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## THE PRESIDENCY

No. 5788                      29 January 2025

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 25 of 2024: Housing Consumer Protection Act, 2024

## INDVUNA YETEBASEBENTI

No. 5788                      29 Januarie 2025

Lapha kuniketwa satiso sekutsi Mengameli uvumile lomtsetfo lolandzelako, loshicilelwa lapha njengesatiso jikelele:—

Umtsetfo No. 25 wemnyaka 2024: Umtsetfo Wekuvikelwa Kwebatsengi Betindlu, 2024

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(English text signed by the President)  
(Assented to 20 December 2024)

# ACT

**To provide for the protection of housing consumers; to provide for the continuance of the National Home Builders Registration Council as the National Home Building Regulatory Council; to provide for the registration of homebuilders; to provide for the enrolment of homes in order to be covered by the home warranty fund; to provide for the regulation of the conduct of homebuilders; to provide for the continuance of the home warranty fund; to provide for claims against the fund; to provide for the funds of the Council and for the management of those funds; to provide for procurement and contractual matters in relation to the building of a home; to provide for the enforcement of this Act; to repeal the Housing Consumers Protection Measures Act, 1998; and to provide for matters connected therewith.**

**P**ARLIAMENT of the Republic of South Africa enacts, as follows:

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(English text signed by the President)  
(Assented to 20 December 2024)

## UMTSETFO

Kuniketa kuvikela kubatsengi betindlu; kuniketa kuchubeka kweMkhandlu Wavelonkhe Wekubhalisa Bakhi Betindlu njengeMkhandlu Wavelonkhe Wekulawulwa Kwetindlu; kuniketwa kwekubhaliswa kwebakhi betindlu; kuniketwa kubhaliswa kwemiti kute ikwati kukhokhelwa sikhwama sewaranti yasekhaya; kuniketwa kulawulwa kwekutiphatsi kwebakhi betindlu; kuniketa timangalo letibukene nalesi sikhwama; kuniketa timali teMkhandlu kanye nekuphatfwa kwaletu timali; kuniketa tintfo tekutsengwe kwemphahla netinkontileka macondzana nekwakhiwa kwelikhaya; kuniketa kuphocelelwa kwaloMtsetfo; kususa umtsetfo wetindlela tekuvikelwa kwebatsengi betindlu, 1998; kanye nekuniketa tindzaba letiphatselene naloko.

**I**PHALAMENDE YeRiphabhulikhi yaseNingizimu Afrika lishaya umtsetfo, ngalendlela lelandzelako:

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### CHAPTER I

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#### Definitions

1. In this Act, unless the context indicates otherwise—
- “**build**”, in relation to the structural integrity of a home, means the—
- (a) establishment;  
 (b) installation; 30  
 (c) repair;  
 (d) renovation;  
 (e) alteration; or  
 (f) extension,
- of a home, and “**construction**” and “**construct**” have the same meaning; 35
- “**certification body**” means a legal person approved by the Council to provide certification services in respect of the design or compliance with the Home Building Manual through its certifier;
- “**certifier**” means an employee or agent of a certification body appointed by the homebuilder to issue certificates in relation to a design or compliance with the Home Building Manual, but excludes an inspector appointed in terms section 69; 40
- “**Chief Executive Officer**” means the Chief Executive Officer appointed in terms of section 15;
- “**Chief Financial Officer**” means the Chief Financial Officer appointed in terms of section 15; 45
- “**Companies Act**” means the Companies Act, 2008 (Act No. 71 of 2008);
- “**competent person**” means a person who—
- (a) is qualified by virtue of his or her education, training, experience and contextual knowledge to make a determination regarding the performance of a building or part thereof in relation to a functional aspect; and 50  
 (b) where applicable, is approved and appointed in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);



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## SAHLUKO I

## KUHUMUSHA

## Tinchazelo 25

1. Kulomtsetfo, ngaphandle uma ingcikitsi isho lokuhlukile—  
 “**kwakha**”, macondzana nebutcofwo besakhiwo sendlu, kusho kutsi—  
 (a) kusungulwa kwakha;  
 (b) kufakwa;  
 (c) kulungisa; 30  
 (d) kulungiswa kabusha;  
 (e) lushintjo; noma  
 (f) selulo,  
 selikhaya, kanye “**kwakhiwa**” kanye “**nekwakha**” kunetinchazelo letifanako;  
 “**umtimba locinisekako**” kushiwo umuntfu losemtsetfweni lovunyelwe nguMkhandlu kuniketa ngetinsitakalo tetitifiketi macondzana nekwakhiwa noma kuhambisana ne-Manuwali Yekwakhiwa Kwetindlu; 35  
 “**umciniseki**” kushiwo umsebenti nobe i-ejenti yemtimba locinisekisiwe lokhetswe ngumakhi tindlu kutokhipha titifiketi mayelana nedizayini nobe kuhambisana neManuwali Yekwakhiwa Kwetindlu, kodvwa kukhipha umhloli lokhetswe ngekuya kwesigaba 70; 40  
 “**UMphatsi Welihhovisi lomkhulu**” kushiwo uMphatsi Welihhovisi Lomkhulu lokhetswe ngekwesigaba 15;  
 “**UMphatsi Wetetimali Lomkhulu**” kushiwo uMphatsi Wetetimali Lomkhulu locokwe ngekuya kwesigaba 15; 45  
 “**UMtsetfo Wetinkapani**” kushiwo Umtsetfo Wetinkapani, 2008 (UMtsetfo Nombolo. 71 wa 2008);  
 “**umuntfu lonelukhono**” kushiwo umuntfu lo—  
 (a) fanelekile ngenca yefundvo yakhe, kuceceshwa, lwati lwemsebenti, kanye nelwati lemongo kwenta sincumo mayelana nekusebenta kwesakhiwo noma incenye yaso macondzana nesici sekusebenta; futsi 50  
 (b) lapho kufanelekile khona, kugunyatiwe futsi kukhetswe ngekuya kweMtsetfonchubo Wavelonkhe Yetokwakha Nemtsetfo Yelizinga Lekwakha, 1977 (UMtsetfo Nombolo. 103 wa 1977);

- “**Council**” means the juristic person referred to in section 4, which comprises of the administration responsible for the management of the affairs and the execution of the operations of the Council, the implementation of the provisions of this Act, and which acts under the strategic direction of the Board;
- “**day**” means a calendar day for purposes of Chapter V, Part 2 and in all other instances day means a business day, excluding the period from 16 December of any year to 15 January of the following year, both days inclusive, Saturday, Sunday and a Public Holiday; 5
- “**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— 10
- (a) any other delivery agent as defined in section 1 of the Social Housing Act;
  - (b) a social housing institution defined in section 1 of the Social Housing Act; or
  - (c) any agent acting on behalf of that person, organ of state, other delivery agent or social housing institution; 15
- “**funds advisory committee**” means the funds advisory committee established in terms of section 38(2)(b);
- “**head of department**” means the head of department responsible for human settlements in a province;
- “**home**” means a permanent structure intended to provide protection against the natural elements and which is suitable to be occupied for residential purposes or partially for residential purposes by the housing consumer or leased out by any person, and includes— 20
- (a) a structure to be occupied for residential purposes as contemplated in the definition of “social housing” as contained in section 1 of the Social Housing Act; 25
  - (b) a residential section registered in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986);
  - (c) a unit as contemplated in the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988); 30
  - (d) a home forming part of a housing programme initiated by an organ of state;
  - (e) the private drainage system from the home up to the municipal connection or up to and including a conservancy or septic tank;
  - (f) 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; 35
  - (g) any buildings ancillary to a home, including but not limited to storerooms, covered walkways, garages and common facilities;
  - (h) any retaining wall necessary to ensure the structural integrity of the home;
  - (i) 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; 40
  - (j) homes that are co-owned in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), or the Property Time-Sharing Control Act, 1983 (Act No. 75 of 1983);
  - (k) boarding houses; and 45
  - (l) hostels;
- “**homebuilder**” means a person who—
- (a) builds or undertakes to build a home or to cause a home to be built for any person, including himself or herself; or
  - (b) builds a home for the purposes of sale, leasing, renting out or otherwise disposing of such a home, 50
- irrespective of whether or not that person is registered in terms of this Act;
- “**home building contract**” means an agreement between two or more parties for the construction of a home, whether by prime or subcontract, and includes any form of contract contemplated in section 47; 55

- “**UMkhandlu**” kushiwo umuntfu longamangalelwa lokukhulunywa ngaye kusigaba 4, lokubandzakanywa kuphatfwa kwetindzaba nekwenta kwemsebenti yeMkhandlu, kwentiwa kwaloMtsetfo, futsi lokusebenta ngaphansi kwekuncondzisa kwaleliBhodi;
- “**lilanga**” kushiwo lilanga kukhalela ngetinhloso teSahluko V, Incenye 2 kanye kuwo onkhe emalanga kushiwo lilanga lemsebenti, kukhipha sikhatsi sangeti 16 Disemba 5  
5  
kufaka omabili emalanga, Mgcibelo, Lisontfwo kanye neholidi;
- “**njiniyela**” kushiwo umuntfu nobe ligatja lembuso lolucala nobe lolusebentisako, noma kokubili lokusungule futsi kukhipha, iphrojekthi ngenhloso yekuniketa lelilodvwa noma lamaningi emakhaya kubatsengi betindlu, kufaka ekhatsi kepha 10  
10  
kungagcini lapho—
- (a) noma ngimuphi lomunye umenteli wetidzango njengoba kuchaziwe esigabeni 1 seMtsetfo Wetindlu Temphakatsi;
- (b) sikhungo setindlu temphakatsi njengoba kuchaziwe kusigaba 1 seMtsetfo Wetindlu Temphakatsi; 15  
15
- (c) noma ngiyiphi i-ejenti lemele lowo muntfu, ligatja lembuso, lomunye umenteli wetidzango nobe khungo setindlu temphakatsi;
- “**likomidi lekwaluleka ngetetimali**” kushiwo likomidi lekwaluleka ngekwetimali lelisungulwe ngekwesigaba 38(2)(b);
- “**inhloko yelitiko**” kusho inhloko yelitiko lenemtfwalo wekuhlala kwebantfu 20  
20  
esifundzeni;
- “**likhaya**” kushiwo sakhawo sesikhatsi lesidze lesihlose kuvikelwa etitweni temvelo futsi letifanele kuhlala kuso ngenhloso tekuhlala noma nekwencenye ngetinhloso tekuhlala kwemtsengi wetindlu noma lesicashiswe ngunoma ngubani, futsi sifaka ekhatsi— 25  
25
- (a) sakhawo lesitosejtentsiswa ngetihloso tekuhlala njengoba kuvetiwe kuchazelo “yetindlu tekuhlala temphakatsi” njengoba kucuketfwe esigabeni 1 seMtsetfo Wetindlu Temphakatsi;
- (b) incenye yetekuhlala lebhaliwe ngekuya ngeMtsetfo Wencenye Yebunini Betakhiwo, 1986 (UMtsetfo Nombolo. 95 wanga-1986). 30  
30
- (c) iyunuthi njengoba kuhlontsiwe kuMtsetfo Enhlelweni Lekutfufukiswa Kwetindlu Tebantfu Labatsatse Umhlalaphansi, 1988 (UMtsetfo Nombolo. 65 wa 1988);
- (d) likhaya lelakha incenye kutinhlelo tetetindlu lesungulwe ligatja lahulumende;
- (e) luhlelo lwangasese lekuhambisa manti ekhaya luye liyochumana kumasipala nobe kute kufinyelele futsi kufaka ekhatsi lithange lekugcina noma emathange emanti; 35  
35
- (f) tinsita temanti mayelana nelikhaya, ngaphandle kwekuphakela kwetinsita temanti kusukela lapho kunikwa khona kute kube kukhishwa etintweni letisebenta ngagesi; 40  
40
- (g) noma ngutiphi takhiwo letisekela likhaya, kufaka ekhatsi kepha kungakhawulelwe kutindlu tekugcina, tindlela tekuhamba letinganisiwe, emagaraji kanye netindzawo letivamile;
- (h) noma ngikuphi kugcinwa lokudzingekako kucinisekisa bucotfo besakhawo selikhaya; 45  
45
- (i) noma ngusiphi sakhawo nobe ludvonga nobe lichibi lekubhukuda lelisesakhaweni lesivamile lesisedvute nalikhaya, kodvwa kuphela uma linemandla ekubangela sici lesikhulu sekwakheka kwelikhaya;
- (j) tindlu letiphetfwe ngekubambisana ngekuya ngeMtsetfo Wekwabelana WekuLawulwa kweMabhlogo, 1980 (UMtsetfo Nombolo. 59 wa 1980), noma Umtsetfo Wekulawulwa Kwekwabiwa Kwesikhatsi Semphahla 1983 (UMtsetfo Nombolo. 75 wa 1983); 50  
50
- (k) tindlu lekuhlalwa kuto; kanye
- (l) emahostela;
- “**umakhi wetindlu**” kushiwo umuntfu lo— 55  
55
- (a) wakha noma locala kwakha likhaya noma locala indlu kutsi iyakhelwe nobe ngubani, kufaka ekhatsi yena; noma
- (b) akha likhaya ngenhloso yekutsengisa, kucashisa, kucasha nobe kulahla lelokhaya,
- kungakhatsalekile kutsi lowo muntfu ubhalisiwe yini noma cha ngakwaloMtsetfo; 60  
60
- “**inkontileka yekwakha tindlu**” kushiwo sivumelwano emkhatsini kwemacembu lababili noma langetulu ekwakhiweni kwelikhaya, kungaba ngulenkulu noma

- “**Home Building Manual**” means the Home Building Manual published by the Council in terms of section 85;
- “**home warranty fund**” means the home warranty fund contemplated in section 35(1);
- “**Housing Act**” means the Housing Act, 1997 (Act No. 107 of 1997);
- “**housing consumer**” means a person who has acquired, or is in the process of acquiring, a home for the purposes of owning that home, including but not limited to— 5
- (a) a co-owner of a home;
  - (b) the owner of a section registered in terms of the Sectional Titles Act, 1986;
  - (c) the holder of a housing interest as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988; 10
  - (d) the beneficiary in terms of a subsidy housing programme contemplated in the National Housing Code; and
  - (e) the beneficiary of a housing development as contemplated in section 1 of the Social Housing Act, 15
- including that person’s successor in title;
- “**Housing Consumers Protection Measures Act**” means the Housing Consumers Protection measures Act, 1998 (Act No. 95 of 1998);
- “**informal settlement**” means an area where primarily non-permanent structures have been erected for residential purposes, including but not limited to— 20
- (a) an unplanned settlement not having been upgraded in terms of the Less Formal Township Establishment Act, 1991 (Act No. 113 of 1991), prior to its repeal by section 59 of the Spatial Planning and Land Use Management Act, 2013 (Act No. 16 of 2013); or
  - (b) a squatter settlement; 25
- “**inspector**” means an inspector appointed in terms of section 69;
- “**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; 30
- “**MEC**” means a member of the Executive Council of a province responsible for human settlements;
- “**Minister**” means the Minister responsible for human settlements;
- “**MMC**” means a member of the Municipal Council of a municipality responsible for human settlements; 35
- “**municipality**” means a municipality as defined in the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);
- “**municipal manager**” means a person appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 40
- “**National Housing Code**” means the National Housing Code referred to in section 4 of the Housing Act, 1997;
- “**National Regulator for Compulsory Specifications Act**” means the National Regulator for Compulsory Specifications Act, 2008 (Act No. 5 of 2008);
- “**organ of state**” means an organ of state as defined in section 239 of the Constitution of the Republic of South Africa, 1996; 45
- “**person**”, in addition to the meaning attached to it in section 2 of the Interpretation Act, 1957 (Act No. 33 of 1957), includes a trust as defined in section 1 of the Trust Property Control Act, 1988 (Act No. 57 of 1988);
- “**prescribe**” means, in relation to— 50
- (a) the Minister, prescribe by regulation; or
  - (b) the Council, prescribe by rule;

- ngesivumelwano lesingaphansi, futsi kufaka noma nguluphi luhlobo lwenkotilenka levetwe kusigaba 47;
- “**IManuwali Yekwakhiwa Kwetindlu**” kushiwo i-Manuwali Yekwakhiwa Kwetindlu leshicilelwe nguMkhandlu ngekwesigaba 85;
- “**sikhwama sewaranti yalikhaya**” kushiwo sikhwama sewaranti yelikhaya 5 lesihlongotwe esigabeni 35(1);
- “**Umtsetfo Wetindlu**” kushiwo Umtsetfo Wetindlu, 1997 (UMtsetfo Nombolo.107 wanga-1997);
- “**umtsengi wetindlu**” kushiwo umuntfu losatfole, noma lokunchubo yekutfole, likhaya ngenhloso yekuphatsa lelokhaya, kufaka ekhatsi kepha kungagcina lapho— 10
- (a) Indlu lephetfwe ngekubambisana;
- (b) umnikati wencenye lebhaliwe ngekuya kweMtsetfo Webunikati Bencenye Yasakhiwo, 1986;
- (c) lophetse intalo yetindlu njengoba kuchaziwe esigabeni 1 seMtsetfo Weluhlelo Lekutfufukiswa Kwetindlu Tebantfu Labatsatse Umhlalaphansi, 1988; 15
- (d) umhlomuli weluhlelo lwetindlu tekuchaswa lokukhulunywa ku-Khodi Yetindlu Wavelonkhe; futsi
- (e) umhlomuli wekutfufukiswa kwetindlu njengoba kuhlontsiwe kusigaba 1 seMtsetfo Wetindlu Tempakatsi, 20
- kufaka umuntfu lotongena esikhundleni sakhe; 20
- “**Umtsetfo Wetinyatselo Tekuvikelwa Kwebatsengi Betetindlu**” kushiwo Umtsetfo Wetinyatselo Wekuvikela Kwabatsengi Betetindlu, 1998 (UMtsetfo Nombolo. 95 wanga-998);
- “**kuhlaliswa lokungakahleleki**” kushiwo indzawo lapho takhiwo letakhiwe kwesikhane tifakelwe ngetinhloso tekuhlala, kufaka ekhatsi kepha kungagcina 25 lapho—
- (a) sakhiwo lesingakahlelwa lesingazenge sitfutukiswe ngekweMtsetfo Wekusungulwa Kwemalokishi Lasezingeni Lelincane, 1991 (Umtsetfo Nombolo. 113 wanga-1991), ngaphambi kwekuba kusulwe ngekwesigaba 59 seMtsetfo Wekulelwa Kwetindzawo Nekulawula Kwemhlaba, 2013 30 (UMtsetfo Nombolo. 16 wanga-2013); noma
- (b) indzawo yekuhlaliswa yemikhukhu;
- “**umhloli**” kushiwo umhloli locashwa ngekuya kwesigaba 69;
- “**sici lesikhulu sesakhiwo**” kushiwo sici njengoba kuncunye kweManuwala Yesakhiwo Yasekhaya lokudala noma lokungenteka kubangele konakala kwebukhulu 35 lobutsintsa noma lokungenteka kutsintse bucotfo besakhiwo selikhaya, futsi lokudzinga kwakhiwa kabusha ngalokuphelele noma lokuyincenye yelikhaya, noma umsebenzi lomkhulu wekulungisa, futsi sici kusakhiwo kutoba nenchazelo lefanako;
- “**MEC**” kushiwo Lemkhandlu Lomphetse wesifundza locondzene nekuhlaliswa 40 kwebantfu;
- “**INdvuna**” kushiwo iNdvuna lecondzana nekuhlaliswa kwebantfu;
- “**MMC**” kushiwo lilunga leMkhandlu waMasipala locondzene nekuhlalisana kwebantfu;
- “**masipala**” kushiwo masipala njengoba kuchaziwe kuMtsetfo weTinhlelo 45 taHulumende Wasemakhaya, 2000 (UMtsetfo Nombolo. 32 wanga-2000);
- “**Umpantsi wamasipala**” kusho umuntfu lokhetfwe ngekulandzela sigaba 82 seMtsetfo waboHulumende baseKhaya: Tindhaka taMasipala, 1998 (uMtsetfo No. 117 wanga-1998);
- “**Ikhodi Yetindlu Tavelonkhe**” kushiwo Ikhodi Yetindlu Tavelonkhe lendluliswe 50 kusigaba 4 seMtsetfo Wetindlu, 1997;
- “**UMtsetfo Wavelonkhe Wekulawulwa Kwemininingwane Lephoclekile**” kushiwo uMtsetfo Wavelonkhe Wekulawulwa Kwemininingwane Lephoclekile, 2008 (UMtsetfo Nombolo. 5 wa 2008);
- “**ligatja lembuso**” kushiwo ligatja lembuso njengoba kuchaziwe kusigaba 239 55 seMtsetfosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996;
- “**umuntfu**”, kungeta kuletinchazelo letifakwe kuto esigabeni 2 seMtsetfo Wekushumusha, 1957 (UMtsetfo Nombolo. 33 wanga-1957), kufaka sikhwama njengoba kuchazwe kusigaba 1 seMtsetfo Wekulawula Imphanhla, 1988 (UMtsetfo Act Nombolo. 57 wanga-1988); 60
- “**kuncuma**” kusho, mayelana ne—
- (a) Indvuna, incunye ngumtsetfonchubo; noma
- (b) uMkhandlu, uncunye ngumtsetfo;

- “**Promotion of Administrative Justice Act**” means the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- “**Public Finance Management Act**” means the Public Finance Management Act, 1999 (Act No. 1 of 1999);
- “**social housing**” means housing provided as contemplated in the Social Housing Act; 5
- “**Social Housing Act**” means the Social Housing Act, 2008 (Act No. 16 of 2008);
- “**subsidy housing**” means housing projects and programmes contemplated in the National Housing Code or any other programme funded by government;
- “**this Act**” includes the regulations, rules, Home Building Manual and any directive issued in terms of this Act; and 10
- “**Technical Requirements**” means the Technical Requirements referred to in section 85(1), and Technical Standards have a corresponding meaning.

### Application of Act

2. (1) The provisions of this Act apply to— 15
- (a) the building of a new home; and
- (b) any addition to, alteration, renovation or repair of a home, in so far as such addition, alteration, renovation or repair necessitates the submission of building plans to a municipality in terms of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977), 20
- whether or not the home is acquired through social housing or subsidy housing.
- (2) This Act does not apply to—
- (a) a dwelling unit that does not have its own bathroom or kitchen;
- (b) any temporary building as contemplated in the National Building Regulations issued in terms of the National Building Regulations and Building Standards Act, 1977; 25
- (c) a shack or caravan;
- (d) any structure forming part of an informal settlement;
- (e) a hotel; or
- (f) a motel.
- (3) Notwithstanding the provisions of subsection (1), the Minister must, by notice in the *Gazette*, determine— 30
- (a) in relation to a category of a home, a date; and
- (b) in relation to different categories of homes, different dates,
- when the provisions of Chapter IV will apply to any addition to, alteration, renovation or repair of, a home. 35
- (4) Notwithstanding the provisions of subsections (2) and (3), this Act applies to any addition, alteration, renovation or repair of which the purpose is to convert a commercial building or part of a commercial building to a home.
- (5) Notwithstanding the provisions of this Act, the Minister may, after consultation with the Council, in exceptional circumstances— 40
- (a) on application in the prescribed manner, exempt a person or home from the provisions of this Act; or
- (b) in the public interest, by notice in the *Gazette*, exempt certain persons or homes belonging to a category or class specified in the notice from the provisions of this Act, 45
- either generally or subject to such conditions as may be specified.

### Application of Public Finance Management Act

3. (1) The Council must prepare and submit budgets, financial statements, audits and annual reports, in accordance with the Public Finance Management Act.
- (2) The powers and duties of the Board and the Council must be exercised subject to the Public Finance Management Act. 50

- “**uMtsetfo Wekukhutsata Kuphatfwa Kwetebulungiswa**” kushiwo uMtsetfo Wekukhutsata Kuphatfwa Kwetebulungiswa, 2000 (UMtsetfo Nombolo. 3 wanga-2000);
- “**UMtsetfo Wekuphatsa Timali Tempakatsi**” kushiwo Umtsetfo Wekuphatsa Timali Tempakatsi, 1999 (UMtsetfo Nombolo. 1 wanga-1999); 5
- “**tindlu tempakatsi**” kushiwo tindlu letiniketwe njengoba kuhlongotiwe kuMtsetfo Wetindlu Tempakatsi;
- “**UMtsetfo Wetindlu Tempakatsi**” kushiwo uMtsetfo Wetindlu Tempakatsi, 2008 (UMtsetfo Nombolo. 16 wanga-2008);
- “**selekelelomali setindlu**” kushiwo emaphrojekthi etindlu netinhlelo letiniketwe ku-ikhodi Yetindlu Tavelonkhe noma letinye tindhlelo letichaswa nguhulumende; 10
- “**lomtsetfo**” kufaka ekhatsi imingomo, imitsetfo, i-Manuwali Yekwakha Tindlu kanye letinye ticondziso letikhishwe ngekuya kwaloMtsetfo; futsi
- “**Tidzingo Tebuchwepeshe**” kushiwo Tidzingo Tebuchwepeshe lokukhulunywe ngato esigabeni 85(1), futsi emazinga ebuchwepeshe atoba nenchazelo lefanako. 15

### Kusetjentiswa kwaloMtsetfo

2. (1) Kwetfulwa kwaloMtsetfo kumele kusebente ku—
- (a) ekwakheni kwelikhaya lelisha; futsi
- (b) noma ngikuphi kungetwa, kuguculwa, kulungiswa, noma kulungiswa kwelikhaya, ngekungeta loko, kuguculwa, kulungiswa nobe kudzinga kuletswe kwemasu wekwakha kumasipala ngekuya ngeMtsetfo Wavelonkhe Wemitsetfonchubo Yekwakha Kanye neMtsetfo Wemazinga Wetekhiwo, 1977 (Umtsetfo Nombolo. 103 wanga-1977), 20
- kutsi likhaya litfolakala noma cha ngetindlu tempakatsi noma tindlu temchaso wekulekelela ngemali. 25
- (2) Lomtsetfo lo awusebenti ku—
- (a) indzawo yekuhlala lengenayo indzawo yekugezela noma likhishi;
- (b) noma ngusiphi sakhiwo sesikhashana njengobe kuhlongotiwe kuMtsetfonchubo Yekwakha Yavelonkhe lekhishwe ngeMtsetfo Wavelonkhe Wemitsetfonchubo Wekwakha Kanye nemaZinga Wekwakha, 1997; 30
- (c) umkhukhu noma i-kharavani;
- (d) nome ngusiphi sakhiwo lesakha incenye yekuhlala lokungakahleleki emkhukhwini;
- (e) li-hhotela; noma 35
- (f) i-motel.
- (3) Ngaphandle kwekuniketwa kusigatjana (1) indvuna kufanele, ngesimemetelo kuGazethi, kuncume—
- (a) ngalokuphatselene nesigaba selikhaya, lusuku; kanye
- (b) ngalokuphatselene netigaba letihlukene tetindlu, tinsuku letihlukahlukene, 40
- lapho kuniketwa kweSahluko IV sitosebenta kunoma ngikuphi kungetwa, kulungiswa nobe kulungiswa kwelikhaya.
- (4) Ngaphandle kwekuniketwa kwesigatjana (2) na (3), loMtsetfo usebenta kunoma ngikuphi kungetwa, kugucula, kulungiswa noma kulungiswa lokuyinjongo yekugucula sakhiwo sekuhweba noma incenye yalesakhiwo setehwebo sibe likhaya. 45
- (5) Ngekungcubutana nemibandzela yaloMtsetfo, iNdvuna, ngemuva kwekubonisana neMkhandlu, ngetimo letingakavami—
- (a) ngekufaka sicele ngendlela lebekiwe, akhulule umuntu nobe likhaya emisebentini yaloMtsetfo; nobe
- (b) ngekwemfuno yemphakatsi, ngesatiso kuGazethi, akhulule bantfu labatsite 50
- nobe tindlu letitsite letingaphansi kwesigaba nobe sigaba lesichazwe kulesatiso kulokushiwo kuloMtsetfo,
- jikelele nobe ngaphasi kwetimo letingabekwa.

### Kusetjentiswa kweMtsetfo Wekulawulwa Kwetimali Tahulumende

3. (1) Umkhandlu kumele ulungiselele futsi uttfumele liphakelotimali, titatimende tetetimali, luhlolo mabhuku kanye nemibiko yemnyaka, ngekuya ngeMtsetfo Wekulawula Kwetimali Tahulumende. 55
- (2) Emandla nemisebenti yeLibhodi kanye neMkhandlu kufanele asetjentiswe ngekuya kwaloMtsetfo Wekulawula Kwetimali Tehulumende.

## CHAPTER II

## NATIONAL HOME BUILDING REGULATORY COUNCIL

## National Home Building Regulatory Council

4. (1) The National Home Builders Registration Council established in terms of section 2 of the Housing Consumers Protection Measures Act, continues to exist as a juristic person, known as the “National Home Building Regulatory Council”. 5

(2) The Board is the accounting authority as contemplated in the Public Finance Management Act.

(3) The Council must act independently and report in accordance with the Public Finance Management Act. 10

## Objectives

5. (1) The objectives of the Council are to—

- (a) represent the interests of all housing consumers;
- (b) regulate the home building industry;
- (c) ensure structural quality of homes in the interests of housing consumers and the home building industry; 15
- (d) promote housing consumer rights; and
- (e) provide information relevant to stakeholders in the home building industry.

(2) The Council must advance the objectives referred to in subsection (1) in respect of the subsidy housing sector. 20

## Composition of Board

6. (1) The affairs of the Council must be overseen by a Board, which must, subject to the provisions of this Act, determine the policy and objectives of the Council and exercise control generally over the exercise of its powers, the performance of its functions and the execution of its duties. 25

(2) The Board consists of at least seven, but not more than 15 non-executive members, appointed by the Minister in terms of subsection (4).

(3) The Board must, when viewed collectively, consist of persons who have special knowledge and experience in—

- (a) consumer protection; 30
- (b) the planning of human settlements;
- (c) the regulatory and legal environment applicable to this Act;
- (d) social housing;
- (e) subsidy housing;
- (f) town planning; 35
- (g) home building, the supply of housing goods and services and the role of associated professions, including developers, in the provision of housing;
- (h) the insurance industry;
- (i) corporate governance and management; and
- (j) financial management and management of funds. 40

(4) The Minister must appoint the members of the Board only after inviting the nomination of persons as candidates through the media and by notice in the *Gazette*, and following a fair selection process.

(5) The Minister must designate one of the appointed members as chairperson and another as deputy chairperson. 45

(6) If the chairperson is unable to perform his or her duties in terms of this Act, the deputy chairperson acts as chairperson of the Board, and while the deputy chairperson is thus acting, he or she exercises all the powers and performs all the duties of the chairperson.

(7) The Chief Executive Officer and the Chief Financial Officer are *ex officio* members of the Board, but may not vote at a Board meeting. 50

(8) The Board must perform its functions in accordance with the code of conduct prescribed by the Minister for the Board in terms of section 89(1).



