

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**NATIONAL HOME BUILDERS
REGISTRATION COUNCIL BILL**

[B 76B—98]

(As agreed to by the Portfolio Committee on Housing (National Assembly))

[B 76C—98]

REPUBLIEK VAN SUID-AFRIKA

**PORTEFEULJEKOMITEE-AMENDEMENTE
OP**

**WETSONTWERP OP DIE
NASIONALE
HUISBOUERSREGISTRASIERAAD**

[W 76B—98]

(Soos goedgekeur deur die Portefeuljekomitee oor Behuising (Nasionale Vergadering))

[W 76C—98]

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AMENDMENTS AGREED TO

NATIONAL HOME BUILDERS REGISTRATION COUNCIL BILL [B 76B—98]

CLAUSE 1

1. On page 4, in line 27, after “home” to insert:

or to cause a home to be constructed
2. On page 4, from line 31, to omit “but does not include the activities of a *bona fide* estate agent as contemplated in the Estate Agent’s Act, 1976 (Act No. 112 of 1976)”.
3. On page 4, after line 35, to insert:

but does not include—

 - (i) the *bona fide* building of a home by any person for occupation by that person;
 - (ii) the *bona fide* assistance to a person contemplated in paragraph (i) by a person who is not a registered home builder, in the building of a home; or
 - (iii) the sale or disposal by a housing consumer of his or her *bona fide* home;
4. On page 4, in line 40, to omit the words preceding paragraph (a) and to substitute:

(iv) “competent person” is a registered person in terms of the Engineering Professions of South Africa Act, 1990 (Act No. 114 of 1990), or a person registered in terms of section 11 of the Natural Scientific Professions Act, 1993 (Act No. 106 of 1993), and holding the indemnity insurance prescribed by the Council in respect of the certification of—
5. On page 6, in line 6, after “14(1)” to insert “or (2), as the case may be”.
6. On page 6, from line 7, to omit the definition of “enrolment fee” and to substitute:

(x) “enrolment fee” means a fee prescribed by the Council under section 7(1)(a)(iii); (xvii)
7. On page 6, in line 11, after “15(4)” to insert “or (5)”.
8. On page 6, in line 39, to omit “7(1)(b)” and to substitute “7(2)(d)”.
9. On page 6, in line 51, to omit “on the recommendation of” and to substitute “after consultation with”.

CLAUSE 3

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause to follow Clause 2:

Objects of Council

3. The objects of the Council shall be—
 - (a) to represent the interests of housing consumers by providing warranty protection against defects in new homes;
 - (b) to regulate the home building industry;
 - (c) to provide protection to housing consumers in respect of the failure of home builders to comply with their obligations in terms of this Act;
 - (d) to establish and to promote ethical and technical standards in the home building industry;
 - (e) to improve structural quality in the interests of housing consumers and the home building industry;
 - (f) to promote housing consumer rights and to provide housing consumer information;
 - (g) to communicate with and to assist home builders to register in terms of this Act;
 - (h) to assist home builders, through training and inspection, to achieve and to maintain satisfactory technical standards of home building;
 - (i) to regulate insurers contemplated in section 23(9)(a); and
 - (j) in particular, to achieve the stated objects of this section in the subsidy housing sector.

CLAUSE 4

1. On page 8, from line 38, to omit “, in consultation with the Cabinet and after consultation with every MEC,”.
2. On page 8, after line 41, to insert:
 - (a) who are representative of the interests of housing consumers;
3. On page 8, in line 44, to omit subparagraph (b).
4. On page 10, after line 4, to insert the following subsection:
 - (3) The members of the Council shall be appointed only after—
 - (a) the Minister has through the media and by notice in the *Gazette* invited nominations of persons as candidates for the respective positions on the Council; and
 - (b) the Minister has consulted with the MEC of every province and the parliamentary committees for housing of the National Assembly and the National Council of Provinces.
5. On page 10, after line 11, to insert the following paragraph:
 - (b) is absent from three consecutive ordinary meetings of the Council without the permission of the Council;
6. On page 10, from line 18, to omit “if there are sufficient reasons in the opinion of the Minister to do so” and to substitute:

for reasons which are just and fair

7. On page 10, from line 20, to omit subsection (5).

CLAUSE 5

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Powers of Council

5. (1) The Council—

- (a) shall establish a remuneration committee which shall advise the Council on the remuneration of the staff appointed in terms of section 6 and shall review such remuneration regularly; and
- (b) shall establish an industry advisory committee, the funds advisory committee, a registration committee and a disciplinary committee and may establish any other committee that it considers appropriate for the functioning of the Council;
- (c) may appoint the members of the committees contemplated in paragraphs (a) and (b), who may include members of the Council or outsiders, or both such members and outsiders, as the case may be; and
- (d) may prescribe the powers, composition, procedures and rules pertaining to such committees: Provided that the Minister shall prescribe the procedures of the disciplinary committee.

