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## GOVERNMENT NOTICES

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### DEPARTMENT OF HOUSING

No. 354

22 March 2002

### HOUSING CONSUMERS PROTECTION MEASURES ACT, 1998

#### GENERAL REGULATIONS REGARDING HOUSING CONSUMER PROTECTION MEASURES

The Minister of Housing has, after consultation with the National Home Builders Registration Council, under sections 1, 7(2) and 27 of the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998), made the regulations in the Schedule.

#### SCHEDULE

##### Definitions

1.(1) In these rules any word or expression to which a meaning has been assigned in the Act shall bear that meaning, and unless the context otherwise indicates -

"the Act" means the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998).

A "housing development project" means, for the purposes of the Act and these regulations, any project or phase of a project approved by a PHDB from the date of commencement of section 18 (3) of the Act.

A "deposit" is defined as an amount paid by the housing consumer no greater than the amount of the full subsidy itself.

(2) For the purposes of the definition of "home" in section 14(2) of the Act, "home" means 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 and forming part of a housing development project.

(3) For the purposes of these Regulations, the definition of "home builder" shall include a "developer" or an "institution" in terms of Part 3 of the National Housing Code.

#### Maximum amount payable from fund

2.(1) The maximum amount that may be expended from the fund, established in terms of section 15(4) of the Act, in respect of a project enrolled in terms of section 14(2) of the Act is:

(a) in respect of any home, the state housing subsidy draw relating to the top structure current at the time of project enrolment;

(b) in respect of all homes forming part of the housing development project as a whole, a sum of three thousand rand per home enrolled at the date of occupation up to a maximum value of five million rand.

(2) The maximum amount that may be expended may include -

- (a) any professional fee incurred by the Council in investigating and determining a cost effective method of rectification;
- (b) the necessary cost for rectification of any major structural defect and for making good any finishes necessarily damaged by the rectification process; and
- (c) reasonable accommodation costs where, in the opinion of the Council, it would be unreasonable for a housing consumer to remain in occupation of the property due to the extensive nature of the remedial works, prescribed at maximum daily rates by the Council up to maximum of five

percent of the state housing subsidy draw relating to the top structure current at the date of project enrolment.

(4) No amount shall be paid out of the fund in relation to -

- (a) any limitation or exclusion prescribed by the Minister in regulation 14 of the Minister's Regulations promulgated by Government Notice No. R1406 of 1999;
- (b) consequential or economic loss of any kind or description whatsoever, including damages and penalties for and losses due to delay, breach of contract, or loss of rental income; and
- (c) any costs, loss or liability for which compensation is covered under an insurance policy.

(5) The Council may, in exceptional circumstances and at its sole discretion, instead of having a defect rectified, make a payment to the housing consumer in full and final settlement of any claim.

No. 355

22 March 2002

**HOUSING CONSUMERS PROTECTION MEASURES ACT, 1998****NATIONAL HOME BUILDERS REGISTRATION COUNCIL RULES**

The National Home Builders Registration Council has under section 7(1) of the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998) made the rules in the Schedule.

**SCHEDULE****Definitions**

1. (1) In these rules any word or expression to which a meaning has been assigned in the Act shall bear that meaning, and unless the context otherwise indicates -

"the Act" means the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998).

A "housing development project" means, for the purposes of the Act and these regulations, any project or phase of a project contemplated in section 5(4)(c) of the Act and approved by a provincial housing development board from the date of commencement of section 18(3) of the Act.



(2) For the purposes of these Regulations, the definition of "home builder" shall include a "developer" or an "institution" in terms Part 3 of the National Housing Code.

### **Submission for project enrolment**

2. (1) Where a provincial housing development board, in terms of an agreement contemplated in section 5(4)(c) of the Act, conditionally approves a housing development project:

- (a) it must approve it subject to enrolment of the project and, in the case of a developer not registered with the Council, registration of the developer with the Council;
- (b) it must notify the Council by duly completing and submitting the form in Annexure 1; and
- (c) the Council shall enter the relevant details into its records.

