

REPUBLIC OF SOUTH AFRICA

**HOUSING CONSUMERS
PROTECTION MEASURES
AMENDMENT BILL**

(As introduced in the National Assembly as a section 76(1) Bill)

(MINISTER OF HOUSING)

[B 16—99]

REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP
BESKERMINGSMAATREËLS VIR
BEHUISINGSVBRBRUIKERS**

(Soos ingedien in die Nasionale Vergadering as 'n artikel 76(1)-wetsontwerp)

(MINISTER VAN BEHUISING)

[W 16—99]

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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Housing Consumers Protection Measures Act, 1998, so as to rectify certain cross-references; to remove ambiguity in the wording of certain sections; to make further provision for regulating measures; to make better provision for the necessary phased implementation of the Act; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 7 of Act 95 of 1998

1. Section 7 of the Housing Consumers Protection Measures Act, 1998 (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the insertion in subsection (2)(d) after the expression “serviceability,” of the expression “materials,”; and
- (b) by the addition of the following subsection:

“(4) (a) The disciplinary committee may, whenever a fine has been imposed on a home builder in terms of subsection (2)(c), order that any portion of the fine, but not exceeding 80 per cent of such fine, be applied towards the payment of compensation to a housing consumer who suffered a pecuniary loss as a result of the conduct of the home builder concerned. 10

(b) The Council shall on receipt of the fine imposed on the home builder concerned, make the payment to the housing consumer concerned: Provided that such payment shall not be made until all appeals in respect of the imposition of the fine have lapsed or have been finalised or have been abandoned. 15

(c) This subsection shall not preclude any person from pursuing any civil remedy against a home builder: Provided that if an award is made by a court in favour of a person who has received payment from the Council as contemplated in this subsection, the court shall take the payment into account.”. 20

Amendment of section 14 of Act 95 of 1998 25

2. Section 14 of the principal Act is hereby amended by the substitution in subsection (7) for the expression “subsection (1)” of the expression “subsections (1) and (2)”.

Amendment of section 16 of Act 95 of 1998

3. Section 16 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) The Council shall **[subject to section 6]** appoint—”; and 5

(b) by the substitution for subsection (6) of the following subsection:

“(6) **[Subject to section 17(3), (4) and (5)]** If at any time the funds of the Council appear insufficient to meet anticipated demands, the Council may, on the recommendation of the funds advisory committee and after the procedures referred to in section 17(3), (4) and (5), with the necessary changes required by the context, have been followed, increase the fees payable by home builders and provincial housing development boards in respect of the enrolment of homes contemplated in section 14.”. 10

Amendment of section 17 of Act 95 of 1998

4. Section 17 of the principal Act is hereby amended— 15

(a) by the substitution in subsection (6) for the expression “13(2)” of the expression “17(1)”; and

(b) by the substitution in subsection (8)—

(i) for the expression “10(6)(a)” of the expression “10(6)(b)”; and

(ii) for the expression “10(6)(b)” of the expression “10(7)”. 20

Amendment of section 18 of Act 95 of 1998

5. Section 18(3) of the principal Act is hereby amended by the substitution in the words following upon paragraph (c) for the word “home”, where it appears for the second time, of the word “project”.

Amendment of section 23 of Act 95 of 1998

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6. Section 23 of the principal Act is hereby amended by the substitution in subsection (10) for the expression “(5)” of the expression “(9)”.

Amendment of section 31 of Act 95 of 1998

7. Section 31 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1): 30

“(2) Different dates may be fixed in respect of different sections of this Act.”.

Short title

8. This Act shall be called the Housing Consumers Protection Measures Amendment Act, 1999.

MEMORANDUM ON THE OBJECTS OF THE HOUSING CONSUMERS PROTECTION MEASURES AMENDMENT BILL, 1999

1. The Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998), requires amendment to correct oversights in cross-references between certain sections of the Act, to remove minor ambiguities in the wording of certain sections, to make further provision for regulating matters and to make improved provision for the necessary phased implementation of the Act.

2. Section 7(2)(d) requires the insertion of the expression “materials,” after the expression “serviceability,”. Materials are an important component in the Council’s technical requirements as the materials used in building have a significant effect on the durability and structural integrity of a home. “Materials” was omitted in error during the proofreading stage.

3. In drafting the regulations it was found that the Act did not empower the Council to pay housing consumers part of the fines that may be imposed on home builders in terms of section 7(2)(c) of the Act. This is currently the case with the Estate Agents’ Amendment Act, 1998, and this practice should also apply to the Act. A new subsection (4) has thus been added to give effect to this.

4. Section 14(7) needs to be amended by changing the reference to “subsection (1)” to read “subsections (1) and (2)”. This was an oversight in cross-referencing following the insertion of subsection (2). If this is not corrected the home builder in the subsidy only sector will not be liable to undertake the obligations in terms of section 14(7).

5. Section 16(2) requires amendment to delete the reference to section 6. The way the section reads at present gives the impression that the Council’s appointees must be employees of the Council whereas the members of the funds advisory committee may well be Council members or outsiders as is indicated in section 5(1)(c).

6. Legal advice has been received that the current wording of section 16(6) and its cross-referencing to section 17(3), (4) and (5) may limit the power of the Council, namely to increase fees only if it has already reduced payments to housing consumers in terms of section 17(2). A minor rewording of the section is required to remove any legal doubt that the Council may increase fees to home builders without reducing any amount payable to housing consumers.

7. The cross-reference to section 13(2) in section 17(6) is incorrect and should be replaced by “section 17(1)”.

8. Section 17(8) requires amendment as follows:

- (a) The reference to section “10(6)(a)” to read “10(6)(b)”;
- (b) the reference to section “10(6)(b)” to read “10(7)”.

The current wording places the primary obligation for the repair of homes on the contractor rather than the developer. This was not the intention of the legislation. The person who contracts with the consumer and who is financially responsible for the project should carry the primary responsibility. Should he or she fail to do so, the contractor would then be held liable.

9. The cross-reference in section 23(10) to “subsection (5)” should be amended to read “subsection (9)”. This was the original intention and was the case prior to the late insertion of a number of new subsections in this section during the final stages of the consideration of the Act by the Portfolio Committee on Housing. Due to an oversight the cross-reference was, however, never corrected.

10. Section 31 of the Act provides for the Act to come into operation on a date fixed by the President in the *Gazette*. Because it has become desirable for a two-phase implementation of the Act it is necessary that a new subparagraph be added to section 31 to make provision for different sections to come into operation on different dates.

11. The correction of the cross-referencing in the above Act will correct important oversights with significant effects on liability and the performance of obligations as well as a minor oversight as found in section 23(10).

PARLIAMENTARY PROCEDURE

The Department of Housing and the State Law Advisers are of the opinion that the Bill should be dealt with in accordance with the procedure established by section 76(1) or (2) of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution, namely Housing.