

CHAPTER II REGISTRATION OF HOME BUILDERS

10. Registration of home builders.

(1) No person shall—

(a) carry on the business of a home builder; or

(b) receive any consideration in terms of any agreement with a housing consumer in respect of the sale or construction of a home, unless that person is a registered home builder.

(2) No home builder shall construct a home unless that home builder is a registered home builder.

(3) The Council shall register a home builder, on application in the form and manner prescribed by the Council, if the Council is satisfied that the home builder

(a) meets the criteria prescribed by the Minister under section 7 (2);

(b) will in carrying on the business of a home builder comply with the home builder's obligations in terms of this Act; and

(c) has appropriate financial, technical, construction and management capacity for the specific business carried on by the home builder in order to prevent housing consumers and the Council from being exposed to unacceptable risks.

(4) Registration of a home builder shall be subject to the terms and conditions prescribed by the Minister under section 7 (2) or imposed in any particular case, and the Council may register a home builder provisionally on the conditions that the Council deem fit.

(5) The Council may, without prejudice to the generality of subsections (3) and (4), require any suretyship, guarantee, indemnity or other security that the Council may in its discretion deem necessary to satisfy itself in respect of the requirements contemplated in subsection (3).

(6) The Council may, in addition to any other category that the Council may deem appropriate, in the registration of home builders distinguish between—

(a) home builders themselves having the capacity to undertake the physical construction of homes or to manage the process of the physical construction of homes; and

(b) home builders who in the normal course need to enter into agreements with other home builders in order to procure the capacity referred to in paragraph (a).

(7) A home builder registered in terms of subsection (6) (b) shall be obliged, for the purposes of the physical construction of homes, to appoint a home builder registered in terms of subsection (6) (a).

(8) If an application for the registration of a home builder has been made and the Council is of the opinion that the registration of that homebuilder should be refused, the Council shall notify that home builder in writing of its intention and reasons therefor.

(9) A home builder contemplated in subsection (8) shall be entitled to make representations in writing to the Council in response to any reason provided in terms of that subsection.

(10) If the Council, after consideration of the representations contemplated in subsection (9), is of the view that the home builder has not satisfied the Council regarding the requirements of subsection (3), the Council shall notify that home builder accordingly.

(11) A home builder contemplated in subsection (10) may request the Council within 30 days of receipt of a notification referred to in that subsection, to allow the home builder to present its case to a registration committee established by the Council for that purpose, whose decision shall be the decision of the Council and which shall, subject to section 22 (2), be final.

(12) If a home builder fails to exercise its rights in terms of subsection (11), the decision contemplated in subsection (10) shall, subject to section 22 (2), be final.

(13) Unless it is approved by the Council and subject to the terms and conditions that the Council may impose, the registration of a home builder with the Council shall not be transferred to any other person.

(14) The Council shall provide information regarding home builders to housing consumers and shall publish lists of home builders and their grading and lists of deregistered home builders.

(15) The Council, a member of the Council or any person in the service of the Council or acting on its authority shall not be liable for any loss or damage resulting from anything done or omitted in good faith in terms of section 9, 10 or 11 of this Act.

(Date of commencement of s. 10: 1 December, 1999.)

10A. Owner builder exemption.

An owner builder may, in terms of section 29, apply to the Council for exemption from sections 10 and 14.

[S. 10A inserted by s. 4 of Act No. 17 of 2007.]

11. Withdrawal and suspension of registration.

(1) The Council may withdraw the registration of a home builder where the home builder has been found guilty by the disciplinary committee on a charge that such home builder—

(a) has failed to comply with any provision of or obligation in terms of this Act and fails to comply with a notice from the Council requiring rectification of that failure;

(b) has consistently failed to comply with any one or more provision of or condition or obligation in terms of this Act—

(i) where the Council has notified the home builder of its intended withdrawal of the home builder's registration with the Council, and has requested the home builder to provide reasons as to why the Council should not withdraw the home builder's registration with the Council; and

(ii) where the Council is not satisfied, on reasonable grounds, that the home builder will comply with any particular provision of or condition or obligation in terms of this Act;

(c) has failed to comply with a notice from the Council requiring the home builder to pay amounts due to the Council on account of any fee, charge or levy or any costs incurred or expended by the Council related to the failure of the home builder to comply with section 13 (2)

(b) (i);

(d) has contravened the code of conduct made under the Rules; or

(e) has failed to respond to correspondence from the Council.

(2) The provisions of section 10 (8), (9), (10), (11) and (12) shall, with the necessary changes, apply to a withdrawal of the registration of a home builder.

(3) Where the Council has information that would—

(a) enable the Council to act in terms of subsection (1); and

(b) require immediate intervention by the Council in the interest of housing consumers, the Council, after having notified the home builder and after having allowed the home builder an opportunity to urgently respond to the Council, may suspend the registered home builder's registration or refuse to enrol homes for the period that the Council deems to be necessary to investigate the matter or until the registered home builder has complied with the relevant provision of or condition or obligation in terms of this Act, as the case may be.

(Date of commencement of s. 11: 1 December, 1999.)

14. Enrolment.

(1) A home builder shall not commence the construction of a home falling within any category of home that may be prescribed by the Minister for the purposes of this section unless—

(a) the home builder has submitted the prescribed documents, information and fee to the Council in the prescribed manner;

(b) the Council has accepted the submission contemplated in paragraph (a) and has entered it in the records of the Council; and

(c) the Council has issued a certificate of proof of enrolment in the prescribed form and manner to the home builder.

(Date of commencement of sub-s. (1): 1 December, 1999.)

