



CONSTRUCTION & ENGINEERING

Housing consumer rights headed in the right direction

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On Monday, 27 January 2025, while global news headlines flooded with the Expropriation Bill being enacted a few days prior, President Cyril Ramaphosa also quietly signed the Housing Consumer Protection Bill ("**the New Act**") into law, which warrants commendation.

The Housing Consumers Protection Measures Act, 95 of 1998 commenced on 4 June 1999 ("**the 1999 Act**") and was hailed as a significant step towards enhancing the quality and safety of residential construction in South Africa^[1].

The 1999 Act envisaged the provision of protection for housing consumers and to establish and provide for the functions of the National Home Builders Registration Council ("**NHBRC**").

Under the Act, the NHBRC was tasked, among other things, to create a fund, the purpose of which would, not unlike the Attorneys Fidelity Fund, protect consumers from egregious losses in the event of improper building practices. The NHBRC would be responsible for overseeing, against payment of an enrolment fee, the registration of homes and their inspection and certification upon completion. With these fees (which are tariff based), the fund was established.

The 1999 Act banned the construction of homes by persons not registered with the council and did not permit such persons to receive payment for the construction of a home unless registered with the NHBRC (against pain of a fine or imprisonment). The Act also entitled housing consumers to raise claims against the fund administered by the NHBRC in circumstances where "major structural defects" manifested during the first five year period from the date of occupation of the home, or a shorter period (12 months) in relation to roof leaks attributable to workmanship, design or materials in the event that the home builder did not when called upon to do so.

In terms of the general Regulations promulgated under the 1999 Act on 1 December 1999 ("**The Regulations**") (just over 25 years ago) regulation 13 provides: "*The maximum amount that may be expended by the Council ... is the selling price of the home as declared by the homebuilder at the time of the enrolment of the home, up to a maximum amount of R500 000.00*".

And what then is a "major structural defect"? The Regulations also spelled out the technical requirements for structural strength and integrity, serviceability, fire safety, stormwater disposal, design, construction and materials (albeit at a fairly general level, and therefore open to some interpretation).

Over the 25 years since the 1999 Act came into law, it was amended three times. However over time, the NHBRC and the Department of Human Settlements identified challenges which negatively impacted the NHBRC's mandate. The Regulations have also not been updated since 1999.

Among other things, the New Act repeals the 1999 Act and introduces:

- **Enhanced accountability and rigour**

- the application of the Public Finance Management Act to the NHBRC, its board members and the funds managed by it;
- a code of conduct for NHBRC members, homebuilders, developers and other industry role players;
- a more detailed procedure relating to the registration of homebuilders (enhanced requirements for the registration, status, cancellation or suspension and grading of homebuilders and related record keeping by the NHFC); and
- for financial institutions, estate agents, and conveyancers – who are all now individually required to ensure compliance with the New Act, including, in particular, in relation to the enrolment of the home being built/renovated with the NHBRC.

- **Enhanced transparency**

- improved rigour in relation to record keeping by the NHBRC; and
- the application of the Promotion of Access to Information Act 2 of 2000.

- **Enhanced recourse for consumers**

- the extension of roof warranty claims from 12 months to two years;
- repairs, renovations, alterations and extensions to existing homes (and not only new builds) are now included in the NHBRC's region of oversight; and
- personal liability for the members, directors or trustees of a homebuilder.

- **An enhanced social and commercial environment**

- the creation of an enabling environment for new entrants to the home building industry by the introduction of contractual provisions that ensure their sustainability in the market; and
- economic transformation of the industry through the introduction of a warranty fund surplus to be used in relation to developmental programmes for the homebuilding industry.

- **Other**

- a requirement that both builders who undertake home building as a business, and owner-builders, must register with the NHBRC; and
- the fund now being referred to as the “*home warranty fund*”, with the NHBRC now being empowered to underwrite this fund as well.

Based on the transitional provisions of the New Act, any complaint initiated under the old Act will now continue under the New Act, with the fund under the old Act continuing to exist in the form of the “home warranty fund”. Furthermore, any regulations made under the old Act will, to the extent that they are consistent with the New Act, remain valid, presumably until new Regulations can be promulgated.

Regulations and other directions under the New Act will include *inter alia*:

- the maximum threshold for claims which can be made by housing consumers (this is currently only R500 000 under the existing Regulations);
- the applicable fees for enrolment and registration;
- the codes of conduct; and
- the Home Building Manual which will set out the technical requirements for the structural integrity of a home.

Realistically, *any* major structural defect will cost a lot to address. R500 000 may have been a lot in 1999, but with the ever-changing value of money over time, this amount is not always going to satisfy, or even come close to satisfying, the costs of serious structural defects in today's terms. According to *inflationdata.org*, in today's terms, the value of R500 000 in 1999 would translate to approximately R1,800 000. That is more than triple the original amount, and even that is unlikely to satisfy the costs of a very serious structural defect.

The above thresholds and guidelines will need to be enhanced and updated, but the promulgation of the New Act is certainly a positive development in the home building environment.



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