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THE PRESIDENCY

No. 1081

16 November 2007

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 17 of 2007: Housing Consumers Protection Measures Amendment Act, 2007.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

Act No. 17, 2007

HOUSING CONSUMERS PROTECTION
MEASURES AMENDMENT ACT, 2007

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.

(English text signed by the President.)
(Assented to 12 November 2007.)

ACT

To amend the Housing Consumers Protection Measures Act, 1998, so as to amend certain definitions and to define certain words or expressions; to clarify the scope of application of the said Act; to make provision for late enrolment and non-declared late enrolment; to enable owner builders to apply for exemption; to extend claims to include roof leaks; to make further provision for the use of money in the funds contemplated in the said Act; to extend the offences created under the said Act; and to amend provisions pertaining to the granting of exemptions and to the lodging of appeals; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 95 of 1998

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

(a) by the substitution in the definition of “business of a home builder” for paragraph (b) of the following paragraph:

“(b) to construct a home for the purposes of sale, leasing, renting out or otherwise disposing of such a home;”;

(b) by the substitution in the definition of “business of a home builder” for paragraph (d) and the words following that paragraph of the following paragraph:

“(d) to conduct any other activity that may be prescribed by the Minister for the purposes of this definition[,

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];”;

(c) by the substitution for the definition of “home builder” of the following definition:

“‘home builder’ means—

(a) a person who carries on the business of a home builder; or

(b) an owner builder who has not applied for exemption in terms of section 10A;”;

- (d) by the insertion after the definition of "inspector" of the following definition:
" 'late enrolment' means the submission by a home builder of a request for a particular home to be entered into the records of the Council after construction of such home has started in contravention of section 14;";
- (e) by the insertion after the definition of "Minister" of the following definition: 5
" 'National Housing Code' means—
 (a) the National Housing Code contemplated in section 4 of the Housing Act, 1997 (Act No. 107 of 1997); or
 (b) any other policy or administrative or procedural guidelines issued in terms of the Housing Act, 1997 (Act No. 107 of 1997), which 10
repeals or replaces the National Housing Code;";
- (f) by the insertion after the definition of "NHBRC Technical Requirements" of the following definition:
" 'non-declared late enrolment' means enrolment where a home builder has not declared the fact that construction of the home had 15
commenced at the time of enrolment and that fact is detected by the Council;";
- (g) by the insertion after the definition of "organ of state" of the following definitions:
" 'owner builder' means— 20
 (a) a person who builds a home for occupation by himself or herself; or
 (b) a person who is not a registered home builder and who assists a person contemplated in paragraph (a) in the building of his or her home;
'PHP Project' means a housing project approved in terms of Chapter 8 25
of Part 3 of the National Housing Code: Housing Subsidy Scheme: People's Housing Process;"; and
- (h) by the substitution for paragraph (b) of the definition of "prescribe" of the following paragraph:
"(b) the Council, except in section 7(1) or 29(1), prescribe in a circular 30
to all registered home builders;".

Insertion of section 1A in Act 95 of 1998

2. The following section is hereby inserted in the principal Act after section 1:

"Application of Act

- 1A. (1) This Act applies to any home builder. 35
(2) This Act does not apply to a person who uses his or her own labour to build a home for his or her occupation if the home is part of an approved PHP Project."

Amendment of section 7 of Act 95 of 1998, as amended by section 1 of Act 27 of 1999

3. Section 7 of the principal Act is hereby amended— 40
- (a) by the substitution in subsection (1)(a) for subparagraphs (iii) and (iv) of the following subparagraphs, respectively:
"(iii) prescribing enrolment fees and late enrolment fees, including the 45
method of calculating such fees, in respect of homes or categories of homes and other fees, excluding the fees contemplated in subsection (2);
(iv) prescribing procedures for enrolment, late enrolment, non-declared 50
late enrolment and cancellation of enrolment;";
- (b) by the insertion in subsection (1)(a) after subparagraph (iv) of the following subparagraph:
"(ivA) governing the application of NHBRC Technical Requirements to 55
homes financed by a state housing subsidy;"; and
- (c) by the substitution in subsection (2) for paragraph (e) of the following paragraph:
"(e) the minimum and maximum amounts which may be expended 55
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