(2) A home builder shall not commence the construction of a home the acquisition of which will be financed solely from the proceeds of a state housing subsidy, unless—

(a) the home builder has submitted the prescribed documents and information to the Council in terms of the agreement contemplated in section 5 (4) (c);¹⁷

(b) the Council has accepted the submission contemplated in paragraph (a) and has entered it in the records of the Council;

(c) the Council has issued a certificate of proof of enrolment of the project in the prescribed form and manner to the home builder; and

(d) the MEC has paid the prescribed fee to the Council in terms of the agreement contemplated in section 5 (4) (c).

(Date of commencement of sub-s. (2) to be proclaimed.)

[Sub-s. (2) amended by s. 5 of Act No. 17 of 2007.]

(3) A home builder shall provide the housing consumer with a copy of the certificate contemplated in subsection (1) (c) or (2) (c), as the case may be.

(Date of commencement of sub-s. (3): 1 December, 1999.)

(4) The enrolment of a home with the Council may be cancelled or suspended by the Council prior to the occupation date of the home if—

(a) the Council, on reasonable grounds, is not satisfied that the home has been constructed in accordance with the NHBRC Technical Requirements to the extent that it may apply to that home; or

(b) the home builder, having commenced construction in respect of a home, has failed to complete the construction of that home and another home builder continues that construction without complying with the provisions of subsection (7).

(Date of commencement of sub-s. (4): 1 December, 1999.)

(5) The enrolment of a home with the Council shall be deemed automatically to have been cancelled by the Council—

(a) on the granting of an order by a court for the provisional liquidation or the sequestration of a home builder;

(b) on the withdrawal of the registration of the home builder with the Council in terms of section 11; or

(c) on the suspension of the registration of a home builder with the Council in terms of section 11,

where any such event occurs prior to the occupation date.

(Date of commencement of sub-s. (5): 1 December, 1999.)

(6) The Council may re-instate an enrolment contemplated in subsection (4) or (5) within its discretion: Provided that if the Council does not reinstate such enrolment, it shall repay to the home builder, or any person entitled thereto, the enrolment fees less the reasonable costs incurred by the Council in respect of the matter.

(Date of commencement of sub-s. (6): 1 December, 1999.)

(7) If a registered home builder fails to complete the construction of a home contemplated in subsections (1) and (2), no home builder shall complete the construction of that home without informing the Council and without assuming the obligations of the home builder in terms of section 13 (2) (b) (i) or the reasonable obligations that the Council may require.

[Sub-s. (7) amended by s. 2 of Act No. 27 of 1999.]

(Date of commencement of sub-s. (7): 1 December, 1999.)

(8) The Council may refuse to enrol a home submitted for enrolment while the home builder's registration is suspended in terms of section 11 (3).¹⁸

(Date of commencement of sub-s. (8): 1 December, 1999.)

(9) Where an enrolment has been suspended or cancelled in terms of subsection (4) or (5), the Council shall seek—

(a) to inform the relevant housing consumer and the persons referred to in section 18 of such action; and

(b) to advise the housing consumer on the options available to him or her.

(Date of commencement of sub-s. (9): 1 December, 1999.)

14A. Late enrolment and non-declared late enrolment.

(1) Where a home builder—

(a) in contravention of section 14 submits an application for the enrolment of a home to the Council after construction has started; or

(b) does not declare the fact that construction has commenced at the time of enrolment and the Council becomes aware of that fact, the Council shall require the home builder to satisfy the Council that the construction undertaken at the time is in accordance with the NHBRC Technical Requirements and shall take prudent measures, contemplated in section 16 (1), to manage the risks pertaining to the fund.

(2) In the case of late enrolment and non-declared late enrolment, the home builder shall—

(a) submit to the Council such documentation and information as may be prescribed in the Council Rules;

(b) at the request of the Council, pay a prescribed late enrolment fee in an amount determined by the Council for a special inspection to be undertaken by the Council to enable an inspector to determine compliance with NHBRC Technical Requirements, prior to the acceptance of enrolment;

(c) at the request of the Council, and prior to the acceptance of the enrolment, rectify any defects detected during the inspection contemplated in paragraph (b)—

(i) that may influence the structural integrity of the home; or

(ii) that constitute non-compliance with the NHBRC Technical Requirements, at the home builder's cost and under the supervision of a competent person appointed by the home builder;

(d) at the request of the Council, in circumstances where an inspector is unable to determine compliance with the NHBRC Technical Requirements, for whatever reason, appoint a competent person—

(i) to inspect the home; and

(ii) to complete a late enrolment report in the form prescribed in the Council Rules to confirm compliance with the NHBRC Technical Requirements;

(e) undertake any work, and pay for any costs resulting from such work, to expose work already done in order to enable the competent person to address all questions raised in the late enrolment report contemplated in paragraph (d) (ii); and (f) at the request of the Council provide any surety, guarantee, indemnity or other security considered reasonable by the Council to satisfy its obligations under section 16 (1).¹⁹

(3) Notwithstanding the provisions of this section, the Council may prescribe disciplinary measures for late enrolment and non-declared late enrolment which are not inconsistent with this Act.

[S. 14A inserted by s. 6 of Act No. 17 of 2007.]

21. Offences.

(1) Any person who—

(a) knowingly withholds information required in terms of this Act or furnishes information that he or she knows to be false or misleading; or

(b) contravenes section 10 (1) or (2), 13 (7), 14 (1) or (2), 18 (1) or (2) or 19 (5),

[Para. (b) substituted by s. 9 of Act No. 17 of 2007.]

and every director, trustee, managing member or officer of a home builder who knowingly permits such contravention, shall be guilty of an offence and liable on conviction to a fine not exceeding R25 000, or to imprisonment for a period not exceeding one year, on each charge.

(2) Notwithstanding anything to the contrary in any other Act, a magistrate's court shall have jurisdiction to impose any penalty prescribed by this Act.

(Date of commencement of s. 21: 1 December, 1999.)