(2) For the purposes of subsection (1)(c), “outsiders” include—

- (a) the chair of the disciplinary committee who shall be legally qualified; and
- (b) other persons with the expertise, experience or representative capacity necessary for the functioning of such committees.

(3) The industry advisory committee shall advise the Council on any matter referred to it by the Council in respect of this Act.

(4) The Council shall—

- (a) keep a register of home builders and register and deregister home builders in accordance with criteria prescribed by the Minister;
- (b) enrol and inspect the categories of homes that may be prescribed by the Minister;
- (c) enter into agreements generally and specifically with provincial housing development boards 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, will be financed solely from the proceeds of a state housing subsidy;
- (d) establish, maintain and administer a fund contemplated in section 15(4) to provide assistance to housing consumers under circumstances where home builders fail to meet their obligations in terms of section 13(2)(b)(i);
- (e) assist in the resolution of disputes between registered home builders and housing consumers;
- (f) engage in communications to inform consumers of their rights under this Act and other relevant matters;

- (g) provide information to financial institutions, conveyancers, provincial housing development boards and any other interested person in order to assist them to comply with their obligations in terms of this Act;
 - (h) establish grading categories and criteria in respect of home builders with a view to encourage good building practice and discourage bad building practice;
 - (i) determine criteria to be applied in the grading of home builders in different categories for the purposes of differentiated enrolment fees;
 - (j) investigate, at the request of the Minister, the integration of the register of home builders into a possible general register of builders and make recommendations to the Minister; and
 - (k) advise the Minister on any matter referred to it by the Minister in respect of the protection of housing consumers or the objectives of this Act.
- (5) The Council may—
- (a) engage in undertakings to promote improved structural quality of homes constructed in the Republic;
 - (b) engage in undertakings to improve ethical and technical standards in the home building industry;
 - (c) establish, maintain and administer different funds for different purposes contemplated in section 15(5);
 - (d) keep a record of competent persons;
 - (e) issue circulars to be complied with by registered home builders;
 - (f) acquire, register, deal with and dispose of any trade mark;
 - (g) make recommendations to the Minister in respect of any amendment to this Act that it deems advisable; and
 - (h) generally do all things necessary or expedient to achieve its objects and the objectives of this Act.

CLAUSE 6

1. On page 12, after line 17, to insert the following subsection:

(4) The Council shall ensure that all inspectors appointed in terms of section 19(1) have appropriate experience or qualifications.

CLAUSE 7

1. On page 12, from line 24, to omit subparagraph (iii) in its entirety.
2. On page 12, from line 26, to omit subparagraph (iv) and to substitute:
 - (iii) prescribing enrolment fees in respect of homes or categories of homes and other fees, excluding the fees contemplated in subsection (2);
3. On page 12, from line 40, to omit “and procedures for disciplinary proceedings before the registration committee in respect of alleged misconduct of home builders and make provision for fines or other penalties to be imposed on home builders who contravene that code of conduct”.
4. On page 12, from line 45, to omit paragraph (b).

5. On page 12, after line 49, to insert:

- (2) The Minister shall prescribe—
 - (a) application fees, registration fees and annual registration renewal fees;
 - (b) the terms and conditions for the registration and renewal of registration of home builders;
 - (c) procedures for disciplinary proceedings before the disciplinary committee in respect of alleged misconduct of home builders and make provision for fines and other penalties to be imposed on home builders who contravene the code of conduct prescribed by the Council;
 - (d) requirements applying to a home builder for the design and construction of prescribed homes in respect of structural strength and stability, serviceability, behaviour in fire, drainage and storm water management; and
 - (e) the minimum and maximum amounts which may be expended under section 17(1) in respect of any home pursuant to the failure of a home builder to meet his or her obligations in terms of section 13(2)(b)(i).