## SAHLUKO II

## UMKHANDLU WAVELONKHE LOLAWULA KWAKHIWA KWETINDLU

## UMkhandlu Wavelonkhe Lolawulwa Kwakhiwa Kwetindlu

4. (1) UMkhandlu Wavelonkhe Wekubhaliswa Kwebakhi Betindlu losungulwe ngekwesigaba 2 seMtsetfo Wetinyatselo Tekuvikelwa Kwebatsengi Betetindlu, uyachubeka ngekuba ngumuntu ngekwenkqubo, lowatiwa ngekutsi “uMkhandlu Wavelonkhe Wekulawulwa Kwetakhawo Tetindlu”.

(2) LiBhodi ngilo lelineligunya lekubalwa kwetimali njengoba kuhlongotiwe kuMtsetfo Wekulawulwa Kwetimali Tahulumende.

(3) UMkhandlu kumele utimele futsi ubike ngekuhambisana neMtsetfo Wekulawula Kwetetimali Tahulumende.

## Tinhloso

5. (1) Tinhloso teMkhandlu ku—

- (a) khombisa inshisekelo yabo bonkhe batsengi betindlu;
- (b) lawula imboni yekwakha tindlu;
- (c) kucinisekisa lizinga lekwakheka kwemakhaya ngetishisekelo tebatsengi betindlu kanye nemkhakha wekwakha tindlu;
- (d) tfufukisa emalungelo ebatsengi betindlu; futsi
- (e) niketa ngelwati lolufanele kulababamba lichaza embonini yekwakha tindlu.

(2) UMkhandlu kumele uchubekise phambili tinhloso lekukhulunywe ngato esigatjeneni (1) macondzana nemkhakha wetindlu tekuchaswa ngemali.

## Kwakheka kweliBhodi

6. (1) Tindzaba teMkhandlu kufanele tibukwe liBhodi, lokumele, ngekuya ngetinhlinzeko taloMtsetfo, incume inchubomngomo netinjongo teMkhandlu Kanye nekusebentisa kulawula kusetjentiswa kwemandla awo, kwentiwa kwemsebenzi yawo.

(2) LiBhodi lokungenani linebasebenti labasikhombisa, kodvwa labangadluli kulabangu-15 lekungasiwo emalunga laphetse, lacokwe nguNdvuna ngekwesigatjana (4).

(3) LiBhodi kufanele, uma libukwa ngekuhlanganyela, ihlanganise bantfu labanelwati lolukhetsekile kanye nelwati lwemsebenzi ku—

- (a) kuvikelwa kwebasebenti;
- (b) kuhlelwa kwetindzawo tekuhlala bantfu;
- (c) simo sekulawula nesemtsetfo lesisebenta kuloMtsetfo;
- (d) tindlu temphakatsi;
- (e) tindlu temali yekwelekelelwa;
- (f) kuhlelwa kwelidolobha;
- (g) kwakhiwa kwelikhaya, kuphakela kwetintfo tetindlu netinsita kanye nendzima yemisebenti lehambisanako, kufaka ekhatsi bonjiniyela, ekuniketelweni kwetindlu;
- (h) umkhakha wemshwalansi;
- (i) kuphatsa kwenkapani, nekuphatsa; futsi
- (j) kuphatsa kwetetimali kanye nekuphatfwa kwetimali.

(4) INdvuna kufanele incoke emalunga eliBhodi kuphela ngemuva kwekumema kuphakanyiswa kwebantfu njengalabatongela lukhetfo ngabetindzaba nangesatiso ku*Gazethi*, nangekulandzela inchubo lefanele yekukhetsa.

(5) INdvuna kufanele incoke lelinye lemalunga lancokiwe njengesihlalo bese lelinye libe lisekela lasihlalo.

(6) Uma umphatsi sihlalo ahluleka kwenta umsebenzi wakhe ngekuya kwaloMtsetfo, lisekela lasihlalo lisebenta njengesihlalo seliBhodi, futsi ngesikhatsi lisekela sihlalo asebenta njalo, usebentisa wonkhe emandla futsi wenta yonkhe imisebenti wasihlalo.

(7) UMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali bangemalunga ngeliBhodi ngekwesikhundla sabo, kepha angeke bakwati kuvota emhlanganweni weLibhodi.

(8) LeliBhodi kufanele lente umsebenzi walo ngekuya ngemigomo yekutiphatsa lebekwe iNdvuna yeliBhodi ngekwesigaba 89(1).

**Term of office**

7. (1) A member of the Board holds his or her office for a period of three years, and that member may be reappointed at the expiry of his or her term of office, taking into consideration representivity, expertise and previous performance.

(2) A person may not hold office as a member of the Board for more than two consecutive terms. 5

(3) One third of the members of the Board must be reappointed, but if it is not possible to do so, a number as close to a third of the members as possible may be so appointed.

(4) When a vacancy occurs in the ranks of the members of the Board appointed in terms of section 6(4), the Minister must fill the vacancy for the unexpired part of the period for which the member's predecessor was appointed, by the appointment of another person who has special knowledge, skills or expertise similar to that possessed by his or her predecessor, as contemplated in section 6(3). 10

(5) Notwithstanding the period of the term of office referred to in subsection (1), any member holds office until the Minister has appointed another member to replace that member after the expiry of his or her term of office, provided that such extended period does not exceed a period of six months after such expiry, within which period the Minister must appoint the replacement. 15

**Disqualifications, vacation and removal from office**

8. (1) A person may not be appointed as a member of the Board if he or she— 20

(a) is not a resident of the Republic;

(b) is an unrehabilitated insolvent;

(c) is declared by a court to be mentally unfit;

(d) is convicted, in the Republic or elsewhere, of any offence involving dishonesty; or 25

(e) is removed from a position of trust on account of misconduct that involves dishonesty.

(2) A member of the Board must vacate his or her office if he or she—

(a) becomes subject to any disqualification mentioned in subsection (1);

(b) becomes an office-bearer as defined in section 1 of the Independent Commission for the Remuneration of Public Office-Bearers Act, 1997 (Act No. 92 of 1997); 30

(c) tenders his or her resignation as a member to the Minister; or

(d) has been absent without the leave of the Board from three consecutive meetings of the Board. 35

(3) The Minister may, in writing and after following a fair process, remove a member of the Board from office if he or she—

(a) has transgressed the code of conduct contemplated in section 89(1);

(b) did not comply with his or her fiduciary duties in terms of section 9;

(c) commits an act of financial misconduct as contemplated in the Public Finance Management Act; 40

(d) has been found guilty of violation of any law; or

(e) has become unable to perform his or her duties in terms of this Act.

**Fiduciary duties and disclosure**

9. (1) A member of the Board on appointment must submit to the Minister and the Board a written statement declaring any direct or indirect financial interest, which could reasonably be perceived to compromise the objectivity of that member in the execution of his or her duties as member of the Board. 45

(2) A member of the Board may not be present, or take part in, the discussion of or the taking of a decision on any matter before the Board, including a committee or subcommittee of the Board that he or she has been assigned to, in which that member or his or her spouse, partner, close family member, business partner or associate has a direct or indirect financial interest. 50

**Sikhatsi Sekusebenta**

7. (1) Lilunga leliBhodi libamba sikhundla ehhovisi lakhe iminyaka lemitsatfu, futsi lelo lunga lingancokwa futsi nakuphela ithemu yakhe ehhovisi ngekubuka kumelwa, bucwepheshe kanye nemsebenti lowentiwe ngaphambilini.
- (2) Umuntfu angeke abambe sikhundla ehhovisi njengelilunga leliBhodi sikhatsi lesingetulu kwalamabili mathemu laladzelanako. 5
- (3) Linye kulamatsatfu emalunga eliBhodi kufanele ancokwe futsi, kodvwa uma kungekho lula kutsi kwenteke loko, inombolo lesondzelena cishe nencenye yesitsatfu yemalunga kungenteka incokwe.
- (4) Uma kuvela sikhala emahlwini emalunga eliBhodi lacokwe kusigaba 6(4), Indvuna kufanele agcwalise sikhala sencenye lesingakapheli sesikhatsi lokwabekwa kuso lowo lowayengaphambi kwalelo lunga, ngekuncokwa kwalomunye umuntfu lonelwati lolukhetsekile, emakhono nobe bucwepheshe lobufana nalobo lobabunemandvuleli wakhe, njengoba kuvetiwe esigabeni 6(3). 10
- (5) Ngaphandle kwesikhatsi sekusebenta lekukhulunywe ngaso segatjaneni (1), noma nguliphi lilunga lihlala ehhovisi kute kube iNdvuna ikhetse lelinye lilungu lelitobambela lelo lelunga ngemuva kwakuphela kwesikhatsi salo sekuba sesikhundleni, kuniketa uma lesi sikhatsi leseluliwe singeci sikhatsi lesitinyanga letisitfupha ngemuva kwakuphelelwa sikhatsi iNdvuna kumele ikhetse umuntfu lotawungena esikhundleni sakhe. 15 20

**Kungavunyelwa, emaholide nekususwa ehhovisi**

8. (1) umuntfu angeke acokwe njengelilunga leliBhodi uma yena—
- (a) angasiso sakhumuti seRiphabhulikhi;
- (b) ungumuntfu lohluleka kukhokhela tikweletu;
- (c) udzalulwe inkantolo angakalungeli ngekwngcondvo; 25
- (d) ubekwe licala, eRiphabhulikhi noma kulenye indzawo, kwanoba nguliphi licala kubandzakanya kungatsembeki;
- (e) ukhishwe esikhundluni sekutsenjwa ngenca yekungatiphatsi kahle lekufaka kungatsembeki;
- (2) lilunga leliBhodi kumele aphume ehhovisini lakhe uma yena— 30
- (a) uba ngaphansi kwanoma ngikuphi kungafaneleki lekukhulunywa ngako kulesigatjane (1);
- (b) uba ngumphatsi welihhovisi njengoba kuchazwe esigabeni 1 seMtsetfosisekelo weKhomishini Letimele Yekuholelwa Kwebasebenti Basetikhundleni Tehulumende, 1997 (UMtsetfo Nombolo. 92 wa 1997); 35
- (c) ufaka sicelo sekushiya phansi sikhundla sakhe njengelilungu kuNdvuna; noma
- (d) bekangekho ngaphandle kwemvume yeliBhodi emihlanganweni lemitsatfu leladzelanako yeliBhodi.
- (3) INdvuna, ngekubhala futsi ngemuva kwekuladzela luhlelo lolungile, akhiphe lilunga leliBhodi ehhovisi uma yena— 40
- (a) wece umtsetfo wekutiphatsa lohlongotwe esigabani 89(1);
- (b) akahambisani nemsebenti wakhe longamele ngekuya kwesigaba 9;
- (c) wenta sento sekungatiphatsi kahle mgekwetetimali njengoba kubekiwe kuMtsetfo Wekuphatsa Kwetetimali taHulumende; 45
- (d) atfolwe anelicala lekuphula kwanobe ngumuphi umtsetfo; noma
- (e) akasakhoni kwenta umsebenti wakhe ngekuya kwaloMtsetfo.

**Imisebenti yalongamele nekudzalulwa**

9. (1) Lilunga leliBhodi ekucokweni kufanele litfumele kuNdvuna neliBhodi sitatimende lesibhaliwe lesisho noma ngikuphi kuntsintseka kwetetimali lokucondzile noma lokungakacondzi, lokungabonakala kahle njengekuphazamisa inhloso yalelo lilunga ekwenteni imisebenti yakhe njengelilunga lilunga leliBhodi. 50
- (2) Lilunga leliBhodi kungenteke lingabi khona, nobe libambe lichaza, etingcocweni nobe ekutsatfweni kwesincumo nganoma nguluphi ludzaba lolungaphambi kweliBhodi, kufaka ekhatsi likomidi noma likomidi lelincane leliBhodi lakaniketwe lona, lapho lelo lungalilunga noma umlingani walo, umlingani, lilunga lemndeni lasodzelene nalo, umlingani webhizinisi noma losebentisana naye loneshisekelo yetetimali lecondzile noma lengakancodzi. 55

(3) If a member of the Board acquires an interest that could reasonably be perceived to be an interest contemplated in this section, he or she must immediately in writing declare that interest to the Board, and if applicable, to the committee or subcommittee to which he or she has been assigned.

(4) A member of the Board must at all times exercise utmost good faith, honesty, integrity, care and diligence in performing his or her functions as member of the Board, and in furtherance of this duty, without limiting its scope—

- (a) must take reasonable steps to become informed about the Board, its objectives and functions and the circumstances in which it operates;
- (b) must take reasonable steps to obtain sufficient information and advice about all matters to be decided by the Board to enable that member to make conscientious and informed decisions;
- (c) must regularly attend all meetings;
- (d) must exercise an active and independent discretion in respect of all matters to be decided by the Board;
- (e) must exercise due diligence in relation to the business, and necessary preparation for and attendance at meetings, of the Board and any committee to which that member is appointed;
- (f) may not engage in any activity that may undermine the integrity of the Council; and
- (g) must treat any confidential matters relating to the Council, obtained in his or her capacity as member of the Board, as strictly confidential and not divulge them to anyone without the authority of the Board or as required as part of that person's official functions as member of the Board.

(5) This section must be interpreted as adding to, and not deviating from, the duties imposed on members of the Board in terms of the Public Finance Management Act.

#### **Remuneration of members of Board and Compliance and Enforcement Committee**

10. (1) A member of the Board or the Compliance and Enforcement Committee who is not in the full-time employment of the State, may be paid from the Council's funds the remuneration and allowances as determined by the Minister, in consultation with the Minister of Finance.

(2) A member of the Board or the Compliance and Enforcement Committee who is in the full-time employment of the State may not, in respect of the duties performed by him or her as member in terms of this Act, be paid any remuneration in addition to his or her remuneration as an employee of the State, nor may he or she be paid any allowance in respect of subsistence and transport at a rate exceeding the rate applicable to him or her as such an employee.

#### **Meetings of Board**

11. (1) The Board—

- (a) holds meetings at such times and places as may from time to time be determined by the Board; and
- (b) must hold a minimum of four meetings annually.

(2) The chairperson or, in his or her absence, the deputy chairperson, presides at every meeting of the Board.

(3) If both the chairperson and the deputy chairperson are absent from a meeting of the Board, the members present must from among their number elect a person to preside at the meeting.

(4) The quorum for a meeting of the Board is a majority of all its members.

(5) If a member of the Board in his or her personal capacity, or his or her spouse, partner, close family member, business partner or associate, has a direct or indirect financial interest in any matter to be dealt with at any meeting of the Board, such member—

- (a) must immediately after the interest has come to his or her attention, disclose that interest to the chairperson;
- (b) may not attend that meeting during the consideration of that matter;
- (c) may not in any manner take part as a member in the consideration of such matter by the Board; or

- (3) Uma lilanga leliBhodi litfola inshisekelo lengabonakala njengenshisekelo lehlolongotwe kulesigaba, kufanele ngekushesha libhale leyo shisekelo kuliBhodi, futsi uma kufanele, ekomidini noma ekomidini lelincane lapho aniketwe wona.
- (4) Lilunga leliBhodi kumele ngaso sonkhe sikhatsi lisebentise kwetsembeka lokukhulu, kwetsembeka, bucotfo, kunakekela nekukhutsala wekwenteni imisebenti yalo njengelilunga lelibhodi, ngaphandle kwekunciphisa umkhawulo walo— 5
- (a) kufanele kutsatse tinyatselo letifanelekile tekwatiswa ngeliBhodi, tinhloso talo nemsebenti kanye netimo letisebenta ngaphansi kwato;
- (b) kufanele sitsatse tinyatselo letifanele kutfola lwati lolwanele neteluleko mayelana nato tonkhe tindzaba letitoncunyuwa liBhodi kunika lelolunga litfuba lekutsatsa tincumo letihambisana nanembeza futsi letinelwati; 10
- (c) kumele ahlale ahambela yonkhe imihlangano;
- (d) kumele isebente ngekubona lokusebentako nekutimele macondzana nato tonkhe tidzaba letitoncunyuwa liBhodi;
- (e) kufanele usebentise kukhutsala lokufanele macondzana nebhizinisi, nekulungiselelela lokudzinekako ngekuhambela imihlangano, yeliBhodi Kanye nanoma nguliphi linkomidi lelicokelwe kulo; 15
- (f) akukavumeleki kutsi lihlanganyele kunoma ngumuphi umsebenti longabukela phansi bucotfo beMkhandlu; futsi
- (g) kufanele aphantse noma ngutiphi tindzaba letiyifihlo letiphatselene neMkhandlu, letitfolwe esikhundleni sakhe njengelilunga leBhodi, njengetimfihlo ngalokuphelele futsi angatidzaluli kunoma ngubani ngaphandle kweligunya leliBhodi noma njengoba kudzingeka njengencenye yemisebenti lesemtsetfweni yalowo muntfu njengelilunga lelibhodi. 20
- (5) lesigaba kufanele sichazwe ngekutsi sengeta, futsi asiphumbuki, emitsetfweni lebekwe kumalunga eliBhodi ngekweMtsetfo Wekuphatfwa Kwetimali Tahulumende. 25

#### **Kuholelwa kwemalunga eliBhodi neliKomidi Kekuhambisana Nekuphococelela**

10. (1) Lilunga leliBhodi noma liKomidi Kekuhambisana Nekuphococelela lelingasebenti ngalokugcwele kuHulumende, lingakhokhelwa kutimali teMkhandlu umholo nesabelo njengoba kuncunyuwe nguNdvuna ngekubonisana neNdvuna Wetetimali. 30
- (2) Lilungu leBhodi noma leKomidi Kekuhambisana Nekuphococelela lelisebenta ngalokugcwele kuMbuso angeke, macondzana nemisebenti leyentiwa yilo njengelilunga ngekwalo Mtsetfo, likhokhelwe noma ngimuphi umholo ngetulu kwaloku, umholo wakhe njengesisebenti saHulumende, futsi angeke akukhokhelwa noma ngisiphi sibonelelo macondzana nekutiphilisa nekutfutsa ngelizinga lelidlula linani lelisebenta kuye njengalowo msebenti. 35

#### **Imihlangano yeliBhodi**

11. (1) LiBhodi—
- (a) libambe imihlangano ngaletu tikhatsi nasetindzaweni letingabekwa liBhodi; futsi 40
- (b) kumele libambe lokungenani imihlangano lemine ngemnyaka.
- (2) Umphatsisihlalo noma, uma angekho, lisekela lemphatsisihlalo, wengamela yonkhe imihlangano yeliBhodi.
- (3) Uma bobali umphatsisihlalo nelisekela lemphatsisihlalo bangekho kumihlangano yeliBhodi, emalunga lakhona kumhlangano kumele ancoke umuntfu lotewangamela kulomhlangano. 45
- (4) Sibalo semhlangano weliBhodi seliningi semalunga ngawo onkhe.
- (5) Uma lilunga leliBhodi ngesikhatsi sakhe, noma lashande naye, umlingani, lilunga lemndeni lelisedvute, umlingani ngebhizinisi noma losebentisana naye, lenenshisekelo lecondzile noma lengakacondzi yetetimali kunoma ngiluphi ludzaba lokufanele kubukwane nalo kunoma ngimuphi umhlangano weliBhodi, lelo lungu— 50
- (a) kumele ngekushasha ngemuva akhombise umdladla, avete lowomdladla kumphatsisihlalo;
- (b) angeke abe khona kulowo mhlango ngesikhatsi kucatjangelwa leyondzaba; 55
- (c) angeke nganoma nguyiphi indlela abambe lichaza njengelilanga ekubukeneneni nalelondzaba ngeliBhodi; noma

(d) may not in any manner endeavour to influence the opinion or vote of any other member of the Board in connection with such matter.

(6) The decision of the majority of the members of the Board present at a meeting constitutes a decision of the Board, and in the event of equal votes, the member presiding at that meeting has a casting vote, in addition to his or her deliberative vote. 5

(7) A decision taken by the Board or act performed under the authority of the Board is not invalid merely by reason of an interim vacancy on the Board, or because a person who was not entitled to sit as a member or attend such meeting sat as such member or attended such meeting at the time when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members who were present at the time and who were entitled to sit as members of the Board or attend the meeting. 10

(8) The procedures to be followed at meetings of the Board must be determined by the Board.

(9) The Board must cause minutes to be kept of every meeting thereof. 15

(10) The minutes referred to in subsection (9) must be kept at the office of the Council.

### Committees of Board

12. (1) Subject to subsection (2), the Board may from time to time appoint one or more committees that it considers appropriate for the effective functioning of the Board, excluding the Compliance and Enforcement Committee. 20

(2) The Board must—

(a) assign members of the Board to serve on a committee, based on their knowledge and skills;

(b) determine—

(i) the terms of reference of a committee; 25

(ii) the composition of a committee;

(iii) the tenure of members on a committee;

(iv) the reporting mechanisms of a committee; and

(v) the methods and reasons for the removal of a member from a committee.

(3) The Board may co-opt any person to a committee to support that committee in relation to his or her technical expertise, and such co-opted person does not have voting powers. 30

(4) A person co-opted in terms of subsection (3) who is not in the full-time employment of the State, may be paid such remuneration or allowances as the Board may determine. 35

(5) Unless specifically delegated by the Board, a committee has no decision-making powers and can only make recommendations to the Board.

(6) A committee may meet as often as is necessary in order to carry out its functions and may determine its own procedures, subject to the directions of the Board.

### Delegation and assignment of functions by Board 40

13. (1) The Board may—

(a) excluding the powers and duties in relation to the Compliance and Enforcement Committee and subject to subsection (5), delegate any of its powers and assign any of its duties to any member of the Board or any committee established in terms of section 12, to the Chief Executive Officer, the Chief Financial Officer or any employee of the Council; and 45

(b) amend or revoke that delegation or assignment.

(2) Notwithstanding a delegation or assignment contemplated in subsection (1), the Board is not divested of the power or relieved of the duty so delegated or assigned.

(3) Any delegation contemplated in subsection (1)— 50

(a) may be made subject to such conditions as the Board determines; and

(b) must be communicated to the delegate or assignee in writing.

(d) angeke nganoma iyiphi indlela azame kufaka umtselela kumbono noma kuvota kwanoma nguliphi lelinye lilanga leliBhodi macondzana nalelondzaba.

(6) Sincumo selinyeti lelamalunga eliBhodi latfulwe kumhlangano afaka sincumo seliBhodi, kusehlakalo lapho kulingana khona mavoti, lilunga lelangamele kulowo mhlango angafaka mavoti, kungeta kulivoti lakhe ngabomu. 5

(7) Sincumo lesitsetswe liBhodi noma sento lesentiwe ngaphansi kweligunya leliBhodi asikho emtsetfweni ngenca yesizatfu sesikhundla sesikhashane kuliBhodi, nobe kungikutsi umuntfu lobekangafaneli kuhlala njengelilunga noma kuhambele emihlangano ngesikhatsi kutsatswe sincumo noma lesento besigunyatiwe, uma sincumo sitsetfwe noma lesento besigunyatiwe lenyenti lelibalulekile lemalunga lebekangekho kuleso sikhatsi futsi labebanelilungelo lekuhlala njengemalunga eliBhodi noma ahambele umhlangano. 10

(8) Inhubo lekumelwe iladzelwe kumhlangano yeliBhodi itoncunyuwa liBhodi.

(9) Libhodi kufanele lente emamitsi kutsi agcinwe kuwo wonkhe imihlangano walapho. 15

(10) Emaminitisi lekukhulunywa ngawo kusigatjana (9) kumele agcinwe ehhovisi leMkhandlu.

### LiKomidi leliBhodi

12. (1) Ngekuya ngesigatjane (2), liBhodi ngetikhatsi ngetitsite lingakhetsa likomidi lelilodvwa noma lamaningi lelibona lifanele kusebenta kahle kweliBhodi, ngaphandle kweliKomidi Lekuhambisana Nekuphococelela. 20

(2) LiBhodi kufanele—

(a) linike emalunga eliBhodi kutsi asebente kunkomidi, ngekusekelwa lwati lwabo kanye nemakhono; 25

(b) ncuma—

(i) emathemu erifarensi elikomidi;

(ii) kuhlanganiswa kwelikomidi;

(iii) sikhatsi semalunga kulikomidi;

(iv) indlela yekubika yelinkomidi; futsi 30

(v) tindlela kanye netizatfu tekukhishwa kwelilunga kulikomidi.

(3) Libhodi lingakhetsa noma ngumuphi umuntfu enkomidini kutsi asekele lelokomidi macondzana netidzingo tebuchwepeshe, futsi lowo muntfu lokhetsiwe akanawo emandla ekuvota.

(4) Umuntfu lokhetsiwe ngekuya kwesigatjane (3) langasiso sisebenti sahumende sikhatsi lesigcwele, ngabhadalwa umholo noma sibonelelo njengoba liBhodi litoncuma. 35

(5) Ngaphandle kwekutsi kuniketwe liBhodi, linkomidi linayo emandla ekwenta tincumo futsi lingenta tincomo kuphela kweliBhodi.

(6) Likomidi lingahlangana kaningi njengoba kudzingekile kute lente imisebenti yalo futsi lingatincumela tinchubo tawo, ngekuya ngemyalelo yeliBhodi. 40

### Kuniketwa nekwabiwa kwemisebenti yeliBhodi

13. (1) Libhodi kungeteka—

(a) likhiphe emandla kanye nemisebenti macondzana neliKomidi leKuhambisana Nekuphococelela futsi kuncike esigatjaneni (5), liniketa noma ngemandla ngaphandle kwamandla kanye nemisebenti yalo kunoma nguliphi lilunga leBhodi noma nguliphi likomidi lelisungulwe ngekwesigaba 12, kuMphatsi Welihhovisi Lomkhulu, uMphatsi Lomkhulu Wetetimali noma ngumuphi umisebenti weMkhandlu, futsi 45

(b) kuchibiyela noma kubuyisa loko kudluliselwa kwemandla noma kwabiwa.

(2) Ngaphandle kwekuniketwa emandla noma kuniketwa lokuhlongotwe esigatjaneni (1), liBhodi alikamukwa emandla noma likhululiwe emisebentini loniketwe wona noma lowabelwe lona. 50

(3) Noma ngikuphi kudluliswa kwemandla lokuvetwe esigatjaneni (1)—

(a) kungentiwa ngekuya ngemibandzela lencunyuwe liBhodi; futsi

(b) kufanele kwatiswe lowo lonikwe ligunya noma lowabelwe ngalokubhalwe phansi. 55

(4) The written communication contemplated in subsection (3) must contain full particulars of the matters being delegated or assigned and of the conditions subject to which the powers may be exercised or the duty must be performed.

(5) The Board may not delegate the power—

- (a) to make rules as contemplated in section 87; 5
- (b) to appoint the Chief Executive Officer or the Chief Financial Officer; and
- (c) to decide on the strategic corporate plan of the Council.

(6) The Board may enter into an agreement with any person for the rendering of any specific expertise or service to assist the Board in performing its functions or duties.

#### **Functions of Council** 10

**14.** (1) Subject to section 5, the Council must—

- (a) establish and maintain an integrated database, which is able to integrate with the database contemplated in section 6 of the Housing Act, and which consists of— 15
  - (i) a register of homebuilders and developers;
  - (ii) a register of enrolment of homes; and
  - (iii) any other register that the Council considers appropriate;
- (b) maintain and administer the fund contemplated in section 35 or 36;
- (c) register and deregister homebuilders in accordance with requirements and procedures prescribed in terms of this Act; 20
- (d) enrol homes in accordance with the categories prescribed by the Council;
- (e) for the purpose of ensuring the structural integrity of a home, enter into agreements generally or specifically with MECs regarding services to be rendered in respect of projects for the construction of homes, the acquisition of which, except in respect of any deposit that may be payable, is financed solely from the proceeds of a State housing subsidy; 25
- (f) inspect or ensure the inspection of homes in terms of this Act in the manner prescribed by the Council;
- (g) provide training to homebuilders to achieve and maintain satisfactory Technical Standards in the home building industry; 30
- (h) inform housing consumers of their rights and duties in terms of this Act and other matters relevant to the objects of this Act;
- (i) provide information to financial institutions, conveyancers, property practitioners, social housing institutions, delivery agents as contemplated in the Social Housing Act, stakeholders in housing development projects as defined in the Housing Act, and any other interested person in order to assist them to comply with their obligations in terms of this Act; 35
- (j) determine criteria for the determination of fees as envisaged in section 39, and the differentiation between those fees based on justifiable criteria;
- (k) advise the Minister on any matter referred to the Council by the Minister in respect of the protection of housing consumers or the objectives of this Act; 40
- (l) engage in undertakings to promote improved structural quality of homes;
- (m) engage in undertakings to improve ethical and Technical Standards in the home building industry;
- (n) prescribe the requirements for— 45
  - (i) the approval of a certification body; and
  - (ii) the listing of a competent person; and
- (o) determine the minimum level of indemnity insurance required to be held by a certification body or a competent person in the circumstances contemplated in section 49(1)(b). 50

(2) The Council may—

- (a) approve a certification scheme which has as its purpose the certification of performance-based methods of construction as determined in the Home Building Manual;
- (b) approve a legal person as a certification body which is authorised to provide certification of a design or compliance with the Home Building Manual through its certifier; 55



(4) Kuchumana lekubhaliwe lokuvetwe kusigatjana (3) kufanele kube incuketse imininingwane lengcwele yendzaba yekuniketwa noma kwebelwe kanye nemibandzela emandla angasetjentiswa ngaphansi kwayo noma umsebenti lokufanele wentiwe.

(5) LiBhodi lingahle linganiketi emandla—

- (a) kwenta imitsetfo njengoba kuvetiwe esigabeni 87; 5  
 (b) kucoka uMphatsi Welihhovisi Lomkhulu noma uMphatsi Lomkhulu Wetetimali; futsi  
 (c) kuncuma ngelicebo lekubambisana kweMkhandlu.

