof;
- (k) or how long it will be retained
- (l) the party liable for payment of any additional costs
- (m) the amount, item by item, including Vat, for materials or goods to be chosen by the housing consumer and installed by the home-builder and which are included in the contract price. (prime cost items).
- (n) the sum (provisional sums), including Vat, which are part of the contract price for specific work (including materials) to be done on site by someone other than the home builder.
- (o) 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.
- (p) the name of the person responsible for certifying that the work has been completed as agreed.

CHAPTER SEVENTEEN**AGREEMENT ON ADDITIONAL COSTS**

17.1 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;

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- (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.

CHAPTER EIGHTEEN

DUTY TO BEGIN AND END CONSTRUCTION WORK ON TIME

18.1 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) continue regularly with building the home until it is completed;
- (c) complete the home on or before the completion date stated in the Building Contract.

CHAPTER NINETEEN

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 TWENTY

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.

20.1 Form of reply

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

20.2 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.

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20.3 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;
- (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;
- (c) any authorized representative of the NHBRC.

20.4 Purpose for access

Access shall only be granted for the purpose of :

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

20.5 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.

20.6 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.

21. HOUSING CONSUMER'S COMPLAINTS

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, a Housing Contract, Building Contract, and any correspondence.

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22. NAME OF RULES

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