CLAUSE 9

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Access to information

9. (1) The Council shall keep up and provide access to an information database on the home builders registered, suspended and deregistered in terms of this Act.

(2) The database contemplated in section 9(1) shall include—

- (a) the names and identity numbers of the directors, members, trustees or partners of such companies, close corporations, trusts, partnerships or sole traders;
- (b) the number of homes enrolled by such home builders;
- (c) the number of complaints, considered valid by the Council and requiring on-site conciliation, received from housing consumers;
- (d) the grading of those home builders; and
- (e) any other information deemed appropriate by the Council to assist housing consumers to assess the track record of a home builder.

(3) The Council shall provide access to the information database services referred to in subsections (1) and (2)—

- (a) free of charge where this access is for the *bona fide* use of such information by a housing consumer for his or her own non-commercial use;
- (b) free of charge to mortgagees, conveyancers and provincial housing development boards to assist them to meet their obligations in terms of section 18,

and may prescribe fees for the provision of information services used for commercial or other purposes.

(4) Any person may have access to the Rules, the Home Building Manual and all circulars or other documents issued by the Council, at the places and times prescribed by the Council and may obtain copies of any such document against the payment of the fees prescribed by the Council.

CLAUSE 10

1. On page 14, from line 16, to omit subsection (1) and to substitute:
 - (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. On page 14, from line 20, to omit subsection (3).
3. On page 14, from line 25, to omit the words preceding paragraph (a) and to substitute:
 - (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);
4. On page 14, in line 27, to omit “the home builder”.
5. On page 14, in line 29, to omit “the home builder”.
6. On page 14, in line 34, to omit “Council under section 7(1)(c)” and to substitute “Minister under section 7(2)”.
7. On page 14, in line 35, to omit “, without prejudice to the generality of this subsection,”.
8. On page 14, in line 37, to omit “(4) and (5)” and to substitute “(3) and (4)”.
9. On page 14, in line 40, to omit “(4)” and to substitute “(3)”.
10. On page 14, in line 49, to omit “(7)(b)” and to substitute “(6)(b)”.
11. On page 14, in line 51, to omit “7(a)” and to substitute “(6)(a)”.
12. On page 14, in line 55, to omit “(9)” and to substitute “(8)”.
13. On page 14, in line 59, to omit “(10)” and to substitute “(9)”.
14. On page 14, in line 60, to omit “(4)” and to substitute “(3)”.
15. On page 16, in line 1, to omit “(11)” and to substitute “(10)”.
16. On page 16, in line 6, to omit “(12)” and to substitute “(11)”.
17. On page 16, in line 7, to omit “(11)” and to substitute “(10)”.
18. On page 16, in line 11, to omit “may” and to substitute “shall”.
19. On page 16, in line 12, to omit “may” and to substitute “shall”.
20. On page 16, after line 13, to add the following subsection:

(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.

CLAUSE 11

1. On page 16, in line 16, after “builder” to insert:

has been found guilty by the disciplinary committee on a charge that such home builder
2. On page 16, in line 36, to omit “10(9), (10), (11), (12) and (13) and to substitute “10(8), (9), (10), (11) and (12)”.

CLAUSE 12

1. On page 16, in line 55, to omit “Without prejudice to the generality of subsection (1),”.
2. On page 18, after line 5, to add the following subsection:

(5) Nothing in this Act shall exempt any person from any provision of the National Building Regulations and Building Standards Act, 1977.

CLAUSE 13

1. On page 18, in line 12, after “writing” to insert “and signed by the parties”.
2. On page 18, from line 36, to omit “notified to the home builder by the housing consumer within a period not exceeding five years as from the occupation date” and to substitute:

and occurring within a period which shall be set out in the agreement and which shall not be less than five years as from the occupation date, and notified to the home builder by the housing consumer within that period
3. On page 18, in line 46, before “notified” to insert “occurring and”.
4. On page 18, after line 50, to add the following subsections:

(4) Where a housing consumer has sold or disposed of a home to another housing consumer within the period contemplated in subsection (2)(b)(i), the housing consumer having sold or disposed of the home shall be deemed to have ceded his or her rights under subsection (2) to such subsequent housing consumer.
(5) Subsection (4) shall also apply to any subsequent sale or disposal during the period contemplated in subsection (2)(b)(i).