(6) LiBhodi lingangena kusivumelwane nanoma ngumuphi umuntu ngekuniketa ngelwati lolutsite noma tinsita kute kusitwe liBhodi ekwentini imisebenti. 10

#### Imisebenti yeMkhandlu

14. (1) Ngekuya ngesigaba 5, uMkhandlu kufanele—

- (a) kusungula nekugcina imininingwane lehlanganiwe, lengakwati kuhlangani imininingwane levetwe esigabeni 6 seMtsetfo Wetindlu, futsi lecuketse— 15  
 (i) irejista yebakhi betindlu kanye nabonjiniyela;  
 (ii) irejista yekubhalisa emakhaya; futsi  
 (iii) noma nguyiphi irejista uMkhandlu lalibona lifanelekile;  
 (b) kugcina nekuphatsa sikhwama lesivetwe esigabeni 35 noma 36;  
 (c) bhalisa kanye nekukhipha kubhalise bakhi betindlu ngekuya ngetidzingo netinchubo letibekwe ngekuya kwaloMtsetfo; 20  
 (d) bhalisa emakhaya ngekwemikhakha lebekwe nguMkhandlu;  
 (e) ngenhloso yekucinisekisa bucotfo besakhiwo sekhaya, ngena esivumelwaneni ngalokujwayelekile noma neNdvuna mayelana netinsitakalo letitokwentiwa mayelana nemaphrojekthi ekwakhiwa kwemakhaya, kutfolwa kwawo, ngaphandle kwanoma nguyiphi imali lengakhokhwa, uchaswa kuphela ngemali letfolwe kumali yekulekelela kwetindlu tahulumende; 25  
 (f) ahlole noma acinisekise kuhlolwa kwemakhaya ngekuya kwaloMtsetfo ngendlela lebekwe nguMkhandlu;  
 (g) niketa kucecsha kubakhi betindlu kute bazuze futsi bagcine emazinga ebuchwepheshe lanelisako embonini yekwakha tindlu; 30  
 (h) yatisa batsengi betindlu ngemalungelo abo nemisebenti ngekuya kwaloMtsetfo kanye naletinye tindzaba letihambisana netinhloso taloMtsetfo;  
 (i) niketa ngelwati kutikhungo tetetimali, batfutsisi, basebenti betindlu, tikhungo tetindlu tempakatsi, umphatseli wekwetfula njengoba kuvetiwe kuMtsetfo Wetindlu Tempakatsi, lababamba lichaza kumaphrojekthi wekutfutukisa kwetindlu njengoba kuchaziwe eMtsetfweni Wetindlu, kanye nalomunye umuntu loneshisakalo kute ubasite kutsi bahambisane netibopho tabo ngekuya kwaloMtsetfo; 35  
 (j) kuncuma indlela yekutimisela kwetimali njengoba njengoba kucatjangwa esigabeni 39, nekwehlukana emkhatsini kwaletu timali ngekuya kwetindla letivakalako; 40  
 (k) luleka iNdvuna kunoma nguyiphi indzaba loludluliselwe eMkhandlwini nguNdvuna macondzana nekuvikelwa kwabatsengi betindlu noma tinhloso taloMtsetfo;  
 (l) kubandzakanyeka ekutibopheleleni kukhutsata simo letfutukisiwe yetakhiwo temakhaya; 45  
 (m) kubandzakanya ekutibopheleleni kwenta ncono emazinga wekutiphatsa nebuchwepheshe embonini yekwakha tindlu;  
 (n) chaza tidzingo te—  
 (i) kugunyatwa kwenhlangano yetitifiketi; futsi 50  
 (ii) kufakwa kuluhlu kwemuntu lonekhono; futsi  
 (o) uncume lizinga leliphansi lemshuwalense wesivivinyo ledzinga kubanjwa umtimba wesitifiketi noma umuntu lonekhono etimweni letihlongotwe esigabeni 49(1)(b).  
 (2) UMkhandlu unga— 55  
 (a) vumela luhlelo lekuniketa titifiketi lolunenhloso yetitifiketi tetindlela tekwakha letisuselwa ekusebenteni njengoba kuncunye kuManuwali Yekwakhiwa Kwemakhaya;  
 (b) vumele umuntu losemtsetfweni njengemtimba wesitifiketi logunyatwe kuniketa ngesitifiketi sedizayini noma kuhambisana neManuwali Yekwakha Ekhaya; ngekusebentisa sicinisekiso sayo; 60

- (c) through Board approval as contemplated in section 36, and only after consultation with the Minister and the Minister of Finance, establish, maintain and administer different funds for different purposes as contemplated in Part 1 of Chapter V;
- (d) keep a record of competent persons; 5
- (e) acquire, register, deal with and dispose of any trade mark;
- (f) make recommendations to the Minister in respect of any amendment to this Act;
- (g) issue directives to a person or group of persons in relation to compliance with this Act; and 10
- (h) generally do all things necessary or expedient to achieve its objectives in terms of this Act.

#### **Appointment of Chief Executive Officer and Chief Financial Officer**

- 15.** (1) The Board must appoint a Chief Executive Officer and a Chief Financial Officer to ensure that the Council meets its objectives. 15
- (2) The Board must invite applications for the positions of Chief Executive Officer and Chief Financial Officer by publishing advertisements in the media.
- (3) A person appointed as Chief Executive Officer or Chief Financial Officer must have qualifications and experience relevant to the functions of the Council as determined in terms of a job evaluation system approved by the Board. 20

#### **Conditions of appointment of Chief Executive Officer and Chief Financial Officer**

- 16.** (1) The appointment of the Chief Executive Officer and the Chief Financial Officer is subject to the conclusion of an annual performance contract with the Board.
- (2) The Chief Executive Officer and the Chief Financial Officer are appointed for a term of five years and may be re-appointed for only one additional term of five years. 25
- (3) The Chief Executive Officer and the Chief Financial Officer hold office on terms and conditions determined by the Board.
- (4) The Chief Executive Officer and the Chief Financial Officer are entitled to a remuneration package determined by the Board.
- (5) The Chief Executive Officer and the Chief Financial Officer are accountable to the Board. 30

#### **Acting Chief Executive Officer and Acting Chief Financial Officer**

- 17.** (1) The Board may in writing appoint any person who has the appropriate knowledge and skills to act as Chief Executive Officer or Chief Financial Officer when the holder of that office— 35
- (a) is temporarily unable to perform the duties connected with that office; or
  - (b) has vacated or been removed from that office and a new Chief Executive Officer or Chief Financial Officer, as the case may be, has not yet been appointed.
- (2) An acting Chief Executive Officer or acting Chief Financial Officer may exercise all the powers and must perform all the duties of the Chief Executive Officer or Chief Financial Officer, as the case may be. 40
- (3) The appointment of an acting Chief Executive Officer or acting Chief Financial Officer may not exceed a period of six months.

- (c) ngekugunyatwa liBhodi njengoba kuhlongotwe esigabeni 36, futsi kuphela ngemuva kwekubonisana neNdvuna kanye neNdvuna Yetetimali, kusungula, kugcina nekuphatsa timali letehlukene ngetinhloso letehlukene njengoba kuhlongotwe encenyeni 1 yeSahluko V;
- (d) gcina marekhodi ebantfu labanemakhono; 5
- (e) tfofa, bhalise, kuphatsa futsi nekulahle noma nguluphi luphawu lekuhweba;
- (f) ente tincomo kuNdvuna macondzana nanoma ngikuphi kuchibiyelwa kwalo Mtsetfo;
- (g) khiphe ticondziso kumuntfu noma ecenjini lebantfu macondzana nekuhambisana naloMtsetfo; futsi 10
- (h) kwenta konkhe lokudzingekako noma lokudzingakalako kufeza tinhloso talo ngekuya kwaloMtsetfo.

#### **Kucokwa kweMphatsi Lomkhulu Welihhovisi neMphatsi Lomkhulu Welihhovisi Wetetimali**

15. (1) LiBhodi kumele lincoko uMphatsi Wehhovisi Lomkhulu Kanye neMphatsi Lomkhulu Wetetimali kucinisekisa kutsi uMkhandla uhlangabetana netinjongo tayo. 15
- (2) LiBhodi kumele limeme ticelo tesikhundla seMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali ngekushicilelela tikhangiso kubetindzaba.
- (3) Umuntfu loncokwe njengeMphatsi welihhovisi Lomkhulu noma uMphatsi Lomkhulu Wetetimali kufanele abe neticu nelwati lwemsebenti ekusebentini kweMkhandlu njengekuncunywa ngekulandzela luhlelo lwekuhlola umsebenti lolwemukelwe liBhodi. 20

#### **Imibandzela yekukhetfwa kweMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali**

16. (1) Kukhetfwa kweMphatsi Welihhovisi Lomkhulu kanye neMphatsi Welihhovisi Letetimali kuncike ekuphetseni kwenkotileka yemnyaka yekusebenta neliBhodi. 25
- (2) UMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali bakhetswe sikhatsi lesingaba kuphela iminyaka lesihlanu futsi bangakhetswa ngekungenta kwethemu yinye yemnyaka lesihlanu.
- (3) UMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali ubamba lihhovisi kumigomo kanye namibandzela letimisele nguMkhandla. 30
- (4) UMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali banelilungelo lekutfofa iphakheji yemholo lencunye liBhodi.
- (5) UMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali bayatiphedvulela kuBhodi. 35

#### **UMphatsi Lomkhulu Welihhovisi lobambile kanye noMphatsi Lomkhulu Wetetimali**

17. (1) LiBhodi ngekubhala likhetsa noma ngabe ngumuphi umuntfu lonelwati lolufanele kanye nemakhono loyobamba njengeMphatsi Welihhovisi Lomkhulu noma uMphatsi Lomkhulu Wetetimali uma ungumbambi welelohovisi— 40
- (a) kwesikhashane angake akhona kwenta umsebenti lephatselene nalelihhovisi; noma
- (b) uphumile noma ukhishiwe kulelahhovisi futsi Umphatsi Welihhovisi LoMkhulu lomusha kanye neMphatsi Welihhovisi Letetimali lomusha, njengoba kungaba njalo, akasengaka ncokwa. 45
- (2) Lobambe uMphatsi Welihhovisi Lomkhulu noma lobambe uMphatsi Lomkhulu Wetetimali angasebentisa wonkhe emandla futsi kufanele ente wonkhe umsebenti weMphatsi Welihhovisi Lomkhulu noma uMphatsi Lomkhulu Wetetimali, njengoba kungabe njalo.
- (3) Kukhetswa kweMphatsi Welihhovisi Lomkhulu lobambile noma uMphatsi Welihhovisi Letetimali lobambile angeke kundlule sikhatsi setinyanga letisitfupha. 50

**Functions of Chief Executive Officer and Chief Financial Officer**

- 18.** (1) The Chief Executive Officer is the head of the administration of the Council.  
 (2) Subject to directives issued by the Board, the Chief Executive Officer is responsible for the efficient management and administration of the affairs of the Council.  
 (3) The functions of the Chief Executive Officer and the Chief Financial Officer are as provided for in terms of section 57 of the Public Finance Management Act, and as may be delegated or assigned by the Council in terms of section 56 of that Act. 5

**Delegation by Chief Executive Officer and Chief Financial Officer**

- 19.** (1) The Chief Executive Officer or the Chief Financial Officer may delegate or assign any of his or her powers and duties to a member of staff of the Council. 10  
 (2) Any delegation contemplated in subsection (1)—  
 (a) may be made subject to such conditions as the Board may determine;  
 (b) must be communicated to the delegatee or assignee in writing; and  
 (c) may be amended or withdrawn in writing by the Chief Executive Officer or Chief Financial Officer, as the case may be. 15  
 (3) Notwithstanding a delegation or assignment contemplated in this section, the Chief Executive Officer or the Chief Financial Officer, as the case may be, is not divested of the power or relieved of the duty so delegated or assigned.

**Staff of Council**

- 20.** The Chief Executive Officer must— 20  
 (a) subject to the approval of the Board, determine the organogram of the Council's structure; and  
 (b) appoint the staff,  
 necessary to enable the Council to perform its functions.

**Access to information** 25

- 21.** The Council must provide access to any of its records subject to the provisions of the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000).

**Disestablishment of National Home Building Regulatory Council**

- 22.** (1) The Council may only be disestablished by an Act of Parliament.  
 (2) The Council may not be declared insolvent in terms of the Insolvency Act, 1936 (Act No. 24 of 1936). 30

**CHAPTER III****REGISTRATION OF HOMEBUILDERS AND DEVELOPERS****Register of homebuilders and developers**

- 23.** (1) The Council must establish and maintain a register of homebuilders and developers as contemplated in section 14(1)(a)(i). 35  
 (2) The purpose of the register contemplated in subsection (1) is to—  
 (a) facilitate risk management in the tendering process in relation to the building of a home;  
 (b) facilitate the assessment of the performance of a homebuilder or a developer in the execution of home building contracts; 40  
 (c) provide a performance record of homebuilders and developers;  
 (d) facilitate the regulation of the conduct of homebuilders and developers;

**Imisebenti yeMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali**

18. (1) UMphatsi Welihhovisi Lomkhulu uyihloko lephetse yeMkhandlu.

(2) Ngekuya ngemiyalelo lekhishwe yiBhodi, uMphatsi Welihhovisi Lomkhulu sibhekele kuphatfwa kahle nekuphatfwa kwetindzaba teMkhandlu. 5

(3) Imisebenti yeMphatsi Welihhovisi kanye neMphatsi Welihhovisi Letetimali baniketiwe ngekwesigaba 57 seMtsetfo Wekulawula Kwetetimali, njengoba kunganiketwa noma yabelwe nguMkhandlu ngekuya kwesigaba 56 salowoMtsetfo.

**Kudluliselwa kwemandla nguMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali** 10

19. (1) UMphatsi Welihhovisi Lomkhulu noma uMphatsi Welihhovisi Letetimali singadlulisela noma sinikete noma nguwaphi emandla yaso kanye nemsebenti kulilunga letisebenti taloMkhandlu.

(2) Noma ngikuphi kudluliselwa kwemandla lokuvetwe kusigatjana (1)—

(a) kungetiwa ngekuya ngemibadzela lencunywe liBhodi; 15

(b) kumele kwatiswe lowo lonikwe emandla noma loniketwe ligunya ngelokubhalwe phansi; futsi

(c) ingachitjiyelwa noma sikhishwe ngekubhalisi phansi nguMphatsi Welihhovisi Lomkhulu noma uMphatsi Welihhovisi Letetimali, njengoba kungenteka. 20

(3) Ngaphandle kwekuniketwa emandla noma kwabiwa lokuhlongotwe kulesi sigaba, uMphatsi Welihhovisi Lomkhulu, njengoba kungaba njalo, asihlutswa emandla noma sikhululwe emsebentini lesiwunikwe noma lesabelwe wona.

**Basebenti bemkhandlu**

20. UMphatsi Welihhovisi kufanele— 25

(a) kuncike ekwamukelweni yiBhodi, ncuma kwakheka kweligatja leMkhandlu; futsi

(b) kucashwa kwebasebenti, lokudzingekako kute uMkhandlu ukwati kwenta imisebenti yawo.

**Kufinyelela kumniningwane** 30

21. Umkhandlu kufanele unikete kufinyelela kunobe nguwaphi emarekhodi ngekuya ngemibadzela yeMtsetfo Wekukhutsata Kufinyelela Kumniningwane, 2000 (UMtsetfo Nombolo. 2 wanga-2000).

**Kumiswa kweMkhandlu Wavelonkhe Lolawula Kwakhiwa Kwetindlu**

22. (1) UMkhandlu ungavinjelwa kuphela Umtsetfo wePhalamende. 35

(2) UMkhandlu angeke imenyetelwe njengalokwatiko kukhokhela tikweleti ngekweMtsetfo Wecotfula, 1936 (Umtsetfo No. 24 wanga-1936).

**SAHLUKO III****KUBHALISWA KWEBAKHI BETINDLU NEBONJINIYELA****Irejista yebakhi betindlu nebonjiniyela** 40

23. (1) UMkhandlu kufanele usungule futsi agcine kubhalisa kwabakhi betindlu nebonjiniyela njengoba kuvetiwe esigabeni 14(1)(a)(i).

(2) Inhloso yekubhalisa lokuvetwe esigatjaneni (1)—

(a) kwenta lula kulawulwa kwebungoti uma kwentiwa inchubo yekwakhiwa kwemakhaya; 45

(b) kwenta lula kuhlolwa kwekusebenta kwemakhi wetindlu noma njiniyela lapho kwentiwa sivumelwano tekwakha tindlu;

(c) niketa likhoredi lemsebenti lebakhitindlu nabonjiniyela;

(d) kwenta lula kulawulwa kwekutiphatsa kwebakhi betindlu nebatfutukisi;

- (e) promote minimum standards and best practice in the home building industry;
- (f) store and provide data on the size and distribution of homebuilders and developers;
- (g) reflect the volume and nature of different categories of homebuilders and developers; 5
- (h) facilitate economic and strategic research in relation to the home building industry; and
- (i) reflect any other information that the Council considers necessary in relation to the purpose of this Act.

#### **Contents of register** 10

**24.** (1) The register contemplated in section 23 must be accessible to the public and must at least reflect—

- (a) the identification particulars of a homebuilder or a developer;
- (b) the registration number of a homebuilder or developer in terms of this Act, and, if applicable, the Companies Act or the Trust Property Control Act, 1988 (Act No. 57 of 1988); 15
- (c) the period of validity of the registration of a homebuilder or a developer;
- (d) the grading category of a homebuilder or a developer;
- (e) any limitation placed on the homebuilder or a developer;
- (f) any penalty or sanction imposed on a homebuilder or developer in terms of this Act, but that penalty or sanction may not be reflected in relation to a transgression by a homebuilder or developer before any process contemplated in Chapter VII, or any court process, has been finalised; and 20
- (g) any claim against the home warranty fund for work conducted by the homebuilder or developer or their employee or agent, but no information regarding that claim may be reflected until any adjudication of that claim has been finalised in terms of Chapter VI or a court process. 25

(2) The reflection of the status of a homebuilder or developer as registered on the register contemplated in section 23 is confirmation of that homebuilder or developer's registration. 30

(3) The Council may, on payment of a prescribed fee, issue to a homebuilder or a developer a certificate of proof of registration valid for a period determined by the Council.

#### **Homebuilder or developer to be registered**

**25.** (1) A homebuilder or developer who intends to undertake or to commission the building of a home, as the case may be, must in the manner prescribed by the Council apply for registration as a homebuilder or a developer in terms of this Chapter. 35

(2) A person, developer or an organ of state may not procure the services of a homebuilder or a developer who is not registered in terms of this Chapter.

(3) A homebuilder or developer may not commence with, allow or instruct the commencement of the building of a home if that homebuilder or developer is not registered in terms of this Chapter. 40

(4) The registration of a homebuilder or a developer is valid for a period prescribed by the Council.

(5) A homebuilder or a developer must, on application for registration, pay the registration fee determined by the Council in terms of section 39. 45

(6) A homebuilder or a developer must on the date of the anniversary of the registration of that homebuilder or developer, pay an annual or renewal fee prescribed by the Council in terms of section 39.

- (e) kugcugcutela emazinga laphansi kanye nekwentu lokuhle embonini yekwakha tindlu;
- (f) gcina futsi unikete ngemininingwane ngebukhulu nekwabelana kwebakhi betindlu nabonjiniyela;
- (g) kukhombisa bungako nebunjalo betigaba letahlukahlukene tebakhi betindlu nabonjiniyela; 5
- (h) kwenta lula lucwaningo lwetemnotfo nelemasu macondzana nemkhakha wekwakha tindlu; futsi
- (i) kukhombisa noma nguluphi lolunye lwati uMkhandlu lolubona ludzingeka macondzana nenhloso yaloUmtsetfo. 10

#### Lokucuketfwe kurejista

24. (1) Irejista lehlolongtwe esigabeni 23 kufanele ifinyeleleke emphakatsini futsi lokungenani ibonakalise—

- (a) imininingwane lekhomba umakhi welikhaya noma njiniyela;
- (b) inombolo yekubhaliswa kwemakhi wetindlu noma unjiniyela ngekwalo Mtsetfo, futsi, uma kufanele, uMtsetfo Wetinkampani noma uMtsetfo Wekulawulwa Kwetakhiwo teKwetsenjwa, 1988 (uMtsetfo Nombolo. 57 wanga-1988); 15
- (c) sikhatsi sekuba semtsetfweni kwekubhaliswa kwemakhi wetindlu noma umakhi; 20
- (d) sigaba sekulinganisa semakhi wasekhaya noma unjiniyela;
- (e) noma ngumuphi umkhawulo lobekwe kumakhi noma kunjiniyela;
- (f) noma nguyiphi inhlawulo noma sijeziro leniketwe umakhi wendlu noma umakhi ngekuya kwaloMtsetfo, kodvwa leyo nhlawulo noma sijeziro angeke sibonakale macondzana nekwephula umtsetfo lokwakhiwa ngumakhi noma unjiniyela ngaphambi kwekuba noma nguyiphi inchubo lehlolongtwe esahlukweni VII, noma yinoma nguyiphi inchubo yenkantolo, lesekucedzwe ngayo; futsi 25
- (g) noma ngusiphi simangalo esikhwameni sewaranti yasekhaya semsebenti lowentiwe umakhi wetindlu noma unjiniyela noma sisebenti noma i-ejenti yakhe, kepha akukho lwati macondzana naleso simangalo lolungakhonjiswa kute kube ngulapho kwahlulelwa kwaleso simangalo sekucedziwe ngekweSahluko VI noma inchubo yenkantolo. 30

(2) Kuboniswa kwesimo semakhi wemuti noma wenjiniyela njengoba kubhalisiwe kwirejista lehlolongtwe esigabeni 23 sicinisekiso salowo makhi walikhaya noma kubhaliswa kwabonjiniyela. 35

(3) UMkhandlu ungakhokha imali lebekiwe, ukhiphe kumakhi wetindlu noma kunjiniyela sitifiketi sebufakazi bekubhaliswa lesivumeleke sikhatsi lesincunye nguMkhandlu.

#### Umakhi wetindlu nobe njiniyela lotobhaliswa 40

25. (1) Umakhi wetindlu noma njiniyela lohlose kwenta noma kutfuma kwakhiwa kwelikhaya, njengoba kungaba njalo, kumele ngendlela lebekwe nguMkhandlu afake sicelo sekubhaliswa njengemakhi wendlu noma unjiniyela ngekuya kwaleSahluko.

(2) Umuntfu, njiniyela noma ligatja lembuso angahle angatfoli tinsita temakhitindlu noma unjiniyela longakabhaliswa ngekuya kwalesi Sahluko. 45

(3) Umakhi wendlu noma unjiniyela wetakhiwo angeke acale, avumele noma acondzise kucala kwesakhiwo selikhaya uma lowo makhi noma lowo onjiniyela angakabhaliswa ngekwemigomo yalesi Sahluko.

(4) Kubhaliswa kwemakhi wendlu noma injiniyela kutosebenta ngesikhatsi lesincunye nguMkhandlu. 50

(5) Umakhi wetindlu noma njiniyelai kufanele, ngesicelo sekubhalisa, akhokhe imali yekubhalisa lencunye nguMkhandlu ngekwesigaba 39.

(6) Umakhi wetindlu noma njiniyela kufanele ngelusuku lokugubha lusuku lekubhaliswa kwalowo makhi wetindlu noma lowo njiniyela, akhokhe imali yemnyaka noma yekuvuselela lebekwe nguMkhandlu ngekwesigaba 39. 55

**Requirements for registration**

**26.** (1) The Council, in consultation with the Minister, must prescribe a system and the requirements for the registration of homebuilders and developers, which system must provide for the registration of a homebuilder or a developer in a grade that reflects the level of competence of that homebuilder or developer; and for which the criteria are fair and objectively determinable. 5

(2) The determination of the level of competence referred to in subsection (1) must take into account the financial, technical, construction and management requirements that are necessary to build a home.

(3) The Council must evaluate every application for registration of a homebuilder or a developer in accordance with the requirements prescribed by the Council in terms of subsections (1) and (2). 10

**Cancellation, suspension or amendment of homebuilder's or developer's registration or grading status**

**27.** (1) Subject to subsection (2), the Council may— 15

- (a) cancel or suspend the registration of a homebuilder or developer or amend the grading of that homebuilder or developer as contemplated in section 26; or
- (b) refuse to assess or action any application for registration, including renewal of a registration, of that homebuilder or developer.

(2) The Council may only exercise the powers referred to in subsection (1), if it is satisfied on reasonable grounds that— 20

- (a) the homebuilder or developer failed to comply with an administrative penalty notice or a compliance notice issued in terms of section 63 or section 64 respectively, and did not—
  - (i) make any objection to the Compliance and Enforcement Committee as contemplated in terms of section 63(6) or section 64(6) against that administrative penalty notice or compliance notice; or 25
  - (ii) institute any review proceedings in terms of the Promotion of Administrative Justice Act within the prescribed time periods for such objection or review; and 30
- (b) the Council notified the homebuilder or developer in writing of its intention to act in accordance with this section, and did not receive any correspondence from that homebuilder or developer in reply to that notice.

(3) In the event of any cancellation, suspension or amendment contemplated in this section, the Council must notify the homebuilder or developer in writing of that cancellation, suspension or amendment. 35

(4) The registration and continued registration of a homebuilder or a developer is subject to the code of conduct contemplated in section 89(2), compliance with this Act and such other conditions that the Minister may prescribe.

**Liability of unregistered homebuilder or developer** 40

**28.** Failure by a person to register, or to retain the registration status, as a homebuilder or developer does not affect that person's liability and obligations in terms of this Act.

**CHAPTER IV****ENROLMENT****Register of enrolments** 45

**29.** (1) The Council must establish and maintain a register of enrolment of homes, which must be able to interface with any other register established in terms of this Act.

(2) The purpose of the register contemplated in subsection (1) is to facilitate—

- (a) the identification of enrolled homes and informing housing consumers thereof; 50
- (b) a cost-effective procurement process in relation to the building of a home;
- (c) the inspection of enrolled homes;



**Tidzingo tekubhalisa**

26. (1) UMkhandlu, ngekubonisana neNdvuna, kufanele uncume luhlelo kanye tidzingo tekubhaliswa kwebakhi betindlu kanye nebatfutukisi, lokuluhlelo lekufanele linikete ngekubhalwa kwemakhi indlu noma njiniyela ebangeni lelikhombisa lizinga lelikhono lalowo makhi welikhaya noma unjiniyela; futsi leyo mibandzela lelungile nelengancunywa ngelokufanele. 5

(2) Kuncunywa kwamazinga lemakhono lekukhulunywa ngawo esigatjeni (1) kumele kubhekele tidzingo tetimali, tebuchwepheshe, tekwakha nekuphatsa letidzingeakako kwakha likhaya.

(3) UMkhandlu kufanele uhlole tonkhe ticelo tekubhalisa kwemakhi wetindlu noma njiniyela macondzana nedzingo letibhekise nguMkhandlu ngekuya esigatjane (1) na (2). 10

**Kwesulwa, kumiswa noma kuchibiyela kwekubhalisela kwebakhitindlu noma bonjiniyela noma simo sekulinganisa**

27. (1) Ngekuya ngesigatjane (2), uMkhandlu unga—

(a) sula noma amise kubhalisa kwemakhi indlu noma umfutukisi noma kuchibiyela kukhushulwa kwalowo makhi indlu noma njiniyela njengoba kuhlontotwe kusigaba 26; noma 15

(b) kwala kufinyelela noma kwenta noma ngusiphi sicelo sekubhalisela, kufaka ekhatsi kuvuselela kwekubhaliswa, kwalowo makhi indlu noma unjiniyela.

(2) UMkhandlu ungasebentisa emandla ngawo kuphela lokukhulunywa kusigatjane (1), uma wenelisekile ngetizatfu letivakalako kutsi— 20

(a) umakhi wetindlu noma unjiniyela lohluleka kuhambisana nesatiso sehlawulo yekuphatsa noma satiso sekuhambisana lesikhishwe ngekuya kwesigaba 63 noma sigaba 64 ngekuladzelana, futsi akazange—

(i) ente kuphika kuLikomidi Lekuhambisana neKuphocelela njengoba kuhlontotwe kusigaba 63(6) noma kusigaba 64(5) ngekumelene naleso satiso sehlawulo yekuphatha noma satiso sekuhambisana; noma 25

(ii) kufaka noma ngitiphi tinchubo tekubuyeketa ngekweMtsetfo Wekukhutsatwa Kwetebulungiswa Betekuphatsa ekhatsi netikhatsi letibekiwe tekuphikisana noma kubuyeketwa lokunjalo; futsi 30

(b) uMkhandlu watise umakhi wendlu noma njiniyela ngekubhala ngetinhloso takhe tokwenta ngekuhambisana nalesigaba, futsi akakayitfoli kuvumelana lokuvela kulowo makhi wendlu no njiniyela ekuphendvulemi lesisatiso.

(3) Esimweni sekwasulwa, kukhishwa noma kuchibiyela lokuvetwe kulesigaba, uMkhandlu kufanele atise umakhi wendlu noma njiniyela ngekubhala ngalokwasulwa, kukhishwa noma kuchibiyela. 35

(4) Kubhalisela kanye nekubhalisela lokuchubekako kwemakhi wendlu kuncike kumingomo yekutiphatsa lehlontotwe kusigaba 89(2), kuhambisana naloMtsetfo futsi naleminyane imingomo lenjalo iNdvuna lengawakhetsa.

**Sibopho semakhi wetindlu noma njiniyela longakubhaliswa** 40

28. Kuhluleka kwemuntfu kubhalisa, noma kugcina simo sekubhalisa, njenge makhi wendlu noma njiniyela akutsikameti licala noma sibopho salowomuntfu ngekuya kwaloMtsetfo.

**SAHLUKO IV****KUBHALISA** 45**Irejista Yekubhalisa**

29. (1) UMkhandlu kufanele asungule futsi agcine irenjista yekubhaliselwa kwetindlu, lekumele sikhone kuchumanisi nalenye irejista lesungulwe ngekuya kwaloMtsetfo.

(2) Inhloso yalerejista levetwe kusigatjane (1) kwenta lula— 50

(a) kukhonjwa kwetindlu letibhalisiwe kanye kwetisa batsengi betindlu kwaloo;

(b) inchubo yekutsenga lengabiti macondzana nekwakhiwa kwelikhaya;

(c) luhlolo lwetindlu letibhalisiwe;

- (d) the operation of the home warranty fund and the management of claims from the fund; and
- (e) economic and strategic research in relation to the home building industry.
- (3) The register referred to in subsection (1) must be accessible to the public and, subject to the Promotion of Access to Information Act, 2000, must reflect— 5
- (a) the geographical location of every enrolled home;
- (b) the homebuilder who enrolled the home;
- (c) if applicable, the developer in relation to an enrolled home;
- (d) any finalised claim against the home warranty fund that has been instituted in relation to an enrolled home; and 10
- (e) any other information that is reasonably necessary in relation to the purpose of this Act.
- (4) The reflection of an enrolment on the register of enrolments is proof that the home concerned is enrolled in terms of this Chapter.

### **Enrolment of home** 15

- 30.** (1) A homebuilder or developer, as the case may be; may not commence with the construction of a home unless that home is enrolled with the Council in the manner and on the conditions prescribed by the Council in consultation with the Minister.
- (2) In the case where a home is part of a development, the developer concerned must enrol each home within that development. 20
- (3) The Council may, in terms of subsection (1), prescribe different procedures and conditions in relation to different categories of homes.
- (4) The Council must evaluate the application for enrolment of a home in the manner prescribed by the Council.
- (5) The Council may not enrol a home unless— 25
- (a) the Council is satisfied that the conditions contemplated in subsection (1) are met; and
- (b) the fees payable by a homebuilder or a developer as prescribed by the Council in accordance with section 39 are paid by that homebuilder or developer.
- (6) A homebuilder or developer, as the case may be, must notify the Council of the date of commencement of the construction of a home. 30
- (7) When a homebuilder or developer, as the case may be, has complied with the provisions prescribed in terms of subsection (1), the Council must update the register of enrolments indicating the enrolment status of the home concerned.
- (8) The Council may refuse to enrol a home submitted for enrolment by a homebuilder or a developer if the Council is satisfied that the homebuilder or developer failed to comply with an administrative penalty notice or compliance notice issued in terms of section 63 or 64, as the case may be. 35
- (9) Notwithstanding subsection (8), the Council may not refuse to enrol a home in the case where an objection was lodged against that administrative penalty notice or compliance notice in terms of section 63(6) or 64(6), as the case may be. 40
- (10) Where a homebuilder fails to complete the construction of a home within the time period agreed to, the housing consumer must notify the Council, and the Council must update the register of enrolments and the register of homebuilders accordingly, and act in terms of Chapter VII against that homebuilder. 45
- (11) Where a home as contemplated in subsection (10) is part of a development, the Council must update the register in relation to the developer concerned and act against that developer in terms of Chapter VII.
- (12) Where a housing consumer as contemplated in subsection (10) or in the case of a development, the developer concerned, appoints a new homebuilder to complete the home concerned, that new homebuilder must notify the Council of such appointment, and the Council must update the register of homebuilders and the register of enrolments accordingly. 50
- (13) The enrolment fee is not refundable after the expiry of the warranty period.

