

## HOME BUILDING, YOUR BUILDER AND THE NHBRC

*NHBRC is the acronym for the National Home Builders Registration Council created in terms of the Housing Consumers Protection Measures Act ('The Act'). The Act obliges home builders to register with the Council as part of a regulatory system aimed at protecting consumers from poor building work. Homes to be erected must also be enrolled with the Council. How can you ensure you are protected and that your builder complies?*

Through the NHBRC enrolment process, consumers enjoy certain benefits, including a warranty in respect of major structural defects which present within 5 years after date of occupation, together with warranties in respect of smaller defects. Other benefits include:

- the requirement that the builder complies with the NHBRC's Home Builders Manual, which sets minimum quality standards;
- quality inspections during construction by NHBRC Inspectors - a minimum of 4 inspections should be carried out and consumers and home builders are encouraged to demand an inspection from the NHBRC during construction; and
- access to NHBRC-led mediation (and other dispute resolution mechanisms) between the consumer and builder in the event of disputes.

Currently the Act does not make provision for registration or enrolment in projects where the owner undertakes alterations, conversions or improvements to his home, although there are discussions underway to include the same requirements for such 'lesser' building works.

### **1. Banks and provincial housing subsidy boards insist on proof of registration with the NHBRC**

Home builders are obliged to be registered with the NHBRC (as provided for in section 10 of the Act). This is enforced in practice by banks that insist on proof of a builder's registration and enrolment of the home before they will allow registration of a mortgage bond intended to finance the erection of a home. Provincial housing board subsidies operate similarly.

### **2. Consumer protection and warranties**

Certain warranties are automatically afforded to consumers. The Act contains "deemed" warranties which means that by law a builder must, amongst other things:

- Rectify certain defects that occur in the first 3 months after occupation;
- Rectify certain roof leaks that occur in the first 12 months after occupation; and
- Rectify certain major structural defects that occur in the first 5 years after occupation.

The standard of building work guarantees is described as follows in section 10 of the Act:

*“(a) the home, depending on whether it has been constructed or is to be constructed-*  
*(i) is or shall be constructed in a workmanlike manner;*  
*(ii) is or shall be fit for habitation; and*  
*(iii) is or shall be constructed in accordance with-*  
*(aa) the NHBRC Technical Requirements to the extent applicable to the*  
*home at the date of enrolment of the home with the Council; and*  
*(bb) the terms, plans and specifications of the agreement concluded with*  
*the housing consumer as contemplated in subsection (1).”*

Section 17(1) takes this further and stipulates that the Council must make a pay-out for rectification if a ‘major structural defect’ manifested itself within 5 years of the date of occupation, in the following circumstances:

- It resulted from non-compliance with the NHBRC Technical Requirements and the home builder has been notified accordingly within that period;
- the home builder is in breach of his obligations to rectify the defect;
- the home was constructed by a registered home builder and the home was enrolled with the NHBRC; and
- the home builder no longer exists, was liquidated or is otherwise unable to meet his or her obligations.

The term ‘major structural defect’ is defined in section 1 of the Act to mean ‘a defect which gives rise or which is likely to give rise to damage of such severity that it affects or is likely to affect the structural integrity of a home and which requires complete or partial rebuilding of the home or extensive repair work to it, subject to the limitations, qualifications or exclusions that may be prescribed by the Minister’.

The claim can be entertained to a maximum of “the selling price of the home as declared by the home builder at the time of the enrolment of the home, up to a maximum amount of R500 000” (reg 13).

### **3. What should a home owner do when there is a problem with a builder’s work?**

The housing consumer (home owner) should contact the home builder within 3 to 7 days. The housing consumer can approach the NHBRC if the home builder fails to address the complaint adequately, provided of course the home builder is registered and the home was enrolled with the Council.

### **4. Case law and the question: ‘What constitutes a major structural defect’?**

It is not always a simple task to determine whether a defect constitutes a major structural defect or just a defect resulting from shoddy building work. The recent matter of

*Stergianos v National Home Builders Registration Council* (October 2012) is an illustrative case in point.

Stergianos entered into a contract with Herrington Construction CC ('Herrington Construction'), in terms of which the latter would build a home for Stergianos on a property he owned in Wilderness. The home was duly constructed and Stergianos took occupation in December 2005. The home was built on a primary dune adjacent to the Indian Ocean, the erf having a substantial slope with a drop in height of 2,45 metres along the south-north axis of the house itself.

During the course of the first year of Stergianos' occupation of the house, cracks began to develop in the concrete floor slab. These became progressively worse with time and efforts to fill them came to naught as the cracks continued to expand. Stergianos turned to his attorneys for help and a civil engineer was instructed to determine the cause of the cracks. The latter's opinion was that the cause was structural and that the characteristics of the site signalled that it had to be handled with care.

Stergianos was not able to obtain relief from Herrington Construction and he opted to issue summons against the NHBRC, arguing that it was responsible for the rectification of the defects in the home as they were structural in nature, as per the provisions of the Act.

The NHBRC refused the claim and argued that the defect did not occur as a result of a structural defect, but was a result of bad workmanship.

The civil engineer who testified as an expert on behalf of Stergianos, testified that the defects in the concrete floor slab of the home were indeed caused by major structural defects in the substructure of the home and consequent incorrect settling of the slab. The NHBRC's expert, also an engineer, was of the opinion that the cracks were caused by shrinkage as a result of poor workmanship when the concrete slab was poured and the builder's failure to place expansion joints in the slab where they should have been placed. In his view, therefore, the defects in the slab were not structural in nature. Both experts agreed that, whatever the cause of the cracking, the standard of workmanship of the builder left a lot to be desired. But, on the NHBRC's expert's version, there would be no liability for the Council.

The Court, in essence, had to choose between the versions of the two expert witnesses. Finding that both were truthful, it ultimately chose Stergianos' engineer's version, taking into account the various tests performed by that engineer to reach his conclusion. The NHBRC was held liable to rectify the structural defects in Stergianos' home – subject to the minimum amount prescribed in the regulations to the Act.

## 5. The builder was not registered with the Council

But beware: if your builder is not registered with the NHBRC, you do not have these warranties. This was confirmed by the Supreme Court of Appeal in *Cool Ideas 1186 CC v Hubbard and Another* (June 2014) where it held that it would not confirm an arbitrator's award that was granted in a developer's favour if the latter was not registered with the NHBRC at the time of contracting. This is because, even though the developer had subcontracted a builder who was so registered, it also had to be registered in order to receive a consideration "in terms of an agreement with a housing consumer in respect of the sale or construction of a home".

One can check a builder's registration with the NHBRC on their website at [www.nhbrc.org.za](http://www.nhbrc.org.za). Contact our experts on [info@stbb.co.za](mailto:info@stbb.co.za) for legal assistance.

## CONTACT US

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