(6) Any provision in an agreement contemplated in subsection (1) that excludes or waives any provision of this section shall be null and void.

(7) A home builder may not—

- (a) demand or receive from a housing consumer any deposit for the construction or sale of a home unless an agreement between the home builder and the housing consumer has been concluded in terms of subsections (1) and (2); and
- (b) receive any other consideration unless the provisions of section 14(1) or (2), as the case may be, have been complied with.

(8) A housing consumer or a home builder may refer a complaint in respect of this section to the Council, who shall investigate such complaints in terms of the prescribed procedures and any agreement contemplated in section 5(4)(c).

CLAUSE 14

1. On page 20, after line 6, to insert the following subsection:

(2) A home builder shall not commence the construction of a home the acquisition of which, except in respect of any deposit payable, 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);
- (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 provincial housing development board has paid the prescribed fee to the Council in terms of the agreement contemplated in section 5(4)(c).

2. On page 20, in line 8, after “(1)(c)” to insert:

or (2)(c), as the case may be

3. On page 20, in line 17, to omit “(6)” and to substitute “(7)”.
4. On page 20, in line 27, to omit “(3) or (4)” and to substitute “(4) or (5)”.
5. On page 20, after line 37, to insert the following subsection:

(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.

CLAUSE 15

1. On page 20, from line 42, to omit paragraph (a) and to substitute:

- (a) any fee or charge payable by home builders or a provincial housing development board;

2. On page 20, in line 46, to omit “The Council may” and to insert:
 Subject to section 17(2), the Council shall
3. On page 20, from line 52, to omit subsection (4) and to substitute:
 - (4) The Council shall establish a fund for the purposes of providing assistance to housing consumers under circumstances where a home builder fails to meet his or her obligations under section 13(2)(b)(i).
 - (5) After consultation with and in a manner prescribed by the Minister, the Council may establish a fund or funds for the purposes of providing assistance to housing consumers—
 - (a) where a registered home builder has failed to meet his or her obligations to the housing consumer under section 13(2)(b)(iii);
 - (b) where a registered home builder has failed to complete an enrolled home and the enrolment of that home has been suspended or cancelled in terms of section 14(4) or (5);
 - (c) where a registered home builder has misappropriated a deposit from a housing consumer; or
 - (d) for any other purpose, including the training of historically disadvantaged home builders, to enhance housing consumer protection measures covered within the scope of this Act.

CLAUSE 16

1. On page 22, in line 22, to omit “, levies”.
2. On page 22, in line 52, after “(6)” to insert “Subject to section 17(3), (4) and (5),”.
3. On page 22, from line 56, to omit subsection (7).

CLAUSE 17

1. On page 24, from line 15, to omit the words preceding paragraph (a) and to substitute:
 - (1) Subject to subsection (2), the Council shall pay out of the fund established for that purpose in terms of section 15(4), an amount for rectification where—
2. On page 24, in line 19, after “home” to insert:
 within five years of the date of occupation and has been notified to the home builder within that period and
3. On page 24, from line 23, to omit paragraph (c) and to substitute:
 - (c) the relevant home was constructed by a registered home builder, had been enrolled with the Council and, at the occupation date, the home was enrolled with the Council subject to section 14(4), (5) and (6);
4. On page 24, from line 29, to omit paragraph (e) and to substitute:

- (e) in the case of a home that has been enrolled with the Council on a project basis in terms of section 14(2), the application has been made by the provincial housing development board pursuant to an agreement in terms of section 5(4)(c).

5. On page 24, after line 31, to insert:

(2) Subject to subsections (3), (4) and (5), if money is not available or is expected not to be available for that purpose due to future demands on the fund, the Council may, reduce any amount, subject to section 7(2)(e), that may be expended in terms of subsection (1) or refuse such claims.

(3) Prior to exercising its powers in terms of subsection (2), the Council shall consult with and make recommendations to the Minister in respect of its obligations under section 16(1) and 16(6).

(4) The Minister shall make a decision on any recommendation contemplated in subsection (3) within a period of three months.

(5) The Council may not—

(a) exercise its powers in terms of subsection (2); or

(b) prescribe increased enrolment fees under section 16(6) unless the Minister has approved such action or the period referred to in subsection (4) has expired.