### **Failure to enrol home** 55

- 31.** (1) A homebuilder or a developer who failed to enrol a home in terms of section 30, must—

- (d) umsebenti wesikhwama sewaranti yendlu kanye nekuphatfwa kwemacala kulesikhwama; futsi
- (e) lucwaningo lwetemnotfo macondzne nemkhakha wekwakha tindlu.
- (3) Irejista lekukhulunywa ngayo esigatjaneni (1) kufanele ifinyeleleke emphakatsini futsi, ngekuya ngekweMtsetfo Wekukhutsata Kutfolakala Kwemningwane, 2000, kufanele ukhombise— 5
- (a) indzawo yawo onkhe emakhaya labhalisiwe;
- (b) umakhi wetindlu lobhalisele letindlu;
- (c) uma kusebenta, unjiniyela macondzana nendlu lebhaliwe;
- (d) noma ngusiphi simangalo lesiphofuliwe esikhwameni sewaranti yasekhaya lesisungulwe macondzana nelikhaya lelibhalisiwe; futsi 10
- (e) noma ngumuphi lolunye lwati loludzingekako mancondzana nenhloso yaloMtsetfo.
- (4) Kuboniswa kwekubhaliswa kurejista yekubabhaliswa kubufakazi bekutsi likhaya leletsintsekako libhalisiwe ngakuya kwaleSahluko. 15

### Kubhaliswa kwelikhaya

30. (1) Umakhi wetindlu noma unjiniyela, njengoba kungaba njalo; angeke acale ngekwaakhiwa kwelikhaya ngaphandle kwalapho lelo khaya libhaliswe neMkhandlu ngendlela nengemibandzela lebekwe nguMkhandlu ngekubonisana neNdvana.
- (2) Esimweni lapho likhaya liyincenye yentfutuko, unjiniyela lotsintsekako kumele abhalise likhaya ngalinye kuleyo ntfutuko. 20
- (3) UMkhandlu, ngekwesigatjana (1), ungabeka tincubo nemibadzela macondzana netigaba letahlukahlukene temakhaya.
- (4) UMkhandlu kumele uhlolisise sicelo sekubhaliswa kwelikhaya ngendlela lebekwe nguMkhandlu. 25
- (5) UMkhandlu awukwazi kubhalisa likhaya ngaphandle kwalapho—
- (a) uMkhandlu wenelisekile kutsi imibandzela lehlontotwe esigatjaneni (1) iyahlangabetwe; futsi
- (b) imali lekhokha ngumakhi wetindlu noma unjiniyela njengoba kuncunye uMkhandlu ngekuya kwesigaba 39 ikhokha ngulowo makhi noma njiniyela. 30
- (6) Umakhi noma njiniyela, njengoba kungaba njalo, kumele atise uMkhandlu ngelikusuku lekutocala ngalo kwakhiwa kwelikhaya.
- (7) Lapho umakhi noma unjiniyela, njengoba kungaba njalo, ehambisane nemibandzela lebekiwe ngekwesigatjana (1), uMkhandlu kufanele uvuselele irejista lababhalisile lekhombisa simo sekubhaliswa kwalelo khaya lelibandzakanyekako. 35
- (8) UMkhandlu ungancaba kubhalisa likhaya lelitfumele kute libhaliswe ngumakhi noma unjiniyela uma uMkhandlu wenelisekile kutsi umakhi noma unjiniyela wehlulekile kutfobela satiso senhlawulo yekuphatsa noma satiso sekutfobela lesikhishwe ngekwesigaba 63 noma 64, njengoba kunjalo kungenteka.
- (9) Ngaphandle kwesigatjana (8), uMkhandlu awukwazi kwala kubhalisa likhaya lapho kwenteka khona kuphikisana nesatiso senhlawulo yekuphatsa noma satiso sekutfobela umtsetfo ngekwesigaba 63(6) noma 64(6), njengoba kungaba njalo. 40
- (10) Lapho umakhi wendlu ahluleka kucedzela kwakhiwa kwendlu ngesikhatsi lesivunyelwe, umtsengi wetindlu kufanele atise uMkhandlu, futsi uMkhandlu kufanele uvuselele irejista lababhalisile kanye nerejista yabakhi betindlu ngalokufanele, futsi bente ngekweSahluko VII ngekumelene lowomakhi walikhaya. 45
- (11) Lapho likhaya njengoba kuhlongotwe esigatjaneni (10) liyincenye yetfutukisa, uMkhandlu kufanele kuvuselele irejista macondzana nanjiniyela lotsintsekako futsi utsatse sinyatselo ngelokumelene nalowo njiniyela ngekweSahluko VII.
- (12) Lapho umtsengi wetindlu njengoba kuhlongotwe esigatjaneni (10) noma uma kwenteka intfutuko, umcambi wetakhiwo lotsintsekako, acoka umakhi lomusha wendlu kucedzela likhaya leletsintsekako, lowo makhi lomusha kufanele atise uMkhandlu ngaloku kucokwa, futsi uMkhandlu kufanele uvuselele irejista yebakhi betindlu kanye nerejista yekubhaliswa ngalokufanele. 50
- (13) Imali yekubhaliselwa ayibuyiswala ngemuva kwekuphela kwesikhatsi sewaranti. 55

### Kuhluleka kubhalisa kwelikhaya

31. (1) Umakhi wendlu noma unjiniyela lohluleka kubhalisa likhaya ngekuya kwesigaba 30, kufanele—

- (a) immediately upon being notified by the Council, or otherwise becoming aware, of such failure, apply for the enrolment of that home as contemplated in section 30; and
- (b) where construction has already commenced, immediately stop the construction until given approval by the Council to proceed with such construction. 5
- (2) The Council may, before giving the approval contemplated in subsection (1)(b), require the homebuilder or developer to—
- (a) satisfy the Council, in the prescribed manner, that the home complies with the Technical Requirements; and
- (b) provide a financial guarantee to the amount prescribed by the Council in relation to that home's compliance with the applicable Technical Standards. 10
- (3) The homebuilder or developer must, at the request of the Council and prior to the approval of the enrolment of a home by the Council, rectify any defects detected at the homebuilder's or developer's cost.

#### **Duties in respect of subsidy housing project** 15

- 32.** (1) A head of department or municipal manager or his or her delegate may not release any funds in relation to any housing project, unless the requirements of this Act have been met in relation to that project.
- (2) The developer or organ of state in relation to a subsidy or social housing project must, in the manner prescribed by the Council, inform the Council of the appointment of a homebuilder in relation to a subsidy or social housing project, and the Council must update the register of homebuilders accordingly. 20
- (3) In the case where a subsidy is provided to an individual under a subsidy programme, the relevant organ of state must notify the Council of the approval of the application for a subsidy for that individual and must notify that individual of his or her obligation to appoint a registered homebuilder, who must ensure enrolment of that home in terms of this Act. 25
- (4) A MEC or MMC or his or her delegate must ensure, through oversight, compliance with this Act in relation to a subsidy or social housing project.

#### **Failure of MEC, MMC, social housing institution or delivery agent to comply with Act** 30

- 33.** (1) Where the Council becomes aware that a MEC or MMC failed to comply with the provisions of this Act in relation to appointing only registered homebuilders, or ensuring that every home forming part of a subsidy housing or social housing project is enrolled, the Council must, subject to subsection (2), report that failure to the Minister. 35
- (2) The Council must, before reporting the failure by the MEC or MMC in terms of this section, notify that MEC or MMC of its intention to report him or her.
- (3) Where a social housing institution or other delivery agent fails to ensure that every home that forms part of a social housing funded project is enrolled, or that only a homebuilder registered in terms of this Act is appointed, the Council must report that failure to the Social Housing Regulatory Authority established in terms of section 7 of the Social Housing Act. 40

### **CHAPTER V**

#### **FINANCIAL MATTERS**

##### *Part 1* 45

##### *Funds and fees*

#### **Funds of Council**

- 34.** (1) The funds of the Council consist of—

- (a) ngekushesha lapho kwatiswa nguMkhandlu, noma uma kungenjalo esati, ngaloko kwehluleka, angafaka sicelo sekubhaliswa kwalelo khaya njengoba kuhlongotwe esigabeni 30; futsi
- (b) lapho kwakhiwa sekucala khona, misa ngekushesha kwakhiwa kuze uMkhandlu unikete imvume yekuchubeka naleso sakhiwo. 5
- (2) Umkhandlu, ngephambi kwekuniketa imvume lehlongiwe kusigatjane (1)(b), idzinga kutsi umakhi watindlu noma njiniyela ente—
- (a) nelisa uMkhandlu, ngendlela lefanele, kutsi lelikhaya lihambisana neTidzingo Tebuchwepheshe; futsi
- (b) unikete sicinisekiso setetimali elinanini lelibekwe nguMkhandlu macondzana nekuhambisana kwalelo khaya nemazinga lasebentako ladzingeko lasebentako. 10
- (3) Umakhi noma njiniyela kufanele, ngesicelo seMkhandlu nangaphambi kwekuvunyelwa kwekubhaliswa kwemuti nguMkhandlu, alungise noma ngusiphi sici lekutholwe ngetindleko temakhi wetindlu noma njiniyela. 15

### **Imisebenti macondzana nephrojekthi yekwakhiwa kwetindlu temchaso**

32. (1) Ngaphambilini umphatsi welitiko nobe wamasipala nobe ummeleli wakhe angeke akhiphe nobe nguyiphi imali lecondzene nemklamo wekwakhiwa kwetindlu, ngaphandle uma tidzingo talomTsetfo tihlangabetene naleso sakhiwo.
- (2) Injiniyela nobe ligatja lembuso macondzana nekuchasa noma i-phrojekthi yetindlu temphakatsi kufanele, ngendlela lebekiwe nguMkhandlu, yatisa uMkhandlu ngekucasha umakhitindlu macondzana nekuchasa noma iphrojethi yetindlu temphakatsi, futsi uMkhandlu kufanele uvuselele kubhaliswa kwebakhitindlu ngalokufanele. 20
- (3) Esimweni lapho kuchaswa ngemali kuniketwa umuntfu ngaphansi kweluhlelo lekulekelela ngemali, ligatja lembuso lolufanele kumele latise uMkhandlu ngekuvunywa kwesicelo sekobhalisela kuchasa ngemali yelomuntfu futsi kumele atise lowomuntfu ngesibopho sakhe sekuncoka makhi wetindlu lobhalisiwe, lofanele acinisekise kubhaliswa kwalelokhaya ngekuya kwaloMtsetfo. 25
- (4) I-MEC nobe i-MMC nobe ummeleli wayo kumele icinisekise, ngekucondzisa, kuhambisana naloMtsetfo mayelana nesibonelelo nobe umklamo wetindlu telusito. 30

### **Kuhluleka kwa-MEC, i-MMC, sikhungo setindlu temphakatsi noma i-ejenti yekutfula kuhambisana naloMtsetfo**

33. (1) Lapho uMkhandlu wati khona kutsi i-MEC noma MMC bahlulekile kuhambisana nekuniketwa kwaloMtsetfo macondzana nekuncokwa bakhitindlu lababhalisiwe kuphela, noma kucinisekisa kutsi onkhe makhaya lenta incenye yekuchasa kwetindlu noma iphrojethi yetindlu tasemakhaya tiyabhaliswa, uMkhandlu kufanele, ngekuya ngesigatjane (2), ubike lokokuhluleka kuNdvuna. 35
- (2) Umkhandlu kufanele, ngaphambi kwekubika kuhluleka kwe-MEC noma MMC ngekuya kwalesigaba, yatisa i-MEC noma MMC ngetinhloso tayo tekumbika. 40
- (3) Lapho sikhungo setindlu tenhlalakahle noma lomunye umenti wetindzingo ahluleka kucinisekisa kutsi onkhe emakhaya abyincenye yephrojethi yetindlu temphakatsi letichaswa ngetimali tiyabhaliswa, noma umakhiwetindlu kuphela lobhalisiwe ngekuya kwaloMtsetfo kuyancokwa, uMkhandlu kufanele ubike kwehluleka kuMphatsi lolawula Kwakhiwa Kwetindlu Temphakatsi losungulwe ngekwesigaba 7 seMtsetfo Wetindlu Temphakatsi. 45

## **SAHLUKO V**

### **TINDZABA TETETIMALI**

#### *Incenye 1*

#### *Timali netindleko*

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#### **Timali teMkhandlu**

34. (1) Letimali teMkhandlu ticuketse—

- (a) any fee, or any interest on a fee, or any penalty on a fee, which becomes due and payable in terms of this Act;
- (b) interest derived from investments;
- (c) surplus to the warranty fund;
- (d) money appropriated by Parliament; and 5
- (e) any money which may accrue to the Council from any other source.

(2) The Council must pay from its funds any amount required to meet the operational costs of the Council, in accordance with an annual budget for each financial year approved by the Board.

(3) The funds referred to in subsection (1)(c) may be applied in relation to developmental programmes for the home building industry. 10

#### Home warranty fund

35. (1) The home warranty fund established in terms of the Housing Consumers Protection Measures Act, continues to exist for the purpose of payment of claims submitted by a housing consumer as contemplated in section 41, where a homebuilder or developer, as the case may be, fails or is unable to meet his or her obligations in terms of this Act. 15

(2) The Council may, in accordance with section 41, pay out of the home warranty fund in respect of a claim contemplated in that section.

#### Additional fund 20

36. The Board may, subject to section 14(2)(c), establish any additional fund for the purposes of achieving the objectives of the Council, including for the purpose of underwriting the home warranty fund liability.

#### Bank account

37. Subject to the Public Finance Management Act, the Council must open a bank account with any bank, mutual bank or other similar institution, registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), for the purpose of the Council's funds or any fund contemplated in this Part. 25

#### Management of funds

38. (1) The Council must take prudent measures— 30
- (a) to manage the risks pertaining to the home warranty fund and any other fund, including its own funds as contemplated in section 34(1); and
  - (b) to ensure that the fees and penalties payable to the Council in terms of this Act are at levels which are sufficient, in aggregate, to meet the financial obligations of the Council, including the home warranty fund. 35
- (2) The Board must appoint—
- (a) a person who is authorised in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), and who has appropriate experience in respect of—
    - (i) investment fund management and appropriate financial and risk management expertise to act as a fund manager; 40
    - (ii) investment fund administration to act as an investment fund administrator; and
    - (iii) investment fund advice to act as an investment fund adviser, in respect of a fund established in terms of this Act; and 45
  - (b) a committee, called the funds advisory committee, comprising not less than three and not more than seven persons having expertise in respect of fund management or appropriate financial and risk management expertise.

- (a) noma nguyiphi imali, noma lenye intalo lekhokhwako, noma inhlawulo lekhokhwako, lokufanele ikhokhwe futsi ikhokhwe ngekuya kwaloMtsetfo;
- (b) intalo letfolakala ekutjaleni kwemali;
- (c) insalela esikhwameni sewaranti;
- (d) imali leyabiwe iPhalamende; futsi 5
- (e) noma nguyiphi imali lengacongelela uMkhandlu kunoma ngumuphi lomunye lomkhandlu.
- (2) UMkhandlu kufanele kukhokhe esikhwameni sayo noma nguyiphi imali ledzingekako kuhlangubetana netindleko tekusebenta kweMkhandlu, ngekuya ngesabelomali semnyaka ngamunye wetimali lesivunye liBhodi. 10
- (3) Timali lekukhulunywa ngato esigatjaneni (1)(c) tingasetjentiswa macondzana netinhlelo tetfutfuko temkhakha wekwakha tindlu.

#### Sikhwama sewaranti yasekhaya

35. (1) Sikhwama sewaranti yasekhaya sisungulwe ngekuya ngeMtsetfo Wetinyatselo Tekuvikela Batsengi Betindlu, iyachubeka nekuba khona ngenhloso yekukhokha timangalo letifakwe batsengi betindlu njengoba kuhlolongiwe esigabeni 41, lapho umakhindlu noma injiniyela, njengoba kungaba njalo, ahluleka noma angakwati kuhlangubetana netibopho takhe ngekuya kwaloMtsetfo. 15
- (2) UMkhandlu, ngekwesigaba 41, ungakhokha esikhwameni sewaranti yasemakhaya macondzana nesimangalo lesihlongotiwe kuleso sigaba. 20

#### Sikhwama letingetiwe

36. Libhodi, ngekwesigaba 14(2)(c), lingasungula noma ngusiphi sikhwama lesingetiwe ngenhloso ngekufeza tihloso teMkhandlu, kufaka ekhatsi ngenhloso yekubhala sikweletu sesikhwama sewaranti yelikhaya.

#### I-akhawunti yasebhange

37. Ngekuya ngekweMtsetfo Wekulawula Kwetimali Tahulumende, uMkhandlu kufanele uvule i-akhawunti yasebhange noma nguliphi libhange, i-mutual bank noma lesinye sikhungo lesifanako, lesibhaliswe ngekweMtsetfo wemaBhange, 1990 (uMtsetfo Nombolo. 94 wanga-1990), ngenhloso yetimali teMkhandlu noma ngusiphi sikhwama lesivetwe kulencenye. 30

#### Kuphatfwa kwetimali

38. (1) UMkhandlu kumele utsatse buhlakani—
- (a) kuphatsa bungoti lobuphatselene nesikhwama sewaranti yasekhaya nanoma ngikuphi lokunye, kufaka ekhatsi netimali taso njengoba kuvetiwe esigabeni 34(1); futsi 35
- (b) kucinisekisa kutsi timali netihlawulo letibhadalwako kuMkhandlu ngekuya kwaloMtsetfo tikumazingeni lanele, lahlanganisiwe, kuhlangubetana netibopho teMkhandlu, kubandzakanya nesikhwama sesikhaya.
- (2) LiBhodi kufanele likhetse—
- (a) umuntfu logunyatwe ngekweMtsetfo Wekwelulekwa Nawekulamula Wetetimali, 2002 (Umtsetfo No. 37 wanga-2002), futsi lonelwati lolufanele macondzana ne— 40
- (i) kuphatfwa kwesikhwama sekutjala imali kanye nebuchwepheshe lobufanele bekulawulwa kwetimali nebungoti kute wente njengemphatsi wesikhwama; kanye 45
- (ii) kuphatfwa kwesikhwama sekutjala imali kusebenta njengemlawuli wesikhwama sekutjala imali;
- (iii) seluleko sesikhwama sekutjala imali sekuba ngumeluleki wesikhwama sekutjala imali, macondzana nesikhwama lesisungulwe ngekweMtsetfo; futsi 50
- (b) likomidi, lelibitwa ngekutsi likomidi leleluleka ngetimali, lelicuketse bantfu labangaphansi kwalabatsatfu futsi labangegeci kwalabasikhombisa labenechwepheshe macondzana nekuphatfwa kwesikhwama noma buchwepheshe lobufanele bekulawulwa kwetimali nebungoti.

(3) The Chief Executive Officer and the Chief Financial Officer are *ex officio* members of the funds advisory committee.

(4) The funds advisory committee advises the Council on the prudent management of its funds and the risks pertaining to it, and makes recommendations to the Council regarding procedures and policies for approval by the Board and implementation by the Council, relating to— 5

- (a) money to be paid into its funds;
- (b) money to be paid out of its funds generally, and specifically for rectification costs contemplated in section 42(3);
- (c) the administration of its funds; 10
- (d) the investment of money in its funds;
- (e) the management of the risks pertaining to its funds; and
- (f) the lowering of the enrolment fee as contemplated in subsection (7).

(5) The funds advisory committee reports quarterly to the Board on the status of the Council's funds and, where necessary, makes recommendations to the Board in respect of the fees and the penalties payable to the Council contemplated in subsection (1). 15

(6) The funds of the Council may, subject to subsection (4) and the Public Finance Management Act, be invested in accordance with a policy approved by the Board.

(7) The Minister may, if an actuarial assessment indicates excess free reserves in the funds of the Council, instruct the Council to lower any enrolment fee prescribed by the Council under section 39. 20

### Fees

**39.** (1) Subject to subsections (2) and (3), the Council may determine the following fees by notice in the *Gazette*:

- (a) A once-off registration fee to be paid by a homebuilder or developer on application for registration in terms of section 25(5), which fee may be calculated in the manner prescribed by the Council; 25
- (b) an annual fee to be paid by the homebuilder or developer as contemplated in section 25(6) for renewal of registration, which may provide for programmes and projects aimed at supporting homebuilders and developers in relation to the acquisition of information, and their development; 30
- (c) an enrolment fee calculated in the manner prescribed by the Council; and
- (d) any other fee which the Minister authorises by regulation.

(2) The Council must, before making the determination contemplated in subsection (1), detail the criteria used to calculate the relevant fee, which criteria and proposed fees must be published by notice in the *Gazette* for comment for a period of 30 days. 35

(3) The Council may, after evaluation of the comments received, amend the fees published in terms of subsection (2) and, subject to the approval of the Board, publish the final fees by notice in the *Gazette*.

(4) The Council may differentiate between different categories of fees in relation to different categories of homes, and different categories of homebuilders and developers based on grading status. 40

(5) The Council may escalate the fees prescribed in terms of subsection (1) in accordance with this section, but if the Council escalates those fees in excess of the most recent publication by Statistics South Africa of the Consumer Price Index, the Council must obtain the approval of the Minister, prior to the publication of the notice contemplated in subsection (1). 45

### Part 2

#### *Claims and recourse against home warranty fund*

#### **Commencement date and duration of warranty** 50

**40.** (1) The duration of a warranty cover in relation to a structural defect occurring in a home, is the period from the date of commencement of construction of a home, plus a



- (3) UMphatsi Welihhovisi Lomkhulu kanye neMphatsi Lomkhulu Wetetimali bengemalunga ngesikhundla selikomidi lekwaluleka kwetetimali.
- (4) Likomidi leleluleka ngetimali leluleka uMkhandlu ngekuphatfwa kwetimali tawo ngebuhlakani kanye nebungoti letiphatselene nawo, futsi lenta tincomo eMkhandlwini macondzana netinchubo netinchubomgomo tekuvunywa liBhodi nekusentjentswa nguMkhandlu, letiphatselene— 5
- (a) imali lekufanele ikhokhwe esikhwameni sayo;
- (b) imali lekhokhelwa ngaphandle kwetimali tayo ngalokuvamile, futsi ikakhulukati tindleko tekulungisa letivetwe esigabeni 42(3); 10
- (c) kuphatfwa kwemali esikhwameni sayo;
- (d) kutjalwa kwemali esikhwameni sayo;
- (e) kulawula kwebungoti letiphatselene netimali tayo; kanye
- (f) kwehliswa kwemali yekubhalisa njengoba kuvetwe esigatjaneni (7).
- (5) LiKomidi leleluleka ngetimali libika kuBhodi njalo ngekota ngesimo setimali teMkhandlu futsi, lapho kudzingeka khona, lenta tincomo kuliBhodi macondzana netimali netinhlawulo letikhokhwa eMkhandlwini letivetwe esigatjaneni (1). LiKomidi lekwaluleka ngetimali libika kuliBhodi ngekota kusimo seMkhandlu setimali futsi, lapho kufanelekile, kwenta tincomo kuliBhodi mayalena netimali kanye netinhlawulo letibhadalwa kuMkhandlu lekuvetwe esigatjaneni (1). 15
- (6) Timali teMkhandlu, ngekuya kwesigatjana (4) kanye neMtsetfo Wekuphatfwa Kwetimali taHulumende, tingatjalwa ngekuhambisana nenchubomgomo levunywe liBhodi. 20
- (7) INdvuna, uma kuhlolwa kwenta kubonisa kugcizelelwa lokukhululekile kwetimali teMkhandlu, angayalela uMkhandlu kutsi wehlise noma ngiyiphi imali yekubhalisa lebekwe nguMkhandlu ngaphansi kwesigaba 39. 25

### Timali

39. (1) Ngekwesigatjana (2) na (3), uMkhandlu ungancuma letitimali letilandzelako ngesimemetelo *kuGazethi*:
- (a) Imali yekubhalisa kanye letokhokhwa ngumakhi wetindlu noma kunjinyela uma afaka sicelo sekubhalisa ngekwesigaba 25(5), lokuyimali lengabalwa ngendlela lebekwe nguMkhandlu; 30
- (b) imali lekhokhwa iminyaka yonkhe ngumakhi wetindlu noma njinyela njengoba kuhlongotwe esigabeni 25(6) sekuvuselela kubhaliswa, lokunganiketa ngetinhlelo nemaphrojekthi ahlose kuchasa bakhi betindlu nebatfufukisi macondzana nekutfolakala kwelwati, netfutfuko yabo; 35
- (c) imali yekubhalisa ibalwa ngendlela lebekwe nguMkhandlu; futsi
- (d) noma nguyiphi lenye imali iNdvuna layigunyatwe ngekwemtsetfo.
- (2) UMkhandlu kumele, ngaphambi kwekwenta sincumo lesihlongotwe esigatjaneni (1), unikete imininingwane ngemibandzela lesentjentsiwe kubala imali lefanele, leyomibandzela netimali letihlongotwayo lokumele tikhishwe ngesatso *kuGazethi* kute kuphawulwe ngato tinsuku letingu 30. 40
- (3) UMkhandlu, ngemuva kwekuhlola kuphawula lokutfolakele, ungachibiyela timali letikhashwe ngekwesigatjana 2 futsi, ngekuya kwemvume yeliBhodi, ungashicilela imali yekugcina ngesimemetelo *kuGazethi*.
- (4) Umkhandlu ungahlukanisa emkhatsini wemikhakha leyehlukene yemali lebhadalwa mayalena netinhlobo letehlukene tetindlu, kanye netinhlobo letehlukene tebakhi betindlu kanye nebatfufukisi ngekwesimo sekuhlukaniswa. UMkhandlu ungakhuphula imali lebekiwe ngekwesigatjana (1) ngekuhambisana nalesi sigaba, kodvwa uma uMkhandlu unyusa leyo mali ngatulu kwekushicilelwa kwakamuva kakhulu kwetelubalo teNingizimu Afrika kweNkomba Yemanani Ebatsengi, uMkhandlu kufanele utfole imvume yeNdvuna, ngaphambi kwekushicilelwa kwesatso lesihlongotwe esigatjaneni (1). 45 50

### Incenye 2

#### Timangalo nekukhokhela sikhwama sewaranti yasekhaya

#### Lusuku lekucala nebudze bewaranti

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40. (1) Sikhatsi sekhaya yewaranti macondzana nenkinga yekwakheka lokwenteka ekhaya, sikhatsi kusukela esukwini lekucala kwekwakhiwa kwelikhaya, kanye

period of five years after the finalisation of the construction of a home, calculated as prescribed by subsection (6), (7) or (8), as the case may be.

(2) The duration of a warranty cover in relation to a roof leak occurring in a home, is the period commencing at the date of commencement of construction of the roof concerned plus a period of two years after the finalisation of the construction of a home, calculated as prescribed by subsection (6), (7) or (8), as the case may be. 5

(3) Notwithstanding subsections (1) and (2) the Minister may, by notice in the *Gazette*, extend the period of the warranty cover.

(4) Before the Minister extends the period of the warranty cover as contemplated in subsection (3), the Council must undertake an actuarial assessment to determine whether the home warranty fund is able to provide for the additional period. 10

(5) The enrolment fee must, subject to section 39(2), be proportionally adjusted in accordance with the extended period of the warranty cover as contemplated in subsection (3).

(6) Subject to subsection (7), the periods of five and two years, respectively, as contemplated in subsection (1) or (2), are calculated 90 days from the date on which the final inspection of a home was conducted by an inspector appointed in terms of this Act, irrespective of whether that home has been occupied or not. 15

(7) If the outcome of the final inspection contemplated in subsection (6) identifies an instance of non-compliance with the Technical Requirements, the periods contemplated in that subsection are calculated 90 days from the date on which the inspector has certified compliance with the Technical Requirements. 20

(8) In the event that a final inspection referred to in subsection (6) is not performed due to an omission on the part of the Council or its inspector, the commencement date of the warranty is deemed to be 90 days after the housing consumer has been granted the right of occupation, irrespective of whether or not the housing consumer occupies that home. 25

### Claims and limitations

41. (1) The Council is not liable to pay out of the home warranty fund in respect of any claim contemplated in section 42(1) in relation to a home that is not enrolled in terms of this Act. 30

(2) In the case of a dispute being declared or a claim being lodged against the home warranty fund in terms of subsection (3), the homebuilder or the developer concerned is liable to rectify that home in accordance with any finding in terms of Chapter VII or the finding of an adjudicator as contemplated in Part 3 of Chapter VI. 35

(3) A housing consumer may institute a claim against the home warranty fund where —

- (a) there is a major structural defect, or a roof leak, that is attributable to non-compliance with the Technical Requirements; and
- (b) 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. 40

(4) The Council must reject a claim contemplated in subsection (3) in the case of that major structural defect or roof leak having been caused by—

- (a) wilful acts or wilful omissions of the housing consumer or persons residing in the home; 45
- (b) fire, explosion or damage caused by a third party;
- (c) lightning storm, flood or earthquake or any other natural occurrence;
- (d) inadequate maintenance or abnormal use of the home or the imposition of any load greater than that for which the structure of that home was designed, or the use of the home for any purpose other than that for which it was designed; 50

nesikhatsi seminyaka lesimihlanu ngemuva kwekuphotfulwa kwekwakhiwa kwelikhaya, lokubalwa njengoba kuncunyiwe ngekwesigatjana (6), (7) noma (8), njengoba kungaba njalo.

(2) Sikhatsi sekhava yewaranti macondzana nekuvuta kweluphahla lokwenteka ekhaya, sikhatsi lesicala nelusuku lokucala kwakhiwa kweluphahla lolutsintsekako kanye nesikhatsi seminyaka lemibili ngemuva kwekuphotfulwa kwekwakhiwa kwelikhaya, lokubalwa njenga lokuncunyiwe sigatjana (6), (7) noma (8), njengoba kungaba njalo. 5

(3) Ngaphandle kwesigatjana (1) na (2) iNdvuna, ngesatiso kuGazethi, anganweba sikhatsi yesiqinisekiso. 10

(4) Ngaphambi iNdvuna kwekuba anweba sikhatsi sekhava sewaranti njengoba kuhlongotwe kusigatjana (3), uMkhandlu kufanele wente lukuhlolwa lwekuhlathiya tingoti temshwalense kute kutfolakale kutsi ngabe sikhwama sewaranti yasekhaya siyakwati yini kuniketa sikhatsi lesengetiwe.

