

**DEPARTMENT OF HOUSING
DEPARTEMENT VAN BEHUISING**

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**National Home Builders Registration Council
Code of Conduct for Home Builders**

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

SCOPE

- The Housing Consumers Protection Measures Act (Act 1995 of 1998) makes provision for the protection of housing consumers and regulation of the home building industry. The Act in this regard enables the National Home Builders Registration Council (*NHBRC*) to establish, promote technical and ethical standards in the home building industry.
- Section 7 (1) (a) (ix) of the Act provides that the Council may make rules prescribing a code of conduct.
- This Code of Conduct has been drawn up to provide the minimum standards to be maintained by all NHBRC Home Builders (*a person who carries on the business of a home builder*)
- All NHBRC Home Builders shall observe this Code of Conduct.
- The Home Builders are required to have signed an undertaking that they have received a copy of this Code of Conduct as a condition of Membership.
- Changes to the Code of Conduct will be issued from time to time.

GOVERNMENT GAZETTE. NHBRC' CODE OF CONDUCT FOR HOME BUILDERS

CHAPTER ONE

DEFINITIONS

The purpose of this chapter is to define words to which a meaning is attached which expands on the dictionary meaning of the word.

Definitions

1. In this Code of Conduct, unless the context otherwise indicates-

(a) **"Additional Costs"** means any costs not included in the contract price and which are or may be payable under a fixed cost building contract or sale agreement, such as costs for:

Soil testing
Engineer's service
Plan drawing
Plan approval
Transfer (including transfer duty and bond registration)
Inspections
Electrical cable connection
Sewerage connection and other service connections

(b) **"Advance payment"** means any amount of money paid by a housing consumer (in relation to a Building Contract) to a home-builder before completion of work equal in value to the advance. This shall include other amounts the housing consumer may have paid to the home-builder for the construction of a home.

Note:

"Advance payments" exclude additional costs

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

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

-full name;

-company or close corporation's registration number;

GOVERNMENT GAZETTE. NHBRC CODE OF CONDUCT FOR HOME BUILDERS

-names of all directors of company or members of close corporation;
 -physical and contact address where the home builder can be contacted;
 -business telephone number
 -business fax number (if any), e-mail address (if any).

The name of the contact person for the housing consumer NHBRC registration number.

- (e) "Contract Price" means the amount payable by a housing consumer to a home-builder for the construction of a home in terms of a fixed cost building or sale agreement.
- (9)** "Cost-plus building contract" means a contract where the housing consumer pays the actual costs of all the services, labour and materials needed to build the home and a percentage or fixed sum as a fee to the home builder
- (g) "Deposit" means monies paid by a housing consumer to a home-builder before the home builder starts building or land is registered in the housing consumer's name.
 (excluding additional costs)
- (h) "Fixed Cost Building Contract" means a contract where the home-builder pays for all the material, labour needed for the building of a home, subject to additional costs as defined and also referred to in rules 8.8.10 and 8.8.11
- (i) "Housing Contract" means agreement entered into between a home builder/Developer and a housing consumer wherein a home builder undertakes to provide a housing consumer with a home for a specified fee.
- (j)** "Instalment Sale" means a sale agreement that is a "contract" as defined in the Alienation of Land Act, 1981 (Act No. 68 of 1981)

GOVERNMENT GAZETTE, NHBRC CODE OF CONDUCT FOR HOME BUILDERS

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

CHAPTER TWO

GENERAL DUTIES OF HOME BUILDERS

The purpose of this chapter is to outline the general duties of home builders.

2. A Home-builder must:
- (a) give service and conduct business affairs in a competent, honest and fair manner taking into account the standard of services and conduct expected of home builders in general.
 - (b) honour all the obligations and statutory warranties imposed on a home builder in terms of the Act and comply with all the duties of a home builder set out in the Act.
 - (c) comply with all laws that apply to the home building industry:
 - (i) the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977)
 - (ii) laws concerning the health, safety and welfare of housing consumers, the alienation of Land Act, 1981 (Act No. 68 of 1981);
 - (d) respect the copyright on building plans, whether or not approved by a Municipality.
 - (e) treat all consumers fairly, regardless of their race, gender, sex, marital status, ethnic or social origin, sexual orientation, age, disability, religion, conscience, belief, culture or language, unless any law permits otherwise
 - (f) Apply sound business administration systems and conduct financial affairs in such a way to meet all obligations to housing consumers.

GOVERNMENT GAZETTE. NHBRC CODE OF CONDUCT FOR HOME BUILDERS

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

CHAPTER THREE

DUTY TO DISCLOSE

- 3. A home builder must, before asking or permitting a housing consumer to sign a housing contract:
 - (a) explain all the facts pertaining to the home and land of which he/she is aware or should reasonably be aware, which may affect the housing consumer:
 - (b) give the housing consumer thirty (30) calendar days to examine the contract and other relevant documents.
 - (c) ensure that the agreement contains all representations and promises made to the consumer.

CHAPTER FOUR

EXCLUSIONS FROM CONTRACT

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

CHAPTER FIVE

DUTIES BEFORE CONSTRUCTION

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

GOVERNMENT GAZETTE. NHBRC CODE OF CONDUCT FOR HOME BUILDERS

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

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

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

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

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

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

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

CHAPTER SIX

DUTIES IN RESPECT OF FINANCIAL MATTERS

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

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