6. On page 24, in line 32, before “No” to insert “Subject to section 13(2),”.

7. On page 24, after line 52, to insert:

(10) The provisions of this section shall apply, with the necessary changes, to any other fund established in terms of section 15(5).

CLAUSE 18

1. On page 26, after line 19, to insert the following paragraph:

(c) pay a home builder any portion of housing subsidy funds in respect of a housing development project approved by it,

2. On page 26, in line 20, after “Act” to insert:

and has enrolled the home in terms of section 14(2)

3. On page 26, after line 21, to insert the following subsection:

(4) A provincial housing development board shall enter into an agreement with the Council in terms of section 5(4)(c).

CLAUSE 19

1. On page 26, in line 23, to omit “or” and to substitute “and”.

2. On page 26, from line 24, to omit paragraph (b) and to substitute:

- (b) enter into agreements or liaise with local government bodies or other bodies or persons for the inspection of homes.

CLAUSE 21

1. On page 28, in line 2, after “(a)” to insert “knowingly”.
2. On page 28, in line 5, to omit paragraph (b) and to substitute:

(b) contravenes a provision of section 10(1) or (2), 13(7), 14(1) or (2), 18(1) or 19(5),
3. On page 28, after line 9, to insert the following subsection:

(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.

CLAUSE 22

1. On page 28, in line 10, after “**Review**” to insert “, **arbitration and appeal**”.
2. On page 28, from line 14, to omit subsection (2) and to substitute:

(2) A home builder whose application for registration has been finally declined in terms of section 10 or withdrawn in terms of section 11, may lodge an appeal with any division of the High Court within its area of jurisdiction.

(3) The Council shall establish an internal complaints procedure for housing consumers and home builders to review any decision or action of the Council’s staff or its agents.

(4) After exercising his or her rights in terms of subsection (3), a housing consumer or a home builder may refer—

 - (i) any decision or action of the Council, its staff or its agents to the Public Protector for review in terms of the Public Protector Act, 1994 (Act No. 23 of 1994); or
 - (ii) any decision of the Council to arbitration in terms of the Arbitration Act, 1965 (Act No. 42 of 1965).

CLAUSE 23

1. On page 28, from line 19, to omit subsection (1) and to substitute:

(1) The Minister shall appoint a Council Advisory Committee on National Home Builder Registration Council Matters within two years of the commencement of this Act.

(2) The Council Advisory Committee shall consist of at least three but not more than seven members, including a chairperson.

(3) The Minister shall ensure that the Council Advisory Committee consists of persons having skills and experience regarding housing consumer protection, insurance, competition and regulation matters, and construction dispute resolution.

(4) The members of the Council Advisory Committee shall be appointed only after—

- (a) the Minister has through the media and by notice in the *Gazette* invited applications for the respective positions; and
- (b) the Minister has consulted with the MEC of every province and the parliamentary committees for housing of the National Assembly and the National Council of Provinces.

(5) The Director-General may pay to a member of the Council Advisory Committee, who is not in the full-time employ of the State or an organ of state, from money appropriated by Parliament for that purpose, the allowances which the Minister may determine in general or in a specific case, in consultation with the Minister of Finance.

- 2. On page 28, in line 26, to omit “(3),”.
- 3. On page 28, after line 54, to add:

(10) Subject to subsection (5) and section 5, the Minister may refer any matter in respect of any objective or provision of this Act to the Council Advisory Committee for investigation and recommendation.

CLAUSE 24

- 1. On page 30, from line 9, to omit paragraph (c) and to substitute:
 - (c) where the notice or document was posted, 21 days after it was sent,
in the absence of evidence to the contrary that the person on whom it was served, acting in good faith, through absence, accident, illness or other cause beyond that person’s control, did not receive the notice, or did not receive the notice until a later date.

CLAUSE 28

- 1. On page 32, in line 1, to omit the heading “Application of laws” and to substitute “Dissolution of Council”.
- 2. On page 32, from line 2, to omit subsection (1).

CLAUSE 31

- 1. On page 32, in line 19, to omit “National Home Builders Registration Council” and to substitute “Housing Consumers Protection Measures Act”.

LONG TITLE

Long Title rejected.

NEW LONG TITLE

1. That the following be a new Long Title:

To make provision for the protection of housing consumers; and to provide for the establishment and functions of the National Home Builders Registration Council; and to provide for matters connected therewith.