(5) Imali yekubhalisela kufanele ngaphasi kwembandzela wesigaba 39(2), ilungiswe ngalokulinganako ngekuya kwesikhatsi leseluliwe sekhava yewaranti njengoba kuhlongotwe esigatjaneni (3). 15

(6) Ngekuya ngesigatjana (7), sikhatsi seminyaka lesihlanu noma lemibili, ngekuladzelana, njengoba kuhlongotwe kusigatjana (1) noma (2), kubalwa ngetinsuku letingu-90 kusukela esukwini lokwentiwa ngalo kuhlolwa kwekugcina kwelikhaya ngumhloli locokiwe ngakwaloUmtsetfo, kungakhatsalekile kutsi lelo khaya belihlala bantfu noma cha. 20

(7) Uma umphumela wekuhlolwa kwekugcina lokuhlongotwe esigatjaneni (6) ukhomba simo sekungalandzelwa KweTidzingo Tebuchwepheshe, tikhatsi letihlongotwe kuleso sigatjana tibalwa tinsuku letingu-90 kusukela elusukwini umhloli acinisekise ngalo kutfobela Tidzingo Tebuchwepheshe. 25

(8) Uma kwenteka kutsi kuhlolwa kwekugcina lokukhulunywe ngako esigatjaneni (6) kungentiwa ngenca yekweciwa kweMkhandlu noma ngumhloli wawo, lusuku lekucala kwaranti lutsatfwa njengetinsuku letingu-90 umtsengi wendlu aniketwe lilungelo lekuhlala, kungakhatsalekile kutsi umtsengi wendlu uhlala kulelo khaya noma cha. 30

#### Timangalo nemikhawulo

41. (1) UMkhandlu awukabophelekile kukhokha esikhwameni sewaranti yelikhaya macondzana nanoma ngusiphi simangalo lesihlongotwe esigabeni 42(1) macondzana nelikhaya lelingakabhaliswa ngalokwalo Umtsetfo. 35

(2) Esimweni sekumenyetelwa kwempikiswano noma kufakwa simangalo esikhwameni sewaranti yelikhaya ngekwesigatjana (3), umninikhaya noma unjiniyela lotsintsekako unesibopho sekulungisa lelo khaya ngekuhambisana nanoma ngikuphi lokutfolakele ngekweSahluko VII noma kutfolwa kwemahluleli njengoba kuhlongotwe eNcenyeni 3 yeSahluko VI. 40

(3) Umtsengi wetindlu angafaka simangalo esikhwameni sewaranti yasekhaya lapho—

(a) kukhona kukhubateka lokukhulu kwesakhiwo, noma kuvuta kweluphahla, lokubangelwa kungatfobeli Tidzingo Tebuchwepheshe; futsi

(b) umakhi wetindlu noma njiniyela akakwati, noma wehluleka kulungisa sici lesibi ngekhati kwesikhatsi lesincunyelwe nguMkhandlu, noma uma umakhi noma njiniyela angasekho noma angeke asalandzelwa. 45

(4) UMkhandlu kufanele wale simangalo lesihlongotwe esigatjaneni sesi-(3) esimweni lapho lokho kukhubateka lokukhulu kwesakhiwo noma kuvuta kweluphahla kudalwe nguMkhandlu kufanele usale simangalo lesihlongotwe esigatjaneni sesi-(3) uma kunaleso sici lesikhulu sekuvuta noma kuvuta kweluphahla kudalwe ngu— 50

(a) kwenta ngamabomu noma kushiya ngamabomu umtsengi wetindlu noma bantfu labahlala ekhaya;

(b) umlilo, kuchuma noma umonakalo localwe ngumutfu wesitsatfu;

(c) siphepho sembani, sikhukhula noma kutamatama kwemhlaba nanoma ngikuphi lokunye kwenteka kwemvelo; 55

(d) kunakekelwa lokungakanele noma kusetjentiswa ngaloku ngakajwayelekile kwelikhaya noma kufakwa kwanoma ngimuphi umtfwalo lomkhulu kwedlula lowo lowakhelwe lelo lakhaya, noma kusetjentiswa kwelikhaya nganoma nguyiphi injongo ngaphandle kwaleyo lakayakhelwe yona; 60

- (e) subsidence or landslip or landslide from any cause not related to non-compliance with the Technical Requirements; 5
- (f) 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; 5
- (g) destruction of or damage to a home or any loss of expense arising therefrom, or any liability of whatsoever nature related to ionising radiations or contamination by radioactivity from whatever cause or from nuclear weapons material; 5
- (h) 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; 10
- (i) loss or damage to any finishes unless they must be repaired or replaced due to a major structural defect in the residential structure; 10
- (j) anything which is of a maintenance nature which any housing consumer could reasonably be expected to rectify himself or herself; or 15
- (k) abuse, failure to undertake reasonable maintenance or abnormal use of that home's private drainage system. 15

(5) The home warranty fund does not cover consequential damages not related to the structure of a home which are caused by a major structural defect. 20

(6) A competent person or certification body must attest to the circumstances contemplated in subsection (4), except in the case of the circumstances referred to in subsection (4)(b), (c), and (i).

#### Claims and recourse

42. (1) Subject to subsection (3), the Council pays out of the home warranty fund an amount for rectification of an enrolled home, where a major structural defect or a roof leak has manifested itself within the relevant period contemplated in section 40 in respect of that home. 25

(2) Any payment from the home warranty fund for a major structural defect or roof leak during the construction of a home must be deducted from the amount prescribed by the Minister in terms of section 43, and the balance constitutes the amount of warranty cover for the enrolled home concerned for the remainder of the warranty period. 30

(3) Where a homebuilder or developer in relation to an enrolled home is unable or fails to rectify the structural defect as contemplated in section 41, or such homebuilder or developer no longer exists, the Council may pay out of the home warranty fund the amount determined in terms of section 43 for the rectification of the home by another homebuilder, on the conditions contemplated in section 43. 35

(4) Notwithstanding subsection (3), in the case where there are reasonable grounds to believe that the cause underlying the dispute or claim can be attributed to any action or omission by the developer or organ of state concerned, or the certification body or competent person, the Council may hold that developer or organ of state or the certification body or competent person accountable for the rectification, or the cost of rectification, of that home. 40

(5) The Council may—

- (a) subject to section 43, reduce any amount that may be expended in terms of subsection (1) or (3); or 45
- (b) in exceptional circumstances prescribed by the Council, instead of having a structural defect rectified, make payment to the housing consumer in full and final settlement of any claim. 45

#### Minimum and maximum amount payable

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43. The Minister may, by notice in the *Gazette*, determine—

- (e) kuhlala noma kudzilika kwemhlaba noma kuwela phansi kunoma ngusiphi sizatfu lesingahlobene nekungahambisani neTidzingo Tebuchwepheshe;
- (f) emagagasi encindzetelo ladalwa tindiza noma letinye tintfo letisemoyeni letihamba ngematubane noma emandla noma umtselela wendiza noma lamanye emadivayisi emoya noma ema-athikili wehla noma wehla lapho; 5
- (g) kucekelwa phansi noma kulinyatwa kwelikhaya noma kulahleka kwemali lokuvela lapho, noma ngusiphi sikweletu sanoma nguluphi luhlobo loluhlobene nemisebe ye-ionizing noma kungcoliswa kwemisakato kunoma nguyiphi imbangela noma etintfweni tetikhali tenyukliya;
- (h) impi, kuhlasela, sento sesitsa sangaphandle, butsa (noma ngabe bumenyetelwe noma cha), impi yembango, igucuko, kuvukela umbuso, kuvukela umbuso noma emandla empi, siteleka, siphitsiphitsi noma siyaluyalu semphakatsi; 10
- (i) kulahleka noma kulimala kwanoma ngikuphi kucedzwa ngaphandle uma kufanele kulungiswe noma kufakwe lokunye ngenca yekonakala kwesakhiwo lesikhulu esakhiweni sekuhlala; 15
- (j) noma yini lefana neyesondlo lapho noma ngimuphi umtsengi wetindlu angalindzelwa kutsi atilungise yena lucobo; noma
- (k) kuhlukumeta, kwehluleka kwenta sondlo lesifanele noma kusetjentiswa ngendlela lengajwayeleki kweluhlelo lwangasese lalokhaya lwekuhambisa emanti. 20
- (5) Sikhwama sewaranti yasekhaya lasihlanganisi umonakalo lolandzelako longakahlobeni nekwakheka kwendlu lokubangelwa kukhubateka lokukhulu kwesakhiwo.
- (6) Umuntfu lonelikhono noma umntimba wesitifiketi kufanele afakazele simo lesihlongotwe esigatjaneni (4), ngaphandle kwalapho kunetimo lokukhulunywe ngato esigatjaneni (4)(b), (c), kanye (i). 25

#### Timangalo nekufuna lusito

42. (1) Ngekuya ngesigatjana (3), uMkhandlu ukhokha esikhwameni sewaranti yasemakhaya linani lekulungiswa kwelikhaya lelibhalisiwe, lapho liphutsa lelikhulu lesakhiwo noma kuvuta kweluphahla kuvele khona esikhatsini lesifanele lesichazwe esigabeni 40 macondzana nalelokhaya. 30
- (2) Noma ngiyiphi inkokhelo levela esikhwameni sewaranti yelikhaya ngesiphambeko lesikhulu sesakhiwo noma kuvuta kweluphahla ngesikhatsi kwakhiwa likhaya kufanele idonswe emalini lebekwe nguNdvuna ngekwesigaba 43, kantsi ibhalansi yakha linani lewaranti yelikhaya lelibhalisiwe lotsintsekako esikhatsini lesisele sewaranti. 35
- (3) Lapho umakhi noma njiniyela macondzana nendlu lebhaliwe lengakwati noma lehluleka kulungisa sici lesibi njengoba kuhlontotwe esigabeni 41, noma lowo makhi welikhaya noma lonjiniyela angasekho, uMkhandlu ungakhokha esikhwameni sewaranti yelikhaya linani lelincunye ngekwemigomo kwesigaba 43 sekulungiswa kwelikhaya ngulomunye umakhi, ngemibandzela lehlontotwe esigabeni 43. 40
- (4) Ngaphandle kwesigatjana (3), esimeni lapho kunetizatfu letivakalako tekukholelwa kutsi imbangela yempikiswano noma simangalo ingabangelwa nginoma ngisiphi sento noma kweciwa ngonjiniyela noma ligatja lahulumende lolutsintsekako, noma umntimba wesitifiketi noma umuntfu lonelukhono, Umkhandlu ungabamba lowo njiniyela noma ligatja lahulumende noma umntimba wesitifiketi noma umuntfu lonelukhono kuphendvula ngekulungiswa, noma tindleko tekulungisa kabusha kwalelokhaya. 45
- (5) Umkhandlu unga— 50
- (a) ngekuya ngesigabeni 43, sinciphise noma ngiwaphi emanani langasetjentiswa ngekwesigatjana (1) noma (3); noma
- (b) etimweni letehlukile letincunye nguMkhandlu, esikhundleni sekutsi kulungiswe liphutsa, khokha imali lekhokhelwa umtsengi wetindlu ngalokugcwele nangekugcina kwanoma ngisiphi simangalo 55

#### Linani lelincane nelisetulu lekumele likhokhwe

43. INdvuna, ngesatso kuGazethi—

- (a) the minimum and maximum amounts which may be expended under section 42 in respect of any home due to a major structural defect or a roof leak; and
- (b) which costs may, or may not, be included in a claim contemplated in section 42.

## CHAPTER VI

5

### COMPULSORY INFORMATION AND CONTRACTUAL MATTERS

#### *Part 1*

#### *Compulsory information and prohibition*

#### **Definition** 10

**44.** For the purposes of this Part, “employer” means a developer, person or organ of state that enters into a home building contract with a homebuilder.

#### **Prohibition on award of home building contract to certain person**

**45.** (1) The Minister must prescribe the information to be required, in addition to the information required in terms of the Public Finance Management Act or the Local Government: Municipal Finance Management Act, (Act No. 56 of 2003), and the legislation as contemplated in section 217 of the Constitution of the Republic of South Africa, 1996, in the case of an invitation for the expression of interest, submission of a tender offer or request for quotations, for the building of a home that forms part of a subsidy or social housing project. 15  
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(2) An employer may not award a home building contract that forms part of a subsidy or social housing project to a homebuilder who—

- (a) at the date of the commencement of the evaluation of a bid—
  - (i) is not already registered as a homebuilder in terms of this Act; or
  - (ii) in his or her expression of interest, tender offer or quotation relies on experience of home building in relation to a home that was not enrolled in terms of this Act; 25
- (b) was requested previously by the Council to rectify structural defects, and failed to do so, or did not complete such rectification, without having reasonable grounds not to rectify or complete the rectification; 30
- (c) is a principal or employee of the homebuilder or a contractor contemplated in paragraph (b), whom the homebuilder or contractor envisages to engage in performing the work as per the tender specifications; or
- (d) failed to disclose the mandatory information as prescribed by the Minister. 35

(3) An employer must within 21 days of rejecting an expression of interest, tender offer or quotation in terms of subsection (2), notify the Council in writing of that rejection, including the details of the relevant homebuilder.

(4) A person who was awarded a bid for the construction of a home may not subcontract that construction or part of it to a homebuilder—

- (a) who was requested to rectify a structural defect or roof leak and failed to do so, or did not complete that rectification without reasonable grounds; or
- (b) who is not registered as a homebuilder in terms of this Act. 40

#### **Prohibition to continue building or effecting payment in certain circumstances**

**46.** (1) Subject to subsection (2), an employer or housing consumer may not instruct continuation of the building process or effect payment where— 45

- (a) linani leliphansi nelingetulu lelingasetjentiswa ngaphansi kwesigaba 42 macondzana nanoma ngiliphi likhaya ngenca yesici lesikhulu sekwakheka noma kuvuta kweluphahla; futsi
- (b) lokutindleko letingafakwa, noma letingeke tifikwe kusimangalo lesivetwe esigabeni 42. 5

## SAHLUKO VI

### IMINININGWANE LEPHOCELELWE NETINDZABA TETINKOTILEKA

#### *Incenye 1*

#### *Imininingwane lephocelelwe nekwalelwa* 10

#### **Tinchazelo**

44. Ngetinhloso talencenye, “umcashi” kushiwo njiniyela, umuntu noma ligatja lembuso lelingena kunkotileka yekwakhiwa kwetindlu nemakhi wendlu.

#### **Kwalelwa kwekuniketwa kwenkontileka yekwakha tindlu kumuntu lotsite**

45. (1) INdvuna kufanele abeke imininingwane letodzingeka, ngetulu kwemininingwane ledzingekako ngekweMtsetfo Wekuphatfwa Kwetimali Tahulumende noma kuHulumende Wasekhaya: uMtsetfo Wekuphatfwa Kwetimali Tamasipala, (uMtsetfo No. 56 wa-2003), kanye nemtsetfo njengoba kuhlontotwe esigabeni 217 weMtsetfosisekelo waseRiphabhuliki yaseNingizimu Afrika, 1996, esimweni sesimemo sekusho intshisekelo, kuletfwa kwethenda noma sicelo semakhotheshini, sekwakha likhaya leliyincenye yechaso noma iphrojekthi yendlu yemphakatsi. 20

(2) Umcashi angeke anikete ngenkotileka yekwakha kwetindlu leyakha incenye yemali yekwelekelela noma iphrojekthi yaletindlu temphakatsi kumakhi wetindlu lo—

- (a) ngelusuku lwekucala kwekuhlatywa kwebhidi— 25
- (i) longasengaka bhaliswa njengemakhi wetindlu ngekuya ngaloMtsetfo; noma
- (ii) ngekubonisa kwakhe inshisekelo, kuniketwa kwethenda noma ikhotheshini kuncike kulwazi lekwakha ikhaya macondzana nelikhaya lelingakabhaliswa ngekwalo Mtsetfo; 30
- (b) wacelwa ngaphambilini nguMkhandlu kutsi alungise sici kusakhiwo, futsi wehluleka kukwenta lokho, noma akazange akuphotfule loko kulungiswa, ngaphandle kwetizatfu letivakalako tekungalungisi noma kucedzela kulungiswa; 35
- (c) ungethishanhloko noma umsebenti wemakhi wetindlu noma sonkontileka lohlongotwe endzimeni (b), lowo makhi wetindla noma sonkontileka acabanga kutsi utokwenta lowo msebenti ngekweimininingwane yethenda; noma 40
- (d) kuhluleka kudzalula imininingwane lephocelekile njengoba kubekwe nguNdvuna. 40

(3) Umcashi kufanele tingakapheli tinsuku letingu 21 ancabe kubonakaliswa kwenshisekelo, kuniketwa kwethenda noma ikhotheshini ngekwesigatjana (2), atise uMkhandlu ngekubhala ngaloko kwala, kubandzakanya nemininingwane yemakhi welikhaya lofanele.

(4) Umuntu loklonyeliswe ngebhidi yekwakhiwa kwelikhaya angeke anikete sivumelwano sekwakha noma incenye yaso kumakhi wendlu— 45

- (a) lowacelwa kuba alungise sici lesibi noma kuvuta kweluphahla futsi wehluleka kwenta njalo, noma akazange akucedzele loko kulungiswa ngaphandle kwetizatfu letivakalako; noma
- (b) longabhaliswa njengemakhi wetindlu ngekuya kwaloMtsetfo. 50

#### **Kwalelwa kuchubeka nekwakha noma kutsikameta inkokhelo etimeni lesitsite**

46. (1) Ngekuya ngesigatjana (2), umcashi noma umtsengi wetindlu angeke ayalele kuchubeka kwenchubo yekwekha noma kwenta inkokhelo lapho—

- (a) an inspector inspected a home; and
  - (b) that 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
  - (c) any dispute arising from the outcome of the inspection was not resolved to the satisfaction of the Council, as per the applicable enforcement or dispute resolution procedures contemplated in Chapters VI or VII. 5
- (2) The prohibition to effect payment contemplated in subsection (1) does not extend to payments for labour or materials already completed or costs already incurred which—
- (a) do not form part of the dispute; or 10
  - (b) did not, indirectly or directly, cause the risk to the structural integrity of the home.

## *Part 2*

### *Contractual matters*

#### **Definition** 15

47. For the purposes of this Part and Part 3, “contract” includes an agreement between—

- (a) a housing consumer and a homebuilder;
- (b) a housing consumer and a developer;
- (c) a homebuilder or a housing consumer and a certifying body; or 20
- (d) a homebuilder or a housing consumer and a competent person.

#### **Contract**

48. (1) Where a contract relates to the building of a home and other matters, this Part applies only in so far as it relates to the building of that home.

(2) The contract between a homebuilder or a developer and a housing consumer for the construction or sale of a home is deemed to include warranties that— 25

- (a) the homebuilder or the developer or both are registered in terms of this Act;
- (b) the home is enrolled in terms of this Act;
- (c) the home, depending on whether it has been constructed or is to be constructed— 30
  - (i) is or must be constructed in a workmanlike manner;
  - (ii) is or must be fit for habitation; and
  - (iii) is or must be constructed in accordance with—
    - (aa) the Technical Requirements to the extent applicable to the home at the date of enrolment of the home in terms of this Act; and 35
    - (bb) the terms, plans and specifications of the contract concluded with the housing consumer as contemplated in subsection (1);
- (d) the homebuilder or the developer, as the case may be, must subject to the limitations and exclusions contemplated in section 41, at his or her own cost and on demand by the housing consumer— 40
  - (i) rectify major structural defects in the home caused by the non-compliance with the Technical Requirements and occurring within a period which must be set out in the contract, which period may not be less than five years as from the date determined in accordance with section 40(1), (6), (7) or (8), as the case may be; 45
  - (ii) rectify non-compliance with or deviation from the terms, plans and specifications of the contract or any deficiency related to design, workmanship or material occurring within a period which must be set out in the contract, which period may not be less than 90 days from the date on which the final inspection of a home was conducted by the inspector appointed in terms of this Act; 50



- (a) umhloli lohlole likhaya,
- (b) loko kuhlolwa kukhombisa kutsi umsebenzi wekwakha awuhambisani Netindzingo Tebuchwepeshe kangangoba kungatfobelwa kwemtsetfo kungadala konakala kwesakhiwo lesikhulu noma kuvuta kweluphahla; noma
- (c) noma ngutiphi imphikiswano levela emiphumileni wekuhlolwa icazulula ngendlela leyenelisa uMkhandlu, ngekwenchubo lesebentaka yekuphococelela noma yekucazulula timphikiswano lehlolongotwe eTahlukweni VI noma VII. 5
- (2) Kwalelwe kwekukhokha lokuhlongotwe esigatjaneni (1) ayekweluli kukhokhelwa kwabasebenzi noma kwekusebenta losekucedziwe noma tindleko lesetentiwe kudzala— 10
- (a) ungabi incenye yembango; noma
- (b) akazange, ngelokungacondzi noma ngekucondza ngco, kudala ingoti kubucotfo besakhiwo salikhaya.

### *Incenye 2*

#### *Tindzaba tetinkotileka* 15

#### **Tinchazelo**

47. Ngenhloso yalencenye kanye nencenye 3, “inkotileka” ifaka sivumelwano emkhatsini—

- (a) kwemtsengi wendlu kanye nemakhi wetindlu;
- (b) umtsengi wetindlu kanye nanjinyela; 20
- (c) umakhi wetindlu noma umtsengi wendlu kanye nemtimba logunyatako; noma
- (d) umakhi wetindlu noma umtsengi wendlu kanye nemuntfu wemakhono.

#### **Inkotileka**

48. (1) Lapho inkotileka iphatselene nekwakhiwa kwelikhaya neletinye tintfo, lencenye isebenta kuphela macondzana nekwakhiwa kwalelo khaya. 25

(2) Sivumelwano emkhatsi kwamakhi wendlu noma injinyela kanye nemtsengi wendlu sekwakha noma kutsengisa kwelikhaya sitfwatfwa ngekutsi sifaka ekhatsi tinisekiseso sekutsi—

- (a) umakhi welikhaya noma njinyela noma bobabile babhalisile ngekuya kwalomtsetfo; 30
- (b) lelikhaya libhalisiwe ngekuya kwalomtsetfo;
- (c) lelikhaya, kuya ngekutsi selakhiwe noma lisatokwakhwa— 35
- (i) lito noma kufanele lakhiwe ngendlela lenjengemsebenzi;
- (ii) lito noma kufanele ilungile indzawo yekuhlala; futsi
- (iii) lito noma kufanele lakhiwe ngekwancodza kwe— 35
- (aa) tindzinga tebuchwepeshe kute kufike ezingeni lelibesenta ngalo ekhaya ngelusuku lokwabhaliswa ngalo likhaya ngakwalo Mtsetfo; futsi
- (bb) imigomo, emapulani kanye neminingwane yenkontileka lephetfwe nemtsengi wetindlu njengoba kuhlolongotwe esigatjaneni (1); 40
- (d) umakhi wendlu noma njinyela, njengoba kungaba njalo, kumele anciphise kulinganiselwa nekukhishwa lokukhulunywe ngako esigabeni 41, ngetindleko takhe futsi ngalokufunwa ngumtsengi wendlu— 45
- (i) kulungisa tinkinga letinkulu etakhiweni ekhaya letidalwa kungatfobeli Tidzingo Tebuchwepeshe futsi tenteka esikhatsini lokufanele sibekwe esivumelwaneni, lokusikhatsi lesingahle singabi ngaphansi kweminyaka lesihlanu kusukela elusukwini loluncunywe ngekwesigaba 40(1), (6), (7) noma (8), njengoba kungaba njalo;
- (ii) kulungisa kungalandzelwa noma kuphambuka emigomeni, etinhlelweni nasetinchazelweni tenkontileka noma noma ngikuphi kwesweleka lokuhlobene nekudzayana, kwentiwa kwemsebenzi noma kwekusebenta lokwenteka esikhatsini lokumele kubekwe esivumelwaneni, sikhatsi lesingeke sibe ngaphansi kwetinsuku letingu-90 kusuka lusuku lapho kuhlolwa kwekugcina kwelikhaya kwentiwa khona ngumhloli locokwe ngekwalo Mtsetfo; 55

- (iii) repair roof leaks attributable to workmanship, design or materials occurring within a period which shall be set out in the contract, which period may not be less than 24 months as from the date determined in accordance with section 40(2), (6), (7) or (8), as the case may be.

- (3) 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 due to a rectification as contemplated in this section— 5
- (a) the homebuilder or developer, as the case may be, is liable; or
- (b) in the case where the homebuilder and the developer are involved, both are jointly and severally liable, 10
- for the reasonable cost of that relocation and accommodation.

#### **Contract with certifying body or competent person**

49. (1) Where a homebuilder or housing consumer appoints a certifying body or a competent person as required in terms of the Home Building Manual, it is deemed that the appointment is made on condition that— 15
- (a) the certifying body or the competent person concerned must apply reasonable skill, care and diligence in the execution of the work; and
- (b) the certifying body or competent person has indemnity insurance cover—
- (i) as prescribed by the relevant professional body; or
- (ii) as determined by the Council by notice in the *Gazette*, in the case 20
- where—
- (aa) the relevant professional or statutory body has not prescribed the nature and amount of indemnity insurance cover; or
- (bb) the competent person is not registered with a professional or 25
- statutory body.

#### **Cession of rights**

50. Any successor in title to the housing consumer has all the rights under this Part exercisable by, or available to, a housing consumer within the period contemplated in section 41.

#### **Prohibition of certain conditional payment provisions** 30

51. (1) Subject to subsection (2), a home building contract may not contain any provision making payment conditional on the payer receiving payment from a third person, but excluding a payment from an institution defined by section 1 of the Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000), or established or deemed to have been established in terms of section 3(4)(h) of the Housing Act. 35
- (2) A provision making payment under a contractor's home building contract conditional on the payer receiving payment from a third person is enforceable where—
- (a) a court order to begin business rescue proceedings has been made in terms of section 131 of the Companies Act; or
- (b) any person becomes insolvent as contemplated in section 2 of the Insolvency Act, 1936 (Act No. 24 of 1936). 40
- (3) Where a provision is rendered ineffective by subsection (2), the parties may agree on other terms of payment.

#### **Entitlement to progress payments**

52. (1) Notwithstanding anything to the contrary in any home building contract, any person who has carried out any construction work, or delivered any goods or services 45

- (iii) lungisa kuvuta kweluphahla lokubangelwa kwakhiwa, kuklanywa noma tintfo tekwakha letenteka esikhatsini lesitobekwa esivumelwaneni, sikhatsi lesingahle singabi ngaphansi kwetinyanga letingu-24 kusukela elusukwini loluncunywe ngekwesigaba 40(2), (6), (7) noma (8), njengoba kungaba njalo. 5

(3) Lapho umtsengi wetindlu asangenile ekhaya macondzana nekutfolakala kwesici lesikhulu sekwakheka, futsi kufanele ashiye lelo khaya afdukele kulenye indzawo lefanelekile ngenca yekulungiswa njengoba kuhlongotwe kulesi sigaba—

- (a) umakhi wetindlu noma njiniyela, njengoba kungaba njalo, unesibopho; noma  
(b) esimweni lapho umakhi wendlu nonjiniyela babandzakanyeka, bobabili babophelekile ngekuhlanganyela nangekutimisele, 10  
ngetindleko letifanele taloko kutfutswa nendzawo yekuhlala.

#### **Inkotileka nemtimba logunyatako noma umuntfu lonelikhono**

**49.** (1) Lapho umakhi wetindlu noma umtsengi wetindlu ancoka umtimba locinisekako noma umuntfu lonelikhono njengoba kudzingeka ngekuya kweManuwali Yekwakha Kwetindlu, kutsatfwa ngekutsi kuncokwa kwentiwa ngaphansi kwembandzela wekutsi— 15

- (a) umtimba logunyatako noma umuntfu lonelikhono lokhatsatekile kufanele afake likhono lelivalakalako, kunakekela futsi akhutsala ekwenteni umsebenzi; futsi 20  
(b) umtimba logunyatako noma umuntfu lonemakhona unekhava yemshwalense wesivikelo—  
(i) njengoba kuncunywe yindikimba lefanele lefanelekile; noma  
(ii) njengoba kuncunywe uMkhandlu ngesitiso kuGazethi, esimweni lapho— 25  
(aa) umtimba webuchwepheshe loceceshiwe noma losemtsetfweni awukase kuncume luhlobo nelinani lemshwalense wekukhokhelwa; noma  
(bb) umuntfu lonelikhono akakabhalisi nalowati umsebenzi noma umtsetfo loceceshiwe noma losemtsetfweni. 30

#### **Kuniketwa kwemalungelo**

**50.** Noma ngumuphi umuntfu lotolandzela esikhundleni semtsengi wetindlu unemalungelo langaphansi kwalesi Sigaba angasetjentiswa, noma atfolakale, kumtsengi wetindlu esikhatsini lesichazwe esigabeni 41.

#### **Kujinjelwa kwemibandzela letsite yetinkokhelo**

35

**51.** (1) Ngekuya ngesigatjana (2), inkotileka yekwakha tindlu ingacukatsa noma ngikuphi kuniketwa lokwenta kukhokha kube nemibandzela yekutsi lowo lokhokhako utfole inkokhelo levela kumuntfu wesitsatfu, kodvwa kungafaki inkokhelo levela esikhungweni lesichazwe sigaba 1 seMtsetfo Wekudalulwa Kwemali Lebolekwako Nekubanjiswa Kwemphahla, 2000 (UMtsetfo Nombolo. 63 wa 2000), noma usungulwe noma utsatfwa ngekutsi usungulwe ngekwesigaba 3(4)(h) seMtsetfo weteTindlu. 40

(2) Kuniketwa kwekukhokha ngaphansi kwenkontileka yekwakha likhaya kunenkontileka lokunemibandzela yekutsi lokhokhako atfola inkokhelo kumuntfu wesitsatfu kuphocelela lapho—

- (a) incwadzi yenkantolo yekucalisa incubo yekuhlenga libhizinisi yentiwa ngekwesigaba 131 seMtsetfo Wetinkampani; noma 45  
(b) noma ngumuphi umuntfu uba nesikweletu njengoba kuchazwe esigabeni 2 seMtsetfo Wekungakhokhi Imali, 1936 (uMtsetfo Nombolo. 24 wanga-1936).  
(3) Lapho umbandzela wentiwa ungasebenzi ngekwesigatjana (2), tinhlango tingavumelana ngaletinye tindlela tekukhokha. 50

#### **Lilungelo lekukhokha lokuchubekako**

**52.** (1) Ngaphandle kwanoma yini lephikisana nanoma ngusiphi sivumelwano sekwakha tindlu, noma ngimuphi umuntfu lowente noma ngumuphi umsebenzi wekwakha, noma lohambise noma ngutiphi timpahla noma tinsitakalo ngaphansi

under a home building contract, is entitled to a progress payment in respect of the work carried out and goods or services delivered.

(2) If the home building contract does not provide for regular and reasonable intervals in which progress payments must be made, a homebuilder, supplier or service provider may submit monthly invoices or tax invoices in relation to construction works completed and goods or services delivered. 5

(3) The date of liability in respect of progress payments and the process in relation to that payment is as prescribed by the Minister, unless the home building contract provides otherwise.

#### **Right to suspend performance for non-payment** 10

**53.** (1) Where a sum due under a home building contract is not paid in full by the final date for payment, and no effective notice to withhold payment has been given, the person to whom the sum is due has the right (without prejudice to any other right or remedy) to suspend performance of his or her obligations under that contract to the party by whom payment ought to have been made, hereafter called “the party in default”. 15

(2) The right to suspend performance may not be exercised without first giving to the party in default at least 10 days’ notice of the intention to suspend performance, stating the ground or grounds on which it is intended to suspend performance.

(3) The right to suspend performance ceases when the party in default makes payment in full of the amount due. 20

(4) Any period during which performance is suspended in pursuance of the right conferred by this section is disregarded in computing for the purposes of any contractual time limit, the time taken, by the party exercising the right or by a third party, to complete any work directly or indirectly affected by the exercise of the right.

#### **Prohibition and validity of contract** 25

**54.** Any provision contained in a home building contract that excludes or waives any provision of this Part is void, but the fact that such a provision is void does not render the entire contract invalid.

### **Part 3**

#### ***Adjudication of contractual disputes*** 30

#### **Right to refer disputes to adjudication**

**55.** (1) A party to a contract has the right to refer a dispute arising under that contract for adjudication under a procedure complying with this Part or the procedure prescribed by the Council, and for the purpose of this Part “dispute” includes any difference between the parties in relation to the contract. 35

(2) A dispute must be referred to an adjudicator in accordance with the procedure prescribed by the Council.

(3) A contract must—

(a) provide for the parties to the contract to appoint an adjudicator agreed on, and failing agreement, an adjudicator determined by the Council; 40

(b) enable a party to give notice at any time of his or her intention to refer a dispute to adjudication;

(c) provide a timetable with the object of securing the appointment of the adjudicator and referral of the dispute to him or her within seven days of such notice; 45

(d) require the adjudicator to reach a decision within 31 days of the referral;

(e) allow the adjudicator to extend the period of 31 days as agreed on by the parties, but that contract may not extend the date of the decision of the adjudicator beyond 45 days after the date of the referral notice;

kwesivumelwano sekwakha tindlu, unelilungelo lekutfola inkokhelo lechubekako macondzana nemsebenti lowentiwako kanye nemphahla noma tinsitakalo tiletswako.

(2) Uma inkontileka yekwakha tindlu inganiketi ngetikhawu letijwayelekile naletivakalako lapho kufanele kwentiwe khona inkokhelo yenchubekela phambili, umakhi walikhaya, umphakeli noma umphakeli tinsita ema-invoyisi ngetinyanga tonkhe noma ema-invoyisi entsela macondzana nemisebenti yekwakha lecedziwe netimphahla noma tinsitakalo letiletswako. 5

(3) Lusuku lwesikweletu macondzana nekukhokhwa kwencubekelaphambili kanye nenchubo macondzana naleyo nkokhelo njengoba kuchazwe nguNdvuna, ngaphandle kwalapho inkontileka yekwakha tindlu tiniketa ngalenywe indlela. 10

### Lilungelo lekumisa kusebenta ngekungakhokhi

53. (1) Lapho imali lekhokhwa ngaphansi kwenkontileka yekwakha indlu ingakakhokhwa ngalokuphelele ngelusuku lekugcina lekukhokha, futsi kungekho satiso lesisebentako sekugodla kukhokha lesinikiwe, umuntu lokufanele akhokhelwe leyo mali unelilungelo (ngaphandle kwekubandlulula noma ngiliphi lelinye lilungelo noma likhambi) lekumisa kusebenta kwetibopho takhe ngaphansi kwaleyo nkontileka ecenjini lobekufanele kutsi kwentiwe ngalo inkokhelo, ngemuva kwaloku lokubitwa ngekutsi “licembu ngekwenkokhelo”. 15

(2) Lilungelo lekumisa kusebenta akumele lisetjentiswe ngaphandle kwekuniketwa kucala licembu ngekungatiphatsi lokungenani satiso setinsuku letingu 10 ngenhloso yekumisa kusebenta, lisho sisekelo noma tizatfu lokuhloswe ngalo kumisa kusebenta. 20

(3) Lilungelo lekumisa kusebenta liyaphela lapho licembu ngeke likhone kukhokha ngalokugcwele linani lelifunekako.

(4) Noma ngisiphi sikhatsi lapho kusebenta kumiswe kwesikhashana ngekulandzela lilungelo leliniketwe nguliesi sigaba kuyashaywa indiva ekusebentiseni ikhompyutha ngenhloso yanoma nimuphi umkhawulo wesikhatsi senkontileka, sikhatsi lesitsatsiwe, licembu lelisebentisa lilungelo noma umuntu wesitsatfu, kucedzela noma ngimuphi umsebenti noma letsintseke ngalokungaka condzi kusetjentiswa kwelilungelo. 25

### Kwalelwa nekuba semtsetfweni kwesivumelwane

54. Noma ngikuphi kuniketwa lokuphatseke esivumelwaneni sekwakha tindlu lokungafaki noma lokususa noma ngikuphi kuniketwa kwalesi sigaba akusebenti, kepha liciniso lekutsi loko kuniketwa akusebenti aliniketi inkotileka ingakavumeleki. 30

### Incenye 3

#### Kwahlulelwa kwetimpikiswano tetinkotileka

### Lilungelo lekudlulisela tingcabano ekwahlulelweni 35

55. (1) Umuntu losenkotilekeni unelilungelo lokudlulisela impikiswano levela ngaphansi kqwaleyo nkontileka yekwahlulela ngaphansi kwenchubo lehambisana nale Ncenye noma inchubo yeMkhandlu, futsi ngenhloso yaleSigaba “impikiswano” ifaka noma ngimuphi umehleko emkhatsini kwemacembu macondzana esivumelwaneni. 40

(2) Umbango kumele udluliselwe kumehluleli ngekulandzela inchubo lebekwe nguMkhandlu. 40

(3) Sivumelwano kufanele—

(a) niketa kumacembu enkontileka kutsi ancoke umahluleli lokuvunyelwene ngaye, nekwehluleka kwesivumelwano, umahluleli loncunye nguMkhandlu; 45

(b) nika emandla licembu kutsi linikete satiso noma ngasiphi sikhatsi ngenhloso yalo yekudlulisela impikiswano ekwahlulelweni;

(c) niketa luhlelo lwetikhatsi nenhloso yekucinisekisa kucokwa kwemhluleli nekudlulisela impikiswano kuye tingakapheli tinsuku letisikhombisa tesatiso; 50

(d) kudzingeka kutsi umahluleli afinyelele esincumweni kungakapheli tinsuku letingu 30 adluliselwe;

(e) vumela umahluleli kutsi anwebe sikhatsi setinsuku letingu 31 njendoba kuvunyelwene ngemacembu, kodwa leyo nkontileka ayinakulula lusuku lwetincumo semahluleli ngetulu kwetinsuku letingu 45 ngemuva kwelusuku lwesatiso sekudluliselwa; 55

- (f) impose a duty on the adjudicator to act impartially; and
- (g) enable the adjudicator to take the initiative in ascertaining the facts and the law.

(4) For the purpose of adjudication in terms of this Part, the period from 16 December to 15 January, both days inclusive, may not be counted in the time allowed for in this Part. 5

### **Adjudication**

56. The Minister may prescribe the powers of the adjudicators, the process of adjudication and any other matter necessary in relation to adjudication.

### **Adjudication at cost of Council** 10

57. The Council may prescribe the conditions, including a monetary threshold, under which an adjudicator may be appointed at the cost of the Council, to make a determination regarding a dispute lodged by a housing consumer.

### **Effect of adjudicator's decision**

58. (1) Where an adjudicator has made a decision and either party to the dispute is not satisfied with that decision, that party may, subject to subsection (2), refer that dispute to arbitration as contemplated in the Arbitration Act, 1965 (No. 42 of 1965), within 14 days of the ruling of the adjudicator, or take any other legal action available in law. 15

(2) Notwithstanding any intention to take the decision of the adjudicator on arbitration or to court, the parties must give immediate effect to the adjudicator's decision after the delivery of the decision. 20

## **CHAPTER VII**

### **ENFORCEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

#### *Part 1*

#### *Enforcement* 25

#### **System for enforcement of Act**

59. (1) This Act must be enforced in terms of an administrative enforcement procedure and system as prescribed by the Minister.

(2) The Minister must prescribe an enforcement system categorising transgressions of this Act into administrative non-compliance and substantive non-compliance with this Act. 30

(3) The Council may determine the penalty in relation to an administrative non-compliance.

(4) The Compliance and Enforcement Committee imposes an administrative fine as contemplated in section 65, in relation to substantive non-compliance, on request of the Council. 35

#### **Compliance and Enforcement Committee**

60. (1) The Compliance and Enforcement Committee is hereby established and must exercise its functions in terms of this Act objectively.

(2) The Minister— 40

(a) must appoint the members of the Compliance and Enforcement Committee; and

(b) may remove a member, after following a fair process, on account of misconduct, incapacity or incompetence.

(3) The term of office of members of the Compliance and Enforcement Committee may not be less than four years. 45

- (f) beka umtfwalo kumhluleli kutsi ente ngekungakhetsi; futsi  
 (g) nika emandla umahluleli kutsi atsatsa sinyatselo kucala sekutfolela emaciniso nemtsetfo.

(4) Ngenhloso yekwahlulela ngakwale Ncenye, sikhatsi lesisukela ngeti-16 kuDisemba kuya kumhlaka 15 Janawari, totimbili tinsuku letifakiwe, angeke sibalwe esikhatsini lesinyelwe kulencenye. 5

#### **Kwahlulela**

56. INdvuna angancuma emandla ebahluleli, inchubo yekwahlulela kanye nanoma nguluphi lolunye lundzaba loludzingekako macondzana nekwahlulela.

#### **Kwahlulela ngetindleko teMkhandlu** 10

57. UMkhandlu ungancuma imibandzela, kufaka ekhatsi umkhawulo wemali, umahluleli angacokwa ngaphansi kwawo kweMkhandlu, kwenta sincumo mayelana nempikiswano lefakwe ngumtsengi wetindlu.

#### **Umpumela wesincumo semahluleli**

58. (1) Lapho umahluleli atsatsa sincumo futsi noma nguluphi licembu ekuphikisaneni lingagculisekile ngalesosincumo, lelocembu, ngekuya kwesigatjane (2), lingadlulisela leyo mpikiswano ekulamuleni njengoba kuhlongotwe eMtsetfweni Wekulamula, 1965 (UMtsetfo Nombolo. 42 wa 1965), kungakapheli tinsuku letingu-14 kukhishwe sincumo semahluleli, noma atsatsa noma ngutiphi letinye tinyatselo temtsetfo letitfolakalako ngekwenmtsetfo. 15 20

(2) Ngaphandle kwanoma nguyiphi inhloso yekutsatsa sincumo semahluleli ngekulamulanamo enkantolo, emacembu kufanele asente ngekushehsa sincumosemahluleli ngemuva kwekukhishwa kwesincumo.

### **SAHLUKO VII**

#### **KUPHOCELELWA KANYE NALOKUNYE KUSONJULULWA KWETIMPHIKISWANO** 25

##### *Incenye 1*

##### *Kuphokelelwa*

#### **Tinhlelo tekuphokelelwa kweMtsetfo**

59. (1) LoMtsetfo kufanele uphokelelwe ngekwenchubo yekuphokelela kuphatfwa Kanye neluhlelo njengoba kuncunye nguNdvuna. 30

(2) INdvuna kufanele abeke luhlelo lekucinisekisa kutsi kweciwa kwaloMtsetfo kuhlukaniswa nekulawula kwekulandzelwa kweMtsetfo Kanye nekungahambisani naloMtsetfo.

(3) UMkhandlu kufanele uncume inhlawulo macondzana nekungandzelwa kweMtsetfo kwetokuphatsa. 35

(4) LiKomidi Lekuhambisana neKuphokelela lifaka inhlawulo yetekuphatsa njengoba kuhlonotwe esigabeni66, macondzana nekungatfobeli lokukhulu ngekucela kweMkhandlu.

#### **Likomidi Lekuhambisana Nekuphokelela** 40

60. (1) LiKomidi Lekuhambisana neKuphokelela liyasungulwa futsi kufanele lente imisebenti yalo ngekweMtsetfo ngalokufanele.

(2) INdvuna—

- (a) kufanele incoke emalunga eliKomidi Lekuhambisana Nekuphokelela; futsi  
 (b) angakhipha lilunga, ngemuva kwekulandzela inchubo lefanelekile, ngenca yekungatiphatsi kahle, kungakwati kusebenta. 45

(3) Ithemu yelihhovisi lemalunga eliKomidi Lekuhambisana neKuphokelela kungenteka kungabi kweminyaka lemine.

(4) The Minister may not appoint any person who is an employee of the Council or member of the Board, or who is disqualified from being a member of the Board, as a member of the Compliance and Enforcement Committee.

(5) The Minister must prescribe the terms and conditions of service of, the reporting mechanisms of, and the process for the removal of a member from, the Compliance and Enforcement Committee. 5

(6) The Compliance and Enforcement Committee must consist of at least—

(a) two persons who have at least 10 years' experience in the fields relevant to the subject matter over which the Compliance and Enforcement Committee has jurisdiction in terms of this Act; and 10

(b) a person qualified in law and who has at least 10 years' experience in law.

(7) The person referred to in subsection (6)(b) acts as the chairperson of the Compliance and Enforcement Committee.

### **Powers and duties of Compliance and Enforcement Committee**

**61.** (1) The Compliance and Enforcement Committee— 15

(a) must adjudicate objections contemplated in section 64(6) during substantive non-compliance procedures, and section 63(6) during administrative non-compliance procedures, in accordance with the procedures, powers and limitations prescribed by the Minister;

(b) may confirm, modify or set aside all or part of a decision of the Council, irrespective of whether such modification is more prejudicial to the person than the original Council decision that forms the subject of the objection concerned; 20

(c) may impose an administrative fine as contemplated in section 65 on the implicated person; 25

(d) may in the case where the implicated person is a homebuilder or a developer, determine that the registration of that homebuilder or developer is—

(i) suspended for a specified period of time; or

(ii) cancelled, subject to the rules prescribed in terms of section 87(1); and

(e) may impose any alternative or other appropriate relief in line with the objectives of this Act, depending on the circumstances of the matter. 30

(2) Where the Compliance and Enforcement Committee has to adjudicate any factual disputes as part of the objection contemplated in subsection (1), the party who alleges any given fact must prove that fact on a balance of probabilities: Provided that the Council at all times bears the burden of proof to justify its decision objected to, on the bases required by any applicable law. 35

(3) Where the Compliance and Enforcement Committee—

(a) consists of more than three members, and certain members do not agree with the Compliance and Enforcement Committee's finding, the decision of the majority of the members constitutes the decision of the Compliance and Enforcement Committee; or 40

(b) consists of an even number of members and there is a split decision on any matter, the Chairperson has an additional deciding vote.

(4) A decision of the Compliance and Enforcement Committee is binding, subject to any right to refer that decision for review by a court. 45

(5) The prohibitions and duties imposed on employees and inspectors in section 70(2) and (3), apply *mutatis mutandis* to any member of the Compliance and Enforcement Committee.

### **Initiating of complaint into suspected non-compliance**

**62.** (1) Any person, including any organ of state, may file a complaint in writing with the Council in respect of any person or organ of state suspected of not complying with a provision of this Act. 50

(2) A complaint may be initiated by the Council, if information is at the Council's disposal which indicates that a person or organ of state may not have complied with any provision of this Act. 55

(3) If the Council is of the opinion that a homebuilder does not comply with this Act, the Council may, despite the imposition of any penalty in respect of administrative or substantive non-compliance, and in addition to any other right or remedy that the



- (4) INdvuna angeke incoke noma ngumuphi umuntfu losebenta eMkhandlwini noma lolilunga leliBhodi, noma longakavunyelwe kuba lilunga leliBhodi, njengelilunga leliKomidi Lekuhambisana Nekuphocelela.
- (5) INdvuna kufanele ancume imigomo nemibandzela tekubika, kanye nenchubo yekusiswa kwelilunga eKomidini Lekuhambisana Nekuphocelela. 5
- (6) Linkomidi lekuhambisana neKuphocelele kufanele sincuketsi lokungenani—
- (a) bantfu lababile labanelwati lwemsebenti iminyaka lengu-10 emkhakheni lohambisana nendzaba lapho liKomidi Lekuhambisana Nekuphocelelwa lineligunya khona ngekuya kwaloMtsetfo; futsi
- (b) umuntfu lofanelekile ngekwentsetfo futsi lonelwati lekungenani lweminyaka lengu-10 kutemtsetfo. 10
- (7) Lomuntfu lekukhulunywa ngaye kusigatjanena (6)(b) isebenta njengemphatsi sihlalo weliNkomidi Lekuhambisana neKuphocelela.

### Emandla nemisebenti yeliKomidi Lekuhambisana Nekuphocelela

- 61.** (1) LiKomidi Lekuhambisana neKuphocelela— 15
- (a) kumele incume kuphikisa lokuhlongotwe esigabeni 64(6) ngesikhatsi setincubo tekungatfobeli umtsetfo, kanye nesigaba 63(6) ngesikhatsi setincubo tekuphatsa tekungatfobeli, ngekulanzela tinchubo, emandla kanye nemikhawulo lebekwe nguNdvuna;
- (b) singacinisekisa, sigucule noma sisuse kukonkhe noma incenye yesincumo seMkhandlu, kungakhatsalekile kutsi loko kuguculwa lokunjalo kunemtselela lomubi kulowo muntfu kunesincumo seMkhandlu sekucala lesakha sihlalo sesiphikiso lesitsintsekako; 20
- (c) ingabeka inhlawulo yekuphatsa njengoba kuhlongotiwe esigabeni 66 kumuntfu lonsintsekako; 25
- (d) kwangatsi esimweni lapho umuntfu lotsintsekako kungumakhi wetindlu noma njiniyela, angancuma kutsi kubhaliswa kwalowo makhi wetindlu noma njiniyela—
- (i) kumiswe kwesikhashana sikhatsi lesitsile; noma
- (ii) khansale, ngekuya ngemitsetfo lebekwe ngekwesigaba 87(1); futsi 30
- (e) ingabeka noma ngikuphi lokunye noma lokunye kusitakala lokufanele ngekuhambisana netinhloso taloMtsetfo, kuya ngetimo talenzaba.
- (2) Lapho liKomidi Lekuhambisana neKuphocelela kufanele lahlulele namo ngutiphi tingcabano letilicinisio njengencenye yesiphikiso lesivetwe esigatjaneni (1) Licembu lelisola noma nguliphi licinisio leliniketwe litfala umtfwalo webufakazi kutsetselela sincumo salo lesiphikisiwe, etisekelweni letifunwa nginoma umtsetfo losebentako. 35
- (3) Lapho liKomidi Lekuhambisana Nekuphocelele—
- (a) inemalunga langetulu kwalamatsatfu, futsi emalunga latsite awahambisani nelokutfolwe liKomidi Lekuhambisana neKuphocelela, sincumo semalunga lamaningi sakha sincumo seliKomidi Lekuhambisana neKuphocelela; noma 40
- (b) inemalunga lamaningi futsi lehlukani siwe kunoma nguluphi ludzaba, Umphatsi Sihlalo unelivoti lelengetiwe lekutsatsa sincumo.
- (4) Sincumo seliKomidi Lekuhambisana Nekuphocelela siyabopha, ngekuya ngelilungelo lekudlulisa sincumo kute sibuyeketwe inkatolo.
- (5) Kwalelwa kanye nemisebenti lebekwe kubasebenti nebaholi esigabeni 70(2) na 3, faka sicelo setingucuko kunoma nguliphi lilunga leliKomidi Lekuhambisana Nekuphocelela. 45

### Kucala kwetikhalo kusolwa kungalandzelwa kwemtsetfo

- 62.** (1) Noma ngumuphi umuntfu, kufaka ekhatsi noma ngiluphi ligatja lahulumende, ngekubhala eMkhandlwini macondzana nanoma ngimuphi umuntfu noma ligatja lahulumende lolusolwa ngekungahambisani nemibandzela yaloMtsetfo. 50
- (2) Sikhalo singacaliswa nguMkhandlu, uma lwati lukhona kuMkhandlu lolukhombisa kutsi umuntfu noma ligatja lahulumende kungenteka kutsi aluzange luhambisane nanoma ngikuphi kuhlinzeka kwaloMtsetfo.
- (3) Uma uMkhandlu unombono wekutsi lowakhi tindlu akahambisani naloMtsetfo, uMkhandlu, ngaphandle kwekubekwa kwanoma ngiyiphi inhlawulo macondzana nekuphatsa noma kungatfobeli lokukhulu, futsi ngatulu kwanoma nguliphi lelinye 55

Council may have, at any time on notice to the homebuilder apply to a court for an order—

- (a) directing that homebuilder to comply with the relevant provision of this Act;
- (b) stopping the construction of a home; or
- (c) granting any other relief appropriate in the circumstances. 5

#### Administrative non-compliance with Act

63. (1) The following transgressions are administrative non-compliance with this Act:

- (a) Failure to register as a homebuilder or a developer as required in terms of this Act;
- (b) failure by a homebuilder or a developer to renew his or her registration as required in terms of this Act; 10
- (c) failure to furnish, produce or make available information, documents or things as required in terms of this Act;
- (d) failure to inform the Council of a change in address or other details as required in terms of this Act; 15
- (e) failure by any person to pay fees to the Council as required in terms of this Act;
- (f) failure to apply for the enrolment of a home in terms of this Act;
- (g) failure to pay the enrolment fee in terms of this Act;
- (h) the building of a home, or allowing or instructing the building of a home, by a homebuilder who is not registered in terms of this Act; 20
- (i) failure to comply with any other duty imposed by the Council in terms of this Act, but excluding those instances of non-compliance categorised as substantive non-compliance in terms of section 64;
- (j) suspension of the construction of a home without just cause; or 25
- (k) any other non-compliance of a similar nature, as may be prescribed by the Council.

(2) If the Council is satisfied that there are reasonable grounds for a complaint of administrative non-compliance against a person, it must issue to that person an administrative penalty notice directing the person to do any of the following: 30

- (a) Cease, correct or reverse any action in contravention of this Act before a date determined in the notice;
- (b) take any action required by this Act on or before a date determined in the notice;
- (c) take any other steps reasonably related to the instance of non-compliance concerned, and designed to rectify its effect on or before a date determined in the notice; or 35
- (d) any combination of one or more of the actions referred to in paragraphs (a) to (c).

(3) The Minister must prescribe— 40

- (a) the penalty amount thresholds that the Council may impose in instances of administrative non-compliance contemplated in this section;
- (b) the form and contents of the administrative penalty notice;
- (c) the manner in which the person who is responsible for the administrative non-compliance must be notified by the Council of the administrative penalty notice; 45
- (d) the manner in which a person who is responsible for the non-compliance referred to in subsection (1), must pay the penalty to the Council;
- (e) the payment and manner of calculation of the accrual of interest in relation to late payment of fees to the Council; 50
- (f) the manner of application for remittance of any amount referred to in an administrative penalty notice;
- (g) the criteria in terms of which the Council may remit, or refuse to remit in whole or in part, any amount referred to in an administrative penalty notice; and 55
- (h) any other matter ancillary to the process applicable to administrative non-compliance.

(4) Any amount of penalty prescribed by the Minister in terms of subsection (3) may be—

lilungelo noma likhambi uMkhandlu angaba nayo, noma ngasiphi sikhatsi ngesatiso umakhi wendlu bafake sicelo enkantolo sekutfolela umyalo—

- (a) kucondzisa lowo makhi wendlu kuba ahambisane nekuniketwa lokufanele kwaloMtsetfo;
- (b) kumiswa kwakhiwa kwelikhaya; noma 5
- (c) kuniketa noma ngimuphi lomunye lusito lolufanele etimweni.

### Kungalandzelwa kweMtsetfo kwetekuphatsa

63. (1) Emacala lalandzelako ngukungalandzelwa kwaloMtsetfo ngekuphatsa:
- (a) kwehluleka kubhalisa njengemakhi wetindlu noma njengenjinyela njengoba kudzingeka ngekwaloMtsetfo; 10
  - (b) kwehluleka kwemakhi wendlu noma unjinyela kuvuselela kubhaliswa kwakhe njengoba kudzingeka ngekwaloMtsetfo;
  - (c) kwehluleka kuniketa, kukhicitwa noma kwenta kutfolakale imininingwane, imibhalo noma tintfo njengoba kudzingeka ngekuya kwaloMtsetfo;
  - (d) kwehluleka kwatisa uMkhandlu ngelushintjo ekhelini noma leminyane imininingwane njengoba kudzingeka ngekuya kwaloMtsetfo; 15
  - (e) kwehluleka kwanoma ngimuphi umuntfu kukhokha imali eMkhandlwini njengoba kudzingeka ngekuya kwaloMtsetfo;
  - (f) kwehluleka kufaka sicelo sekubhaliswa kwelikhaya ngekwalo Mtsetfo;
  - (g) kwehluleka kukhokha imali yekubhalisa ngekwaloMtsetfo; 20
  - (h) kwakhiwa kwelikhaya, noma kuvumela noma kuyala kwakhiwa kwendlu, ngumakhi longakabhaliswa ngekuya kwaloMtsetfo;
  - (i) kwehluleka kuhambisana nanoma ngimuphi lomunye umsebenzi lobekwe nguMkhandlu ngekuya kwaloMtsetfo, kodvwa kungabandzakanyi leto timo tekungatfobeli letifakwa esigabeni njengekungatfobeli lokukhulu ngekwesigaba 64; 25
  - (j) kumiswa kwekwakhiwa kwelikhaya ngaphandle kwesizatfu; noma
  - (k) noma ngikuphi lokunye kungalandzelwa kwemitsetfo lefanako, njengoba kungancunywa nguMkhandlu.
- (2) Uma uMkhandlu weneliseka kutsi kunetizatfu letivakalako setikhalo sekungalandzelwa kweMtsetfo kweTekuphatsa kumuntfu, kufanele unikete lowo muntfu satiso senhlawulo yekuphatsa lesicodzisa lowo muntfu kutsi ente noma ngikuphi kwalokulandzelako: 30
- (a) yeka, lungisa noma ugucule noma ngisiphi sento lesiphule Umtsetfo ngaphambi kwelusuku loluncunywe kusatiso; 35
  - (b) tsatsa noma ngisiphi sento lesidzingeka kuloMtsetfo ngelusuku noma ngaphambi kwelusuku loluncunywe kusatiso;
  - (c) tsatsa noma ngitiphi letinye tinyatsanyelo letihlobene ngokusobala nesimo sekungatfobeli lokutsintsekako, futsi letentelwe kulungisa umphumela waso ngelusuku noma ngaphambi kwelusuku loluncunywe kusatiso; noma 40
  - (d) noma ngiyiphi inhlanganisela yesento lesisodvwa noma letiningi lokukhulunywe ngato etigabeni (a) kuya ku (c).
- (3) INdvuna kufanele ancume—
- (a) linani lenhlawulo linemingcele lengabekwa nguMkhandlu ngekwesibonelo sekungatfobelikuphatsa lokuvetwe kulesigaba; 45
  - (b) lifomu nelokucuketfwe kwesatiso senhlawulo yekuphatsa;
  - (c) indlela umuntfu lobhekele kungalandzelwa kwemitsetfo wekuphatsa kumele atiswe ngayo nguMkhandlu ngesatiso senhlawulo yekuphatsa;
  - (d) indlela umuntfu lobhekene nekungalandzelwa kwemitsetfo esigatjaneni (1), lokufanele akhokhe ngayo inhlawulo kuMkhandlu; 50
  - (e) kukhokhwa kanye nendlela yekubalwa kwekucocwa kwentalo macondzana nekukhokhwa kwesikhatsi kwetimali kuMkhandlu;
  - (f) indlela yekufaka sicelo sekucolwa kwanoma ngiliphi linani lelishiwo kusatiso senhlawulo yekuphatsa;
  - (g) tindlela uMkhandlu longabuyisela ngato noma wale kukhipha ngalokuphelele noma incenye yato, noma ngiliphi linani lelishiwo kusatiso senhlawulo yekuphatsa; futsi 55
  - (h) noma ngiliphi lolunye lundzaba lolusekela inchubo lesebentako ekuphatfweni kwekungalandzelwa kwemitsetfo.
- (4) Noma ngisiphi samba senhlawulo lesincunywe nguNdvuna ngekwesigatjana sesi 60
- (3) singaba njalo—

- (a) remitted by the Council on good cause shown and upon application by the affected person;
  - (b) doubled by the Council in the case of a second similar incident of non-compliance by the same person; or
  - (c) tripled by the Council in the case of a third or more, similar incidents of non-compliance by the same person. 5
- (5) Any penalty amount as contemplated in subsections (3) and (4) is due and payable to the Council on the date stated in the administrative penalty notice, which date may not be earlier than 30 days after the implicated person has been served with the notice.
- (6) Any person who is aggrieved by— 10
    - (a) an administrative penalty notice; or
    - (b) a decision of the Council on a remittance application as contemplated in subsection (3)(f) and (g),
- may in the form and manner prescribed by the Minister, object against such decision to the Compliance and Enforcement Committee. 15

#### Substantive non-compliance with Act

64. (1) The following transgressions are substantive non-compliance with this Act:
- (a) Failure by a homebuilder or a developer, as the case may be, to rectify a defect or a roof leak as and when required in terms of this Act;
  - (b) failure by a homebuilder or a developer to comply with any Technical Standard or a Technical Requirement identified by an inspector in an inspection report; 20
  - (c) failure to comply with the ruling of an adjudicator in terms of Chapter VI;
  - (d) failure by a property practitioner, financial institution or conveyancer, or any person in the employ of a property practitioners, financial institution, or conveyancer, to comply with section 81, 82 or 83, as the case may be; 25
  - (e) failure to comply with the code of conduct referred to in section 89(2);
  - (f) the wilful, or grossly negligent making of a determination by a competent person regarding the structural integrity of a home, which determination causes, or fails to prevent, a major structural defect; or 30
  - (g) any other non-compliance of a similar nature, as prescribed by the Council.
- (2) The Council may decide not to investigate a complaint of substantive non-compliance if—
- (a) the complaint appears to be frivolous or vexatious;
  - (b) the complaint does not allege any facts that, if proven, would constitute grounds for a remedy under this Act; 35
  - (c) the basis for the complaint relates to a contractual dispute referred to in Chapter VI, and that dispute does not relate to a homebuilder's or a developer's failure to comply with the Technical Standards;
  - (d) the complaint does not fall within the mandate of Council; or 40
  - (e) the subject matter of the complaint resides under the auspices of another regulatory body, and is referred to that body by the Council.
- (3) The investigation of a complaint of non-compliance must be performed as prescribed, and an investigation report must be submitted to the Council. 45
- (4) On receipt of the investigation report, and if the Council is satisfied that the implicated person had reasonable opportunity to state his or her case before the conclusion of the investigation into a matter of substantive non-compliance, the Council may issue a compliance notice, in the form, manner and with the content prescribed by the Minister, to any person or persons whom the Council on reasonable grounds believes— 50
- (a) contravened this Act; or
  - (b) assented to, or directly or indirectly benefited from, a contravention of this Act.
- (5) A compliance notice may require the person to whom it is addressed to do any of the following: 55
- (a) Cease, correct or reverse any action in contravention of this Act;

- (a) ikhishwe nguMkhandlu ngesizatfu lesivakalako lesikhonjisiwe nangesicelo semuntfu lotsintsekile;
- (b) kuphindvwe kabili nguMkhandlu esimweni sesigameko sesibili lesifanako sekungatfobeli umtsetfo kwemuntfu lofanako; noma
- (c) kuphindvwe katsatfu nguMkhandlu uma kwenteka sigameko sesitsatfu noma ngetulu lesifanako sekungalandzelwa kwemtsetfo ngumuntfu lofanako. 5
- (5) Noma ngiyiphi imali yenhlawulo njengoba kuhlongotwe esigatjaneni (3) nesesu (4) ikhokhwa futsi ikhokhwe eMkhandlwini ngelusuku lolubekwe kusatiso senhlawulo yekuphatsa, lokungaba lusuku lolungakabi ngaphambi kwetinsuku letingu-30 ngemuva kwekuba umuntfu lotsintsekako aniketwe satiso. 10
- (6) Noma ngimuphi umuntfu lophatseke kabi—
- (a) satiso senhlawulo sekuphatsa; noma
- (b) sincumo seMkhandlu mayelana nesicelo semali lekhokhwako njengoba kuhlongotwe esigatjaneni (3)(f) na (g), kwangatsi ngendlela nangendlela lebekwe nguNdvuna, angaphikisana nalesi sincumo kuliKomidi Lekuhambisana Nekuphococelela. 15

#### Kungahambisani neMtsetfo

64. (1) Emacala lalandzelako awahambisani naloMtsetfo:
- (a) Kwehluleka kwemakhi wetindlu noma wanjiniyela, njengoba kungaba njalo, kulungisa liphatsa noma kuvuta kweluphahla njengoba kudzingeka ngekya kweloMtsetfo; 20
- (b) kwehluleka kwemakhi wendlu nma injiniyela kutfobela noma ngiliphi lizinga lebuchwepheshe lekhonjwe ngumhloli embikweni wekuhlola;
- (c) kwehluleka kutfobela sincumo semahluleli ngokweSahluko VI;
- (d) kwehluleka kwesisebenti sempahla, sikhungo setetimali noma umdlulisi, noma ngimuphi umuntfu locashwe ngalabasebenta ngempahla, sikhungo setetimali, noma umhambisi, kuhambisana netigaba 81, 82, noma 83, njengoba kungaba njalo; 25
- (e) kwehluleka kuhambisana nenchubo yekutiphatsa lokukhulunywe ngayo esigabeni 89(2); 30
- (f) kwenta ngamabomu, noma ngekunganaki lokukhulu kwesincumo lesentiwe ngumuntfu lonelikhona macondzana nebucotfo besakhiwo selikhaya, lapho kutimisela kubangela, noma kwehluleke kuvimbela, sici lesikhulu sesakhiwo; 35
- (g) noma ngukuphi lokunye kungaladzelwa kwemitsetfo lefanako, njengoba kuncunye uMkhandlu.
- (2) UMkhandlu ungatsatsa sincumo sekungaphenyi ngesikhalo sekungalandzelwa kwemtsetfo uma ngabe—
- (a) sikhalo sibonakala singasho lutfo noma sicasula;
- (b) sikhalo asiwaphikisi noma ngimaphi emaciniso ekutsi, uma kufakazelwa, abe sizatfu selikhambi ngaphansi kwaloMtsetfo; 40
- (c) sisekelo sesikhalo siphatselene nemphikiswano yenkontileka lokukhunywe ngayo eSahlukweni VI, futsi leyo mphikiswano ayikahlobani nekuhluleka kwemakhi wetindlu noma kwenjiniyela kutfobela Emazinga Etebuchwepheshe;
- (d) sikhalo asiweli ngaphansi kweligunya leMkhandlu; noma 45
- (e) indzaba yesikhalo ihlala ngaphansi kwesigungu salomunye umtimba lolawulako, futsi idluliselwa kuleyo nhlango nguMkhandlu.
- (3) Luphenyo lwesikhalo ekungaladzelwa kwemtsetfo kumele lweniwe njengoba kuncunye, futsi umbiko weluphenyo kufanele kuyiswe eMkhandlwini.
- (4) Ekutfolakaleni kwembiko weluphenyo, futsi uma uMkhandlu weneliseka kutsi lowo lotsintsekako unelitfuba lelikahle lekubeka ludzaba lwakhe ngaphambi kwekuphela kweluphenyo ngelundzaba lekungalandzelwa lwemtsetfo, uMkhandlu ungakhipha satiso eskutfobela lifomu, indlela nekucuketfwe lokuncunye nguNdvuna, kunoma ngimuphi umuntfu noma bantfu uMkhandlu lobakholelwa ngetizatfu letivakalako— 50
- (a) wephule loMtsetfo; noma
- (b) kuniketwe, noma ngalokucodzile noma ngalokungacodzi, kwephula loMtsetfo.
- (5) Satiso sekutfobela umtsetfo singadzinga kutsi umuntfu lobhekiswe kuye ente noma ngikuphi lokuladzelako: 60
- (a) yeka, lungisa noma ugucule noma ngisiphi sento lesaphula lomtsetfo;

- (b) take any action required by this Act;
- (c) take any other action reasonably necessary to rectify the contravention and its effect; or
- (d) any combination of one or more of the actions referred to in paragraphs (a) to (c). 5

(6) A person issued with a compliance notice may, in the manner and within the period prescribed by the Minister, object to that notice to the Compliance and Enforcement Committee.

(7) If a person issued with a compliance notice fails to comply with the notice, and did not object to the compliance notice as contemplated in subsection (6), the Council may request the Compliance and Enforcement Committee to impose an administrative fine as contemplated in section 65. 10

#### Administrative fine

65. (1) The Compliance and Enforcement Committee may impose an administrative fine for failure to comply with a compliance notice as contemplated in section 64. 15

(2) An administrative fine imposed in terms of this section may not exceed the following values:

- (a) In the event of the implicated person being an organ of state failing to comply with the procurement provisions contained in Part 1 of Chapter VI, 10 per cent of the value of the home building contract or the tender value; 20
- (b) in the event of a homebuilder or developer who without reasonable justification fails to rectify a major structural defect or roof leak pursuant to a claim against the home warranty fund to the satisfaction of the Council and the housing consumer, 100 per cent of the aggregate of the payment made from the warranty fund, and any other costs incurred by the Council to ensure that the homebuilder rectifies the defect; or 25
- (c) in any other event, a fine not exceeding—
  - (i) 10 per cent of the implicated person's turnover for the period during which that person failed to comply with the compliance notice; or
  - (ii) the maximum fine prescribed by the Minister, 30
 whichever is the greater.

(3) When determining the amount of an appropriate administrative fine, the Compliance and Enforcement Committee must consider the following factors:

- (a) The nature, duration, gravity and extent of the contravention;
- (b) any loss or damage suffered by any person as a result of the contravention; 35
- (c) the behaviour of the respondent;
- (d) the market value of the home concerned, if applicable, as determined by a professional valuer registered in terms of section 20 of the Property Valuers Profession Act, 2000 (Act No. 47 of 2000), or the building costs associated with the home concerned, or both; 40
- (e) the level of profit derived from the instance of non-compliance;
- (f) the degree to which the implicated person has co-operated with the Council; and
- (g) the disciplinary record of the respondent with the Council.

(4) An administrative fine payable in terms of this section must be paid into the bank account of the Council. 45

(5) The Minister—

- (a) must prescribe the maximum amount of an administrative fine, which maximum amount must be equal to or more than R1 000 000.00;
- (b) may prescribe reimbursement to the housing consumer concerned, for any losses he or she has suffered as a result of the non-compliance concerned, which reimbursement may only be paid from administrative fines that have already been paid as contemplated in subsection (4). 50

- (b) tsatsa noma ngisiphi sentolesidzingwa nguloUmtsetfo;
- (c) tsatsa noma ngisiphi lesinye sento lesidzingekeko kulungisa loko kwephula Kanye nemphumela wako; noma
- (d) noma ngiyiphi inhlanganisela yasento lesisodvwa noma letiningi lokukhulunywe ngato esigabeni (a) kuya ku (c). 5
- (6) Umuntfu lokhishwe ngesatiso sekutfobela umtsetfo, ngendlela nagesikhatsi lesincunyelwe nguNdvuna, angasiphikisa leso satiso lesiya kwiKomidi Lekuhambisana Nekuphococelela.
- (7) Uma umuntfu akhishwe ngesatiso sekutfobela ahluleka kuhambisana nesatiso, futsi angazenge aphikisane nesatiso sekutfobela njengoba kuvetwe esigatjaneni (6), uMkhandlu ungacela liKomidi Lekuhambisana Nekuphococelelwa kutsi likhokhise inhlawulo yekuphatsa njengoba kuhlongotwe esigabeni 65. 10

### Inhlawulo yetekuphatsa

- 65.** (1) LiKomidi Lekuhambisana Nekuphococelelwa lingabeka inhlawulo yekuphatsa ngekwehluleka kuhambisana nesatiso sekutfobela njengoba kuhlongotwe esigabeni 64. 15
- (2) Inhlawulo yekuphatsa lekhokhise ngokwalesi sigaba angeke indlule emanani laladzelako:
- (a) esimweni lapho umuntfu lotsintsekako leyincenye yembuso lehluleka kuhambisana nekuniketwa tekutsengwa kwetakhiwo leticuketfwe Kuncenye 1 yeSahluko VI, emaphesenti layi-10 elinani lesivumelwano sekwakha tindlu noma linani lethenda; 20
- (b) esimweni lapho umakhi wetindlu noma njiniyela ngaphandle kwesizatfu lesivakalako ahluleka kulungisa liphutsa lelikhulu lesakhiwo noma kuvuta kweluphahla ngekuya ngesimangalo esikhwameni sewaranti yasekhaya kute kwanelise uMkhandlu nebotsengi betindlu, emaphesenti layi-100 acoco inkokhelo leyentiwe esikhwameni sewaranti, kanye nanoma ngitiphi letinye tindleko letentiwe nguMkhandlu kucinisekisa kutsi umakhi wendlu uyalungisa liphutsa; noma 25
- (c) kunoma ngimuphi lomunye umcimbi, inhlawulo lengadluli—
- (i) emaphesenti langu-10 wenzunzo yemuntfu lotsintsekako esikhatsini lapho lowo muntfu ahlulekile kuhambisana nesatiso sekutfobela; noma 30
- (ii) inhlawulo lenkulu lebekwe nguNdvuna, lokungiyi lenkulu.
- (3) Lapho kuncunywa linani lenhlawulo lefanele yekuphatsa, liKomidi Lekuhambisana Nekuphococelelwa kumele licabangele leti tintfo letiladzelako: 35
- (a) Luhlobo, budze besikhatsi, emandla ladonsela phansi nebukhulu bekwepulwa kwemtsetfo;
- (b) noma ngikuphi kulahlekelwa noma kwehliswa kwemali lokutfole yinoma ngimuphi umuntfu ngenca yekwepulwa kwemtsetfo;
- (c) kutiphatsa kwemphendvuli; 40
- (d) linani lemakethe lelikhaya lelitsintsekako, uma likhona, njengoba kuncunywa umlinganisi loyincweti lobhaliswe ngekwesigaba 20 seUmtsetfo Wabanikeli Betakhiwo, 2000 (Umtsetfo Nombolo. 47 wanga-2000), noma tindleko tekwakha letihlobene nelikhaya lelitsintsekako, noma kokubili;
- (e) lizinga lenzuzo lelisuselwa kusimo sekungatfobeli; 45
- (f) lizinga umuntfu lotsintsekakoasebentisane ngalo neMkhandlu; futsi
- (g) lirekhodi lekucondziswa kwetigwegwe kwemangalelwe neMkhandlu.
- (4) Inhlawulo yekuphatsa lekhokhwa ngekwalessi sigaba kufanele ikhokhwe ku-akhawunti yasebhange yeMkhandlu.
- (5) INdvuna— 50
- (a) kufanele uncume linani leliphakeme lenhlawulo yekuphatsa, lokusamba lesisetulu lokufanele silingane noma ngetulu kwa-R1 000 000.00;
- (b) kwangatsi angabeka kubuyiselwa kwemali kumtsengi losetindlini lotsintsekako, nganoma ngikuphi kulahlekelwa laye wakutfole ngenca yekungatfobeli lokutsintsekako, lokuyibuyiselo lengakhokhwa kuphela etinhlawulweni tekuphatsa lesetivele tikhokhwe njengoba kuhlongotwe esigatjaneni (4). 55

**Part 2****Alternative dispute resolution****Objection against other decisions of Council**

**66.** Any person or organ of state aggrieved by a decision of the Council, other than a decision in relation to administrative or substantive non-compliance, may, in the form and manner prescribed by the Minister, object against that decision, and that objection must be resolved in accordance with section 67 or 68. 5

**Alternative dispute resolution**

**67.** (1) The Council may appoint an alternative dispute resolution agent, on the conditions and in the manner prescribed by the Minister, to resolve objections contemplated in section 66. 10

(2) An alternative dispute resolution agent—

(a) must adjudicate the objection in terms of the procedures prescribed by the Minister; and

(b) may make any order that is just and reasonable in the circumstances. 15

(3) The Minister must prescribe—

(a) procedural aspects relevant to the alternative dispute resolution proceedings;

(b) the rights, duties and powers of the parties involved in the alternative dispute resolution proceedings; and

(c) any matter ancillary to the alternative dispute resolution proceedings. 20

**Council's authority to settle dispute**

**68.** (1) Notwithstanding the provisions of section 67, the Council may settle any dispute arising from an objection contemplated in section 66.

(2) The Minister must prescribe—

(a) any factors that the Council must take into consideration in deciding whether to settle a dispute referred to in subsection (1); 25

(b) conditions limiting the Council's authority to settle;

(c) the form and manner of settlement;

(d) any procedural aspects relating to a settlement; and

(e) any matters ancillary to a settlement. 30

**Part 3****Appointment and powers of inspectors, and matters ancillary to inspectors****Appointment of inspectors**

**69.** (1) The Council may appoint so many persons as the Council considers necessary, and who are in possession of a qualification as approved by the Council, as inspectors. 35

(2) The Council must issue an appointment certificate and identification card to an inspector appointed in terms of subsection (1).

(3) The powers of an inspector appointed in terms of this section may be limited in accordance with his or her qualifications and experience.

(4) When an inspector performs his or her functions in terms of this section, he or she must— 40

(a) be in possession of a certificate of appointment or an inspector's identification card issued to him or her in terms of subsection (2);

(b) produce that certificate or identification card to any person who—

(i) is affected by the inspector's actions in terms of this Act; or 45

(ii) requests to see the certificate or identification card.



*Incenye 2**Letinye tindlela tekusonjululwa kwetimphikiswano***Kuphikisana naletinye tincumo teMkhandlu**

66. Noma ngimuphi umuntfu noma ligatja lembuso loluphatseke kabi ngesincumo seMkhandlu, ngaphandle kwesincumo macondzana nekuphatfwa namo kungahambisani nemtsetfo, ngendlela nangendlela lencunye nguNdvuna, angaphikisana nalesi sincumo, futsi leyo mpikiswano kumele icazululwe ngekuya kwesigaba 67 noma 68. 5

**Lenye indlela yekusonjululwa tingcabano**

67. (1) UMkhandlu ungacoka lenye i-enjenti yekusombulula kwetimphikiswano, ngaphansi kwetimo nangendlela lebekwe nguNdvuna, kusombulula tipopho letihlongotwe esigabeni 66. 10

(2) Umenteli lohlukile wekusombulula timphikiswano—

(a) kufanele yehlulele kuphikisa ngekuladzela tinchubo letibekwe nguNdvuna; futsi 15

(b) ungenta noma ngikuphi kuhleleka lokulungile futsi lokunengvodvo etimweni.

(3) INdvuna kufanele ancume—

(a) tinchubo letihambisana naletinye tindlela tekucazulula tingcabano;

(b) emalungelo, imisebenti kanye nemandla emacembu latsintsekako kwakuletinye tinchubo tekusombulula timphikiswano; futsi 20

(c) noma ngiluphi ludzaba loluhambisana nalitinye tindlela tekucatulula tingcabano.

**Ligunya leMkhandlu lekusonjululwa kwemphikiswano**

68. (1) Ngaphandle kwekunikwa kwesigaba 67, uMkhandlu ungakhipha noma ngitiphi tingcabano letivela ekuphikiseni lokuvetwe esigabeni 66. 25

(2) INdvuna kufanele ancume—

(a) tonkhe tintfo uMkhandlu lokufanele uticabangele lapho utsatsa sincumo sekucatulula impikiswano lokukhulunywe ngayo esigatjaneni (1);

(b) imibandzela lelinciphisa ligunya leMkhandlu kukhokha;

(c) indlela nendlela yekuhlala; 30

(d) noma ngitiphi tici tinchubo letiphatselene nekukhokha; futsi

(e) noma ngutiphi tindzaba letihambisana nesivumelwano.

*Incenye 3**Kucashwa nemandla ebahloli, kanye netindzaba letihambisana nebahloli***Kucashwa kwebahloli 35**

69. (1) UMkhandlu unacoka bantfu labaningi ngendlela uMkhandlu lobona kunesidzingo ngayo, futsi labaneticu letivunyelwe nguMkhandlu, njengebahloli.

(2) UMkhandlu kufanele ukhiphe sitifiketi sekucokwa kanye nelikhadi lekutatisa kumhloli locokwe ngekwesigatjana (1).

(3) Emandla wemhloli locokwe ngekwalesi sigaba angancishiswa ngekuya ngeticu takhe Kanye nelwati lwemsebenti. 40

(4) Uma umhloli enta imisebenti yakhe ngekuya kwalesi sigaba, kufanele—

(a) iba nesitifiketi sekucokwa namo likhadi likamatisi lemhloli leliniketwe yena ngekwesigatjana (2);

(b) khipha leso sitifiketi noma likhadi lamatisi kunoma ngimuphi umuntfu— 45

(i) iyatsintseka sento seabhloli ngekwaloMtsetfo; noma

(ii) cela kubona sitifiketi noma likhadi lamatisi.

**Duties of inspectors and employees**

**70.** (1) For the purposes of subsection (2), “gratification” has the same meaning as defined in section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004).

(2) An inspector or employee of the Council (including a temporary employee) must, without delay, report to the Council any knowledge or suspicion he or she has, of any person giving or offering gratification to any inspector or employee appointed in terms of this Act, as a reward or incentive for that inspector or employee to do anything he or she should not do, or not to do anything he or she should do, in terms of this Act. 5

(3) An inspector or employee may not— 10

- (a) engage in any activity that may undermine the integrity of the Council;
- (b) engage in any act he or she is not authorised to perform in terms of this Act, concerning a matter in respect of which that inspector or employee has a direct or indirect financial or any similar personal interest;
- (c) make private use of, or profit directly or indirectly from, any confidential information obtained as a result of performing his or her official functions; or 15
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that inspector’s or employee’s official functions in terms of this Act. 15

**Powers of inspectors** 20

**71.** (1) An inspector may, for the purpose of inspecting a home during construction, to determine compliance with this Act and the Home Building Manual, enter and inspect the premises constituting the site of the construction at any reasonable time.

(2) For the purposes of an investigation, an inspector may—

- (a) require— 25
  - (i) the production by the homebuilder of the drawings and specifications of a home or any part of a home, including plans approved by the local authority and plans and specifications prescribed in the Rules or the Home Building Manual, for inspection; and
  - (ii) information from any person concerning any matter related to a home or any part of a home; 30
- (b) be accompanied by any person employed or appointed by the Council 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 any other person possessing special or expert knowledge, make any examination, test or enquiry that may be necessary to ensure compliance with the Home Building Manual. 35

(3) The Council may recover the costs of any examination or test contemplated in subsection (2)(c) from a homebuilder where the homebuilder has failed to comply with the Technical Requirements. 40

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

(5) When an inspector performs any function of an inspector regarding inspection of a home in terms of this Act, that inspector— 45

- (a) has the powers of a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and may exercise the powers conferred on a peace officer by law; and
- (b) has those powers and duties prescribed by the Minister.

(6) The Council may not prejudice a housing consumer in the assessment of a claim where an inspector wilfully neglects his or her duty as contemplated in section 70, except where the housing consumer wilfully participated in the inspector’s conduct. 50

**Umsebenti webahloli nebasebenti**

**70.** (1) Ngenhloso yesigatjana (2), “kutitfokotisa” kunencazelo lefanako naleyo lechazwe esigabeni 1 seMtsetfo Wekuvikela Nekulwa Nenkohlakalo, 2004 (Umtsetfo No. 12 wa 2004).

(2) Umhloli noma umsebenti weMkhandlu (kubandzakanya losebenta kwesikhashana) kumele, ngaphandle kwekulibala, abikele uMkhandlu noma ngiluphi lwati noma kumiswa lanakho, kwanoma ngimuphi umuntfu loniketa noma loniketa kutfokotisa kunoma ngimuphi umhloli noma umsebenti locokwe kutsi ente noma yini lokungakafaneli akwente, noma angenti lutfo lokufanele akwente, ngekwaloMtsetfo.

(3) Umhloli noma umsebenti angeke—

- (a) kubamba lichaza kunoma ngumuphi umsebenti lobukela phansi bucotfo beMkhandlu; 10
- (b) kwente sento angakagunyatwa kwenta ngekwalo Mtsetfo, macondzana naludzaba lapho lowo mhloli noma umsebenti lanetimali leticondzile noma letingekho ngco noma lenye inshisekelo lefanako yemuntfu; 15
- (c) asebentise ngasese, noma ente inzuzo ngalokucondzile noma ngalokungacondzi, kunoma nguluphi lwati loluyimfihlo lolutfolwe ngenca yekwenta imisebenti yakhe lesemsetfweni; noma 20
- (d) dalula noma yiluphi lwati lokukhulunywe ngalo esigabeni (c) kunoma ngiluphi luhlangothi lwesitsatfu, ngaphandle kwalapho kudzingeka njengencenye yemisebenti lesemsetfweni yalowo mhloli noma umsebenti ngekwalo Mtsetfo.

**Emandla ebahloli**

**71.** (1) Umhloli, ngenhloso yekuhlolo likhaya ngesikhatsi kwakhikha, kutfolo kutsi kuyalandzelwa yini naloMtsetfo kanye neManuwali Yekwakhiwa Kwelikhaya, angangena futsi ahlolo takhiwo letakha indzawo yekwakha nganoma ngesikhatsi lesifanele. 25

(2) Ngenhloso yekuphenya, umhloli anga—

- (a) kudzinga—
- (i) kukhacita kwemakhi wemidvwebo nekucaciswa kwelikhaya noma ngiyiphi incenye yendlu, kufaka ekhatsi emacebo lagunyatwe nguMkhandlu wasekhaya kanye netinhlelo kanye neminingwane lebekwe eMitsetfweni noma kuManula Yekwakha Likhaya, kute ihlolwe; futsi 30
- (ii) iminingwane levela kunoma ngumuphi umuntfu macondzana nanoma nguluphi ludzaba loluphatselene nelikhaya noma lenye incenye yendlu; 35
- (b) kupheleketelwa nginoma ngumuphi umuntfu locashwe noma locokwe nguMkhandlu lonelwati lolukhetsekile noma lebungoti nganoma nguluphi ludzaba macondzana nelikhaya noma incenye yendlu; futsi 40
- (c) uwedvwa noma ngekuhlanguana nanoma ngimuphi lomunye umuntfu lonewati lolukhetsekile noma lebuchwepheshe, angenta noma ngikuphi kuhlolwa, kuhlolwa noma luphenyo lolungadzingeka kucinisekisa kuhambisana neManuwali Yekwakhiwa Kwetindlu.

(3) UMkhandlu ungabuyisa tindleko tanoma ngikuphi kuhlolwa noma kuhlolwa lokuvetwe esigatjaneni (2)(c) kusuka kumakhi lapho umakhi welikhaya ahlulekile kulandzela Tidzingo Tebuchwepheshe te-NHBRC. 45

(4) Akekho umuntfu longatsiya, longavimba, aphantamise noma agodle iminingwane kumhloli, noma azame kwenta loko, ekusebentiseni emandla noma ekwenteni umsebenti ngekwalo Mtsetfo.

(5) Uma umhloli ente noma ngumuphi umsebenti wemhloli mayelana nekuhlolwa kwelikhaya ngekuya kwaloMtsetfo, loyo mhloli— 50

- (a) unemandla wesiphatsimandla sekutfula njengoba kuchaziwe esigabeni 1 seMtsetfo Wetincubo Tebugebengu, 1977 (Umtsetfo Nombolo. 51 wanga-1977), futsi angasebentisa emandla laniketwe umsebenti wetekutfula ngumtsetfo; futsi 55
- (b) unalawo mandla nemisebenti lebekwe nguNdvuna.

(6) UMkhandlu angeke ulimate umtsengi wetindlu ekuhlolweni kwesimangalo lapho umhloli awudzelela ngamabomu umsebenti wakhe njengoba kuhlongotwe esigabeni 71, ngaphandle kwalapho umtsengi wetindlu ahlanguyele ngamabomu ekutiphatseni kwemhloli. 60

**Part 4*****Criminal offences and penalties*****Disclosure of confidential information**

72. (1) Subject to subsection (2), it is an offence to disclose any personal or confidential information concerning the affairs of any person obtained— 5
- (a) in carrying out any function in terms of this Act; or
  - (b) as a result of initiating a complaint or participating in any proceedings in terms of this Act.
- (2) Subsection (1) does not apply to information disclosed— 10
- (a) for the purpose of the proper administration or enforcement of this Act; or
  - (b) for the purpose of the administration of justice.

**Hindering administration of Act**

73. It is an offence to hinder, oppose, obstruct or unduly influence any person who is exercising a power or performing a duty delegated, conferred or imposed on that person by or under this Act. 15

**Offences pertaining to functions of Compliance and Enforcement Committee**

74. A person commits an offence if that person—
- (a) does anything calculated to improperly influence any member of the Compliance and Enforcement Committee;
  - (b) anticipates any finding of the Compliance and Enforcement Committee in a way that is calculated to influence the proceedings or findings; or 20
  - (c) wilfully interrupts the proceedings of the Compliance and Enforcement Committee.

**Offences relating to compliance or administrative penalty notice**

75. It is an offence to fail to comply with an administrative penalty notice or compliance notice, except where in respect of a compliance notice, the decision of the Compliance and Enforcement Committee to impose an administrative fine in terms of section 65 is taken on review before a competent court. 25

**Offences relating to Chapter VI**

76. (1) Any natural or legal person, including an employee of an organ of state but excluding the organ of state itself, commits an offence if that person wilfully or in a grossly negligent manner fails to comply with Part 1 of Chapter VI. 30
- (2) It is an offence to submit false information in relation to any application, or during the course of proceedings, investigation or inspection, or any other matter, in respect of which information is required in terms of this Act. 35

**Offence in relation to registration or enrolment**

77. (1) It is an offence to purport to be registered as a homebuilder or developer in terms of this Act, while not being registered as such in terms of this Act. 40
- (2) It is an offence to purport that a home has been enrolled in terms of this Act, while it is not so enrolled.

**Penalties for criminal offences**

78. Any person, including any director, trustee, managing member or officer of a homebuilder or developer, who is convicted of an offence in terms of section 72, 73, 74,

**Incenye 4****Emacala ebugebengu netinhlawulo****Kudzalulwa kwelwati loluyimfihlo**

72. (1) Ngekuya ngesigatjana (2), kulicala kudzalula noma ngiluphi lulwati lwemuntfu noma loluyimfihlo loluphatselene netindzaba tanoma ngumuphi umuntfu lotfolakele— 5
- (a) ekwenteni noma ngimuphi umsebeni ngekwalo Mtsetfo; noma
- (b) ngenca yekucalisa sikhalo noma kubamba lichaza kunoma ngitiphi tinchubo ngekwalo Mtsetfo.
- (2) Sigatjana (1) asisebeni kulwati leludaluliwe— 10
- (a) ngenhloso yekuphatfwa lokufanele noma kuphococelelwa kwalo Mtsetfo; noma
- (b) ngenhloso yekuphatfwa kwetebulungiswa.

**Kuvimbela kuphatfwa kweMtsetfo**

73. Kulicala kutsiya, kuphikisa, kuvimbela noma ukuthonya ngalokungakafaneli noma ngimuphi umuntfu losebentisa emandla noma lowenta umsebeni laniketwe wona, loniketwe lowo muntfu ngalo Mtsetfo. 15

**Emacala laphatselene nemisebeni yeliKomidi Lekuhambisana Nekuphococelela**

74. Umuntfu lowenta licala uma loyo muntfu—
- (a) wenta noma yini lebalwe njengokuphatamisa ngalokungakafanele noma nguliphi lilungu leliKomidi Lekuhambisana Nekuphococelela; 20
- (b) ulindzela noma ngikuphi kutfolwa kweliKomidi Lekuhambisana Nekuphococelelwa ngendlela lebalwe kutsi ibe nemtselela ekuchubekeni noma ekutfoleni; noma
- (c) uphatamisa ngamabomu kuchutjwa kweliKomidi Lekuhambisana Nekuphococelela. 25

**Emacala laphatselene nekuhambisana nenothisi yekuphatsa**

75. Kulicala kwehluleka kuhambisana nesatiso senhlawulo yekuphatsa noma satiso sekutfobela umtsetfo, ngaphandle kwalapho macondzana nesatiso sekufobela umtsetfo, sincumo seliKomidi Lekuhambisana Nekuphococelela sekukhokhisa inhlawulo yetekuphatsa ngekwesigaba 65 sitsatfwa lapho kubuyeketwa inkantolo lefanele. 30

**Emacala laphatselene neSahluko VI**

76. (1) Noma ngimuphi umuntfu wemvelo noma wetemtsetfo, kufaka ekhatsi sisebeni selugatja lahulumende kodvwa kungabalwa ligatja lembuso lucobo, wenta licala uma lowo muntfu ngamabomu noma ngendlela lebudedengu lehluleka kuhambisana neNcenyane 1 yeSahluko VI. 35
- (2) Kulicala kuletsa imininingwane lemanga macondzana nanoma ngisiphi sicelo, noma ngesikhatsi kuchubeka incubo, kuphenywa noma kuhlolwa, noma ngiluphi lolunye ludzaba, macondzana nelwati loludzingekako ngekwalo Mtsetfo.

**Licala leliphatselene nekubhaliswa noma kujoyina**

77. (1) Kulicala kucabanga kubhaliswa njengemakhi wetindlu noma njiniyela ngekwalo Mtsetfo, ube ungaka bhaliswa kanjalo ngekwalo Mtsetfo. 40
- (2) Kulicala kusho kutsi likhaya libhalisiwe ngekwalo Mtsetfo, kantsi alikabhaliswa kanjalo.

**Tinhlawulo temacala ebugebengu**

78. Noma ngumuphi umuntfu, kufaka ekhatsi noma ngimuphi umcondzisi, umphatseli, lilungu leliphetse noma semakhi wetindlu noma njiniyela, latfolwa anelicala ngekwelicala ngekuya kwalesigaba 72, 73, 74, 75, 76 noma 77, utokhokha 45

75, 76 or 77, is liable to a fine not exceeding R1,5 million or to imprisonment for a period not exceeding 10 years.

## CHAPTER VIII

### MISCELLANEOUS

#### Vicarious liability and law of agency

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**79.** If an agent of a person is liable in terms of this Act for anything done or omitted in the course of that agent's activities on behalf of their principal, that principal is jointly and severally liable with that agent.

#### Liability of homebuilder or developer

**80.** In the case where the homebuilder or a developer is a partnership, trust, company or close corporation, a principal of that homebuilder or developer may be held personally liable in terms of this Act, and may be prevented from registering as a homebuilder or enrolling a home in terms of section 25 or 30, as the case may be, by the Council, before he or she has complied with any instruction in terms of this Act, and on the conditions and in the manner prescribed by the Minister. 10  
15

#### Duty of property practitioner

**81.** (1) A property practitioner must, before becoming involved in the sale of a home in his or her capacity as a property practitioner, take reasonable steps to determine whether that sale relates to a home which has to be enrolled in terms of Chapter IV, or which is covered by the home warranty fund. 20

(2) The property practitioner referred to in subsection (1) must, in the case where the sale relates to a home contemplated in subsection (1), determine whether the home concerned is enrolled in terms of Chapter IV.

(3) If that home has not been enrolled in terms of Chapter IV, the property practitioner concerned must— 25

- (a) notify the Council accordingly; and
- (b) inform any prospective buyer that the home concerned has not been so enrolled, and of the consequences of that failure.

(4) The Council may report a property practitioner who does not comply with the provisions of this section, to the Property Practitioners Regulatory Authority, established in terms of section 5 of the Property Practitioners Act, 2019 (Act No. 22 of 2019). 30

#### Duty of financial institution

**82.**(1) A financial institution—

- (a) as defined by section 1 of the Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000); or 35
- (b) established or deemed to have been established in terms of section 3(4)(h) of the Housing Act, 40

must, before approving a mortgage bond application or financing the building of a home, alterations or additions thereto, determine whether that application relates to a home which has to be enrolled in terms of Chapter IV, or which is covered by the home warranty fund.

(2) The institution referred to in subsection (1) must, in the case where the mortgage bond application relates to a home that has to be enrolled in terms of Chapter IV, determine whether the home concerned has been enrolled in terms of Chapter IV. 45

(3) If the home concerned is not enrolled in terms of Chapter IV, the institution concerned must notify the Council accordingly, and that institution may not process any further payments in terms of the mortgage bond or other financing method before the home concerned is enrolled.

inhlawulo lengegeci ku-R1,5 million noma aboshwa sikhatsi lesingegci eminyakeni lelishumi.

## SAHLUKO VIII

### TINHLOBONHLOBO

#### Licala lemcashi lelibangelwa sento semsebenti ne-ejensi yemtsetfo 5

79. Uma i-ejenti yemuntfu ibekwa licala ngekwaloMtsetfo nganobe yini leyentiwe nobe leyashiywa nguleyo ejenti ekwenteni imisebenti yayo egameni lemcashi wayo, lomcashi ubekwa licala ngalokuphelele kanye naloyo ejenti.

#### Sibopho semakhi wetindlu noma njiniyela

80. Esimweni lapho umakhi wetindlu noma unjiniyela kungubambiswano, 10 kungamela, inkampani noma inkampani lencane, thishanhloko walowo makhi welikhaya noma njiniyela angabekwa licala ngekwakhe ngekwaloMtsetfo, futsi angavinjelwa kubhalisa njengemakhi wetindlu noma kubhalisa likhaya ngekwesigaba 25 noma 30, njengoba kungaba njalo, nguMkhandlu, ngaphambi kwekuba atfobele noma ngimuphi umyalelo ngekwaloMtsetfo, kanye nemibandzela nangendlela lebekwe 15 nguNduna.

#### Umsebenti wesisebenti setakhiwo

81. (1) Umsebenti wemphahla kumele, ngaphambi kwekubandzakanyake ekutsengiseni likhaya ngekwesikhundla sakhe njengemsebenti wetakhiwo, atsatsa tityatselo letifanele tekuncuma kutsi loko kutsengiswa kuhlobene yini nemuti 20 lekufanele ubhaliswe ngekwesahluko IV, noma lembonywe sikhwama sewaranti yasekhaya.

(2) Umphatsi wetakhiwo lokukhulunywe ngaye esigatjaneni (1) kumele, esimweni lapho kutsengisa kutsintsa likhaya lelihlongotwe esigatjaneni (1), ancume kutsi ngabe lelo khaya lelibhalisiwe libhaliswe yini ngekwesahluko IV. 25

(3) Uma lelokhaya alikabhaliswa ngekuya kweSahluko IV, umphatsa wetakhiwo lotsintsekako kumele—

(a) atise uMkhandlu ngalokufanele; futsi

(b) yatisa noma ngimuphi umtsengi kutsi likhaya lelitsintsekako alikabhaliswa, kanye nemiphumela yaloko kwehluleka. 30

(4) UMkhandlu ungabika kumsebenti wetakhiwo longahambisani nemibandzela yalesi sigaba, kuLigunya Lekulawulwa Kwebasebenta Ngetakhiwo, lesungulwe ngekwesigaba 5 seMtsetfo Wetisebenti Tetakhiwo, 2019 (UMtsetfo Nombolo. 22 wanga-2019).

#### Umsebenti wesikhungo setetimali 35

82. (1) Sikhungo setetimali—

(a) njengoba kuchazwe sigaba 1 seMtsetfo Wekubolekwa Kwemali Nemali Yemphahla Lebolekwako Yelikhaya, 2000 (uMtsetfo Nombolo. 63 wanga-2000); noma

(b) lesungulwe noma letsatfwa njenga lengasungulwa ngekwesigaba 3(4)(h) 40 seMtsetfo weteTindlu,

kumele, ngaphambi kwekuvuma sicelo sesibambiso sendlu noma kuchasa ngetimali kwakhiwa kwelikhaya, kugukulwa noma kwengetwa kwaloko, ancume kutsi ngabe leso sicelo sihlobene nendlu lekufanele sibhaliswe ngekwesahluko IV, noma lebhokiswe esikhwameni sewaranti yelikhaya. 45

(2) Sikhungo lekukhulunywe ngaso esigatjaneni (1) kumele, esimweni lapho sicelo sesibambiso sendlu sihlobene nemuti lekumele ubhaliswe ngekwesahluko IV, sincume kutsi ngabe lelo khaya lelibhalisiwe libhaliswe ngekwesahluko IV.

(3) Uma likhaya lelitsintsekako lingabhaliswa ngekwesahluko IV, sikhungo lesintsekako kufanele satise uMkhandlu ngalokufanele, futsi leso sikhungo asikwati 50 kucubungula letinye tinkokhelo ngekuya ngesibambiso sendlu noma lenye indlela yetimali ngaphambi kwekuba kubhaliswe likhaya lelitsintsekako.

(4) The Council may report an institution that does not comply with this section to the Financial Sector Conduct Authority established in terms of section 56 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017), or to the Minister in the case of an institution established or deemed to have been established in terms of section 3(4)(h) of the Housing Act. 5

#### Duty of conveyancer

**83.** (1) A conveyancer must, before he or she finalises the transfer of a property, determine whether or not that property relates to a home which has to be enrolled in terms of Chapter IV.

(2) The conveyancer must, if the property relates to a home contemplated in subsection (1), determine whether the home concerned has been enrolled in terms of this Act. 10

(3) If that home is not enrolled, the conveyancer must immediately inform the Council accordingly.

(4) The Council may report a conveyancer who does not comply with the provisions of this section to the South African Legal Practice Council established by section 4 of the Legal Practice Act, 2014 (Act No. 28 of 2014). 15

#### Recovery of fees

**84.** The Council may, in the manner prescribed by the Minister, recover any—

(a) cost incurred by the Council in terms of this Act, and attributable to an action or omission of a third party; 20

(b) fee;

(c) penalty;

(d) interest;

(e) fine; or 25

(f) other monetary loss to the Council.

#### Home Building Manual

**85.** (1) The Council must, by notice in the *Gazette* and subject to the approval of the Board, publish a Home Building Manual containing—

(a) Technical Requirements providing for the structural integrity of a home; and 30

(b) guidelines prescribed by the Council on how to comply with the Technical Requirements.

(2) The Technical Requirements referred to in subsection (1) are binding upon, and must be adhered to by homebuilders and developers in the home building process, and may be enforced by the Council in terms of Chapter VII. 35

(3) The Home Building Manual may require a plan and associated documents to be approved by a competent person, and different requirements may be determined in respect of different categories of homes, or different types of building techniques or materials.

(4) The Council must give homebuilders reasonable notice of any amendment to, or substitution, of the Home Building Manual. 40

(5) The Council must submit the Home Building Manual and any subsequent amendment to the National Regulator for Compulsory Specifications, established in terms of section 3 of the National Regulator for Compulsory Specifications Act, to ensure consistency with and integration into the regulations made under the National Building Regulations and Building Standards Act, 1977. 45

(6) Except where expressly excluded in this Act or by the Minister in terms of an empowering provision, nothing in this Act exempts any person from any provision of the National Building Regulations and Building Standards Act, 1977.



(4) Umkhandlu ungabika sikhungo lesingahambisani nalesi sigaba ku-Siphatsimandla Sekutiphatsa Kumkhakha Wetetimali lesungulwe ngekwesigaba 56 seMtsetfo Lolawula Umkhakha Wetetimali, 2017 (UMtsetfo Nombolo. 9 wa 2017), noma kuNdvuna uma sikhungo lesisungulwe noma lesitsatfwa njengalesisunguliwe ngekwesigaba 3(4)(h) seMtsetfo weteTindlu. 5

#### Umsebenti wemmeli wekutsengiselana ngetakhiwo

**83.** (1) Ummeli wekutsengiselana ngetakhiwo kufanele, ngaphambi kwekuba acedzele kudluliswa kwesakhawo, ancume kutsi lesosakhiwo sihlobene yini nemuti lokumele ubhaliswe ngekweSahluko IV.

(2) Ummeli wekutsengiselana ngetakhiwo kufanele, uma lesakhiwo sihlobene nendlu lehlontotwe esigatjaneni (1), ancume kutsi lelo khaya lelibhalisiwe libhalisiwe ngekwalo Mtsetfo. 10

(3) Uma lelokaya lingakabhaliswa, ummeli wekutsengiselana ngetakhiwo kufanele atise uMkhandlu ngekushesha ngalokufanele.

(4) Umkhandlu ungabika Ummeli wekutsengiselana ngetakhiwo longahambisani nalokunikwetwa kwalesi sigaba eMkhandlwini Wekusebenta Kwetemtsetfo losungulwe sigaba 4 seMtsetfo Wekusebenta Kwetemtsetfo, 2014 (uMtsetfo No. 28 wanga-2014). 15

#### Kubuyiselwa kwemali

**84.** Umkhandlu, ngendlela lebekwe nguNdvuna, ungatfola noma yini—

(a) tindleko letitfolwe nguMkhandlu ngekwalo Mtsetfo, futsi letibangelwa sento noma kweciwa kwemuntfu wesitsatfu; 20

(b) imali;

(c) inhlawulo;

(d) intalo;

(e) kukhokhisa; noma 25

(f) lokunye kulahleka kwemali kuMkhandlu.

#### IManuwali Yebakhi Betindlu

**85.** (1) Umkhandlu kumele, ngesatiso ku*Gazethi* futsi ngekuya kwemvume yeliBhodi, ushicilele iManuwali Yekwakha Likhaya lecuketse—

(a) Tidzingo Tebuchwepheshe letiniketwe ngekutsembeka kwesakhiwo selikhaya; futsi 30

(b) Imihlahandlela lencunywe nguMkhandlu yekutsi ungatitfobela kanjani Tidzingo Tebuchwepheshe.

(2) Tidzingo Tebuchwepheshe lokukhulunywe ngato esigatjaneni (1) tiyabopheleleka, futsi kufanele tiladzelwe ngubakhi betindlu kanye nabonjiniyela ekwakhiweni kwetindlu, futsi tingaphocelelwa nguMkhandlu ngekwaSahluko VII. 35

(3) IManuwali Yekwakha Kwelikhaya lingadzinga ipulani kanye nemibhalo lehambisanako kutsi ivunywe ngumuntfu lonelikhono, futsi tidzingo letahlukahlukene tingancunywa macondzana netigaba letahlukahlukene tamakhaya, noma tinhlobo letahlukahlukene temasu wekwakha noma tintfo tekwakha. 40

(4) Umkhandlu kufanele unikete bakhi betindlu satiso lesivakalo sanoma ngikuphi kuchibiyela, noma kufaka esikhundleni seManuwali Yekwakha Likhaya.

(5) Umkhandlu kufanele utfumele IManuwali Yetekwakha Yasekhaya nanoma ngikuphi kuchibiyelwa lokulandaelako kuMlawuli Wavelonkhe Wetinchazelo Letiphocekile, lesungulwe ngekwesigaba 3 seMtsetfo Wavelonkhe Wekulawulwa Kwetinchazelo Letiphocekile, 2008 (UMtsetfo Nombolo. 5 wanga-2008), kucinisekisa kuhambisana kanye kuhlangukiswa nemitsetfonchubo leyentiwe ngaphansi kweMtsetfonchubo Wavelonkhe Yetekwakha Nemitsetfo Yelizinga Lekwakha, 1977. 45

(6) Ngaphandle kwalapho kukhishwe ngalokusobala kulo Mtsetfo noma nguNdvuna ngekwebandzela yekunika emandla, akukho lutfo kulo Mtsetfo lokhulula noma ngumuphi umuntfu kunoma ngikuphi kuniketwa kweMtsetfo Wavelonkhe Wemitsetfonchubo kanye nemaZinga Wekwakha, 1977. 50

**Regulations**

**86.** (1) The Minister may make regulations not inconsistent with this Act with regard to any matter that is required or permitted to be prescribed in terms of this Act, and any other incidental or administrative matter necessary for the proper administration and implementation of this Act. 5

(2) Before the Minister makes any regulation under this section, he or she must publish a draft of the proposed regulation in the *Gazette* together with a notice calling on interested persons to comment, in writing, within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice.

(3) If the Minister amends the draft regulations as a result of any comment, he or she need not publish those amendments before making the regulations. 10

(4) The Minister may, if circumstances necessitate the immediate publication of a regulation, publish that regulation without consultation as contemplated in subsection (2).

**Rules**

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**87.** (1) The Board may, on recommendation of the Council, make rules with regard to any matter that is required or permitted to be prescribed in terms of this Act and any other incidental or administrative matter necessary for the proper administration and implementation of this Act, including but not limited to—

(a) regulating the conduct of registered homebuilders and developers; 20

(b) prescribing procedures for the registration of homebuilders and developers and the expiry of that registration;

(c) prescribing procedures for enrolment of homes;

(d) regulating the application of Technical Requirements to homes financed by a State housing subsidy; 25

(e) prescribing procedures for the consideration of applications for assistance by housing consumers from a fund or funds of the Council;

(f) prescribing a code of conduct;

(g) prescribing the conditions on which a homebuilder whose registration was cancelled in terms of this Act, may re-register in terms of Chapter III; 30

(h) prescribing grading categories and criteria in respect of homebuilders with a view to encourage good building practice and discourage bad building practice;

(i) prescribing the manner of service of notices or any documents required to be served in terms of this Act; and 35

(j) prescribing any matter which is necessary or desirable to be prescribed by the Board, in order to achieve the objectives of this Act.

(2) Before the Board makes any rules under this section, it must publish a draft of the proposed rules in the *Gazette* together with a notice inviting interested persons to comment, in writing, within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice. 40

(3) If the Board amends the draft rules because of any comment, it need not publish those amendments before making the rules.

(4) The Board may, if circumstances necessitate the immediate publication of a rule, publish that rule without consultation as contemplated in subsection (2). 45

**Liability of member, staff, accredited representative, expert and adviser of Council**

**88.** A member of the Council, member of staff, an accredited representative, expert or adviser to the Council is not personally liable by virtue of any report, finding made or expressed in good faith in terms of this Act.

**Imigomo**

- 86.** (1) INdvuna ingenta imigomo lengahambisani nalo Mtsetfo macondzana nanoma ngiluphi ludzaba loludzingekako noma loluvunyelwe kuba lubekwe ngekwalo Mtsetfo, kanye nanoma ngiluphi lolunye ludzaba loluhlobene noma lekuphatsa loludzingekako ekuphatfweni nasekusebentisweni lokufanele kwalo Mtsetfo. 5
- (2) Ngaphambi kwekuba iNdvuna yente noma ngimuphi umgomo ngaphansi kwalesi sigaba, kufanele ashicilele lokusalungiswa kwemigomo lokuphakanyisiwe *kuGazethi* kanye nesatiso lesibita bantfu labanenshisekelo kuba baphawule, ngekubhala, esikhatsini lesishiwo esatisweni, lokusikhatsi lesingakavumeleki sibe ngaphansi kwetinsuku letingu-30 kusukela ngelusuku lekushicilelwa kwesatiso. 10
- (3) Uma iNdvuna achibeyala luhlaka lwemigomo ngenca yanoma ngikuphi kuphawula, akudzingeki kutsi atishicilele leto tichibiyelo ngaphambi kwekwenta imigomo.
- (4) INdvuna, uma timo tidzinga kushicilelwa kwemigomo ngekushesha, angawushicilela lowo mtsetfo ngaphandle kwekubonisana njengoba kuhlongotwe esigatjaneni (2). 15

**Imitsetfo**

- 87.** (1) Libhodi, ngekwesincomo seMkhandlu, lingenta imitsetfo macondzana nanoma ngiluphi ludzaba loludzingekako noma loluvunyelwe kuba lubekwe ngekwalo Mtsetfo kanye nanoma ngiluphi lolunye ludzaba loluhlobene noma lekuphatsa loludzingekako ekuphatfweni nasekusebenteni kahle kwalo Mtsetfo, kufaka kungagcini lapho— 20
- (a) kulawula kusebenta kwabakhi betindlu nabonjiniyela lababhalisiwe;
- (b) kubeka tinchubo tekubhaliswa kwebakhi betindlu nabonjiniyela kanye nekuphela kwesikhatsi sekubhaliswa; 25
- (c) kubeka tinchubo tekubhaliswa kwebakhi;
- (d) lelawula kusetjentiswa kwetidzingo Tebuchwepheshe emakhaya lachaswe imali yekulekelela kwetindlu yahulumende;
- (e) lencuma tinchubo tekubukwa kweticelo telusito lwebatsengi betindlu letivela esikhwameni noma etimalini teMkhandlu; 30
- (f) kuncuma indlela yekutiphatsa;
- (g) lencuma imibandzela lapho umakhi wetindlu lokwakhanselwa kubhaliswa kwakhe ngekuya kwalo Mtsetfo, angabhalisa kabusha ngekweSahluko III;
- (h) lechaza imikhakha yekulinganisa kanye nenchubo macondzana nebakhi betindlu ngenhloso yekukhutsata kwentiwa lokuhle kwekwakhiwa nekuncandza kwentiwa lokungakalungi kwekwakha; futsi 35
- (i) umise indlela yekwetfulwa kwetimemetelo nobe leminye imiculu ledzinga kutfulwa ngekwaloMtsetfo; futsi,
- (j) lencuma noma ngiluphi ludzaba loludzingekako noma lolufiselekako kuba lubekwe liBhodi, kute kuzuzwe tinhloso talo Mtsetfo. 40
- (2) Ngaphambi kwekuba liBhodi lente noma ngimiphi imitsetfo ngaphansi kwalesi sigaba, kufanele ushicilele luhlaka lwemitsetfo lephakanyiswe *kuGazethi* kanye nesatiso lesimema bantfu labanenshisekelo kutsi baphawule, ngekubhala, kungakapheli sikhatsi lesishiwo esatisweni, lokungaba sikhatsi lesingaphansi tinsuku letingu-30 kusukela ngelusuku lekushicilelwa kwesatiso. 45
- (3) Uma liBhodi lichibeyala luhlaka lwemitsetfonchubo ngenca yanoma ngikuphi kuphawula, akudzingeki kutsi atishicilele leto tichibiyelo ngaphambi kwekwenta imitsetfonchubo.
- (4) Libhodi uma, uma timo tidzinga kushicilelwa kwemitsetfo ngekushesha, ungashicilela lowo mtsetfo ngaphandle kwekubonisana njengoba kuhlongotwe esigatjaneni (2). 50

**Sibopho selilunga, basebenti, bammele ngekusemtsetfweni, chwepheshe kanye nemeluleki weMkhandlu**

- 88.** Lilungu leMkhandlu, basebenti, bamele ngekusemtsetfweni, chwepheshe kanye nemeluleki weMkhandlu babopheki ngekwapo ngenca yanoma ngimuphi umbiko, lekutfolwe kwentiwa noma kuvetwe ngekutsembeka ngekwalo Mtsetfo. 55

**Code of conduct**

**89.** (1) The Minister must, by notice in the *Gazette*, publish a code of conduct for members of the Board.

(2) The Council must, by notice in the *Gazette*, publish a code of conduct for homebuilders and developers and may publish a code of conduct for other role-players within the home building industry. 5

**State bound**

**90.** This Act binds the State.

**Repeal of laws**

**91.** The Housing Consumers Protection Measures Act is hereby repealed. 10

**Savings**

**92.** Any regulation made in terms of a provision that is repealed under section 91 remains valid to the extent that it is consistent with this Act and must be regarded as having been made in terms of this Act.

**Transitional provisions** 15

**93.** (1) Any reference in any document, including a contract, or legislation to the National Homebuilders Registration Council established in terms of section 2 of the Housing Consumers Protection Measures Act, is deemed to be a reference to the National Home Building Regulatory Council referred to in section 4 of this Act.

(2) The home warranty fund established in terms of section 15(4) of the Housing Consumers Protection Measures Act, continues to exist. 20

(3) Any claim that has been initiated in terms of the Housing Consumers Protection Measures Act must be finalised in terms of that Act.

(4) Any person employed by or appointed in terms of a contract to provide a service to the National Homebuilders Registration Council continues to be employed or appointed by the National Home Building Regulatory Council. 25

(5) Any provision of this Act that imposes a duty, which did not exist before the commencement of this Act, on a person, applies only in relation to a home that is enrolled in terms of Chapter IV of this Act after the date of commencement of this Act.

(6) Part 1 of Chapter VI of this Act applies only to invitations for tenders or requests for expression of interest, published or communicated by employers after the commencement date of this Act. 30

(7) Any expression of interest, tender offer or quotation submitted in relation to an invitation for an expression of interest or tender offer that was issued before the commencement date of this Act, may be evaluated in accordance with the conditions under which that invitation for an expression of interest or tender offer was requested. 35

(8) Parts 2 and 3 of Chapter VI of this Act apply only to a home building contract entered into after the commencement of this Act, and any payment or dispute resolution in terms of those contracts entered into before that date of commencement of this Act, must be made or settled in terms of the contracts. 40

(9) 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.

(10) Any transgression of this Act that is committed before the date of commencement of this Act must be investigated and the disputes arising therefrom must be resolved in terms of the Housing Consumers Protection Measures Act, and for that purpose, the Disciplinary Committee established in terms of that Act continues to exist. 45

**Indlela yekutiphatsa**

**89.** (1) INdvuna kufanele, ngesatiso *kuGazethi*, ashicilele indlela yekutiphatsa yemalunga eliBhodi.

(2) UMkhandlu kumele, ngesatiso kuGazethi, ushicilele indlela yekuziphatsa yebakhi betindlu nabonjiniyela futsi ungashicilele indlela yekutiphatsa yalabanye lababambe lichaza embonini yekwakha tindlu. 5

**Umbuso lobophelekile**

**90.** LoMtsetfo ubophelela uMbuso.

**Kucitfwa kwemitsetfo**

**91.** Ngako uMtsetfo Wekulinganiswa Kwebatsengi Betindlu uyachitfwa. 10

**Lokongiwe**

**92.** Noma ngimuphi umtsetfonchubo lowentiwe ngekwemibandzela lechitfwe ngaphansi kwesigaba 91 uhlala usebenta kete kufike ezingeni lekutsi uyahambisana nalo Mtsetfo futsi kufanele utsatfwe njengalowentiwe ngekwalo Mtsetfo.

**Lokutokwenteka ngalesikhatsi lesisemkhatsi** 15

**93.** (1) Noma ngikuphi kukhonjiswa kunoma ngimuphi umbhalo, kufaka ekhatsi inkontileka, noma umtsetfo weMkhandlu Wavelonkhe Wekubhaliswa Kwebakhi Betindlu losungulwe ngekwesigaba 2 seMtsetfo Wetinyatselo Tekuvikelwa Kwebatsengi Betindlu, kutsatfwa njengokukhulunywa ngeMkhandlu Walelonkhe Wekulawulwa Kwekwakhiwa Kwetindlu lekukhulunywe ngawo esigabeni 4 walo Mtsetfo. 20

(2) Sikhwama sewaranti yasekhaya lesisungulwe ngekwesigaba 15(4) seMtsetfo Wetinyathelo Tekuvikelwa Kwebatsengi Betindlu, siyachubeka nekuba khona.

(3) Noma ngisiphi simangalo lesicaliswe ngekeMtsetfo Wetinyatselo Tekuvikelwa Kwebatsengi Betindlu kumele siphotfulwe ngekwalo Mtsetfo. 25

(4) Noma ngumuphi umuntfu locashwe noma locokwe ngekwesivumelwano sekuniketa ngemsebenti kuMkhandlu Wavelonkhe Wekubhalisa Bakhi Betindlu uyachubeka nekucashwa noma acokwe nguMkhandlu Walelonkhe Wekulawulwa Kwekwakhiwa Kwemakhaya.

(5) Noma ngikuphi kuniketwe kwalo Mtsetfo lokubeka umsebenti, lowawungekho ngaphambi kwekucala kwalo Mtsetfo, kumuntfu, kusebenta kuphela macondzana nelikhaya lelibhaliswe ngekeSahluko IV salo Mtsetfo ngemuva kwelusuku lekucala kwalo Mtsetfo. 30

(6) Incenye 1 yeSahluko VI salo Mtsetfo isebenta kuphela kutimemo temathenda noma ticelo tekuveta inshisekelo, letishicilelwe noma letitfunyelwe bacashi ngemuva kwelusuku lekucala kwalo Mtsetfo. 35

(7) Noma ikuphi kuvetwa kwetishisekelo, kuniketwa kwethenda noma ikhotheshini leletfwe macondzana nesimemo sesibonakaliso sentalo noma kuniketwa kwethenda lokukhishwe ngaphambi kwelusuku lekucala kwalo Mtsetfo kusebenta, kungahlolwa ngekuya ngetimo lapho lesa simemo sesiphakamiso intalo noma kuniketwa kwethenda kuceliwe. 40

(8) Tincenye 2 na-3 teSahluko VI salo Mtsetfo tisebenta kuphela kunkontileka yekwakhiwa kwetindlu lengenwe ngemuva kwekucala kwalo Mtsetfo, futsi noma ngikuphi kukhokha noma kusionjululwa kwetiphikiswano ngekuya ngaletto tinkontileka lokungenwe kuto ngaphambi kwalolo suku lekucala kwalo Mtsetfo kusebenta, kufanele letentiwe noma tacatululwa ngekwetivumelwano. 45

(9) Umakhi wendlu lowenta kulungiswa, kugculwa nekwengetwa ekhaya lapho kucala kwakhiwa kwalo ngemuva kwelusuku lekucala kwalo Mtsetfo, kumele abhaliswe njengemakhi wetindlu.

(10) Noma ngikuphi kwephulwa kwalo Mtsetfo lokwentiwa ngaphambi kwelusuku lekucala kwalo Mtsetfo kusebenta kumele kuphenywe futsi tiphikiswano letivela ngenca yaloko kufanele tingasonjululwa ngekeMtsetfo Wetinyatselo Tekuvikelwa Kwebatsengi Betindlu, futsi ngaleyo njongo, liKomidi Lekucondziswa Kwetigwegwe lelisungulwe ngekwaloko Umtsetfo uyachubeka nekubakhona. 50

(11) Anything done or any permission granted or restriction imposed in terms of the Housing Consumers Protection Measures Act, is deemed to have been done, granted or restricted in terms of this Act.

(12) The members of the Council established in terms of section 2 of the Housing Consumers Protection Measures Act, continue to act as such after the commencement of this Act, until the date on which the Minister has appointed the members to the Board in terms of section 6 of this Act. 5

(13) The Minister must appoint the first Board in terms of this Act within six months after the commencement of this Act.

(14) The Council may lift the suspension of a homebuilder whose registration was suspended before the commencement of this Act in terms of the Housing Consumers Protection Measures Act, if the lifting of the suspension does not affect the housing consumer concerned adversely. 10

(15) The Council is not liable for any loss or damage suffered by a homebuilder or a developer as a result of the suspension contemplated in subsection 14. 15

#### Short title and commencement

**94.** (1) This Act is called the Housing Consumer Protection Act, 2024.

(2) This Act commences on a date determined by the Minister by notice in the *Gazette*, and different dates may be determined in relation to different sections of this Act. 20

(3) Notwithstanding subsection (2), the Minister may relax any provision of this Act for a period not exceeding two years, with a view to the equitable implementation of this Act.

(11) Noma yini leyentiwako noma imvume leniketiwe noma umkhawulo lobekiwe ngekweMtsetfo Wetinyatselo Tekuvikelwa Kwebatsengi Betindlu, kutsatfwa njengekutsi kwentiwe, kwaniwetwa noma kwavinjelwa ngekwalo Mtsetfo.

(12) Emalunga eMkhandlu lasungulwe ngekwesigaba 2 seMtsetfo Wetilinganiso Tebatsengi Betindlu, achubeka nekusebenta kanjalo ngemuva kwekucala kusebenta kwalo Mtsetfo, kute kube lusuku iNdvuna acoke ngalo emalungu eliBhodi ngekwesigaba 6 walo Mtsetfo. 5

(13) INdvuna kufanele acoke liBhodi yekucala ngekwalo Mtsetfo etinyangeni letisitfupha emva kwekucala kwalo Mtsetfo.

(14) UMkhandlu ungakususa kumiswa kukamakhi lokwamiswa kubhaliswa kwakhe ngaphambi kwekucala kwalo Mtsetfo ngekweMtsetfo Wetinyatselo Tekuvikelwa Kwebatsengi Betindlu, uma kuphakanyiswa kwaloku kumiswa kungatsintsi umtsengi wetindlu lotsintsekako. 10

(15) UMkhandlu awukabopheleleki kunoma ngikuphi kulahlekelwa noma kulimala lokwenteki kumakhi noma kunjinyela ngenca yekumiswa lokuvetwe esigatjani 14. 15

#### **Sihloko lesifushane nekucala kusebenta**

**94.** (1) LoMtsetfo ubitwa ngekutsi uMtsetfo Wekuvikelwa Kwebatsengi Betindlu, 2024.

(2) LoMtsetfo ucala ngelusuku loluncunywe nguNdvuna ngesatso kuGazethi, futsi kungancunywa tinsuku letahlukahlukene macondzana netigaba letahlukahlukene taloMtsetfo. 20

(3) Ngaphandle kwesigatjana (2), iNdvuna angaphumata noma ngikuphi kuniketwa kwaloMtsetfo sikhatsi lesingengi eminyakeni lemibili, ngenhloso yekusetjentiswa ngekulingana kwalo Mtsetfo.

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