(2) A provincial housing development board shall not conditionally approve any project unless such projects are accompanied with a preliminary geo-technical survey as specified in terms of Annexure 2.

(3) A provincial housing development board shall not conditionally approve any project using non-standardised building systems or rational design unless such systems:

- (a) Have been Agrément approved and the developer is the holder or a licensee of the system and is an accredited contractor with the Council in terms of Rule 10 of the Council's Rules promulgated by Government Notice No. R. 1408 of 1999; or
- (b) Have been approved by the Council, including Mantag certified building systems, in terms of Rule 11 of the Council's Rules promulgated by Government Notice No. R. 1408 of 1999.

3. A home builder, upon conditional approval as contemplated in regulation 2(1), must submit the housing development project for enrolment in terms of section 14(2) in the form of Annexure 3 accompanied with:

- (a) proof of acceptance by the provincial housing development board of land

availability signed by the parties which may be subject to suspensive or resolute conditions;

- (b) proof of an undertaking by the municipality concerned to take over the services of the project in accordance with the standard requirements;
- (c) a competent person certified preliminary geo-technical survey in the form of Annexure 2; and
- (d) competent person certified house types in the form of Annexure 4.

#### **Home builder deemed registration status**

4. (1) Where a registered home builder submits an application for a project enrolment to the Council in terms of section 14(2) of the Act, the Council shall deem that home builder to be a home builder registered in terms of section 10(6)(b) of the Act, as amended.

(2) Where a home builder contracts a subcontracting home builder to construct one or more complete homes:

- (a) such a subcontracting home builder must be registered in terms of section 10 of the Act; and
- (b) the Council shall deem such a subcontracting home builder to be a home builder in terms of section 10(6)(a) of the Act as amended.

#### **Technical evaluation**

5. The Council shall consider the application for project enrolment with a view to assisting the home builder to comply with the home builder's obligations in terms of section 13(2)(a) of the Act.

#### **Financial evaluation**

6. (1) The home builder when making an application to the Council for project enrolment in



accordance with regulation 3 above, shall submit financial details of the housing development project to the Council, including:

- (a) the home builder's banking details;
- (b) number of subsidies in each subsidy band and the aggregate amount thereof and details of the applicability of the geo-technical allowance;
- (c) the price of serviced land, top structures and total purchase price;
- (d) copies of elemental cost breakdown and cash flow projections;
- (e) anticipated commencement and completion dates for the housing development project; and
- (f) any other financial or management information required by the Council.

(2) In order to prevent housing consumers and the Council from being exposed to unacceptable risks, the Council in view of its obligation in section 10(4) of the Act:

- (a) Shall review the financial and management capacity of the home builder in relation to this specific housing development project; and
- (b) May request any suretyship, guarantee or indemnity that the Council may at its discretion deem necessary.

#### **Approval of project enrolment**

7. (1) The Council may, in respect of such application made pursuant to regulation 3 above:

- (a) Approve the housing development project for enrolment;
- (b) Approve the housing development project subject to such conditions as the Council may consider appropriate;

- (c) Request further information from the home builder; or
- (d) Reject the application.

(2) If the Council intends to approve the enrolment of the housing development project subject to conditions or to reject the enrolment, the Council must notify and inform the home builder and the PHDB of the Council's reasons in this regard.

(3) A decision of the Council notified in terms of subregulation (2) takes effect –

- (a) On receipt of written acceptance of the relevant conditions by the home builder; or
  - (b) 30 days after it has been notified to the home builder, unless the home builder exercises its rights, in terms of section 10(9) of the Act, to make written representations to the Council.
- (4) On approval of the project enrolment, the home builder must provide updated cashflow projections on a quarterly basis.

#### **Issuing the project enrolment certificate**

8. Where a housing development project is approved or approved subject to conditions, the Council must

- (a) issue to the home builder a single project enrolment certificate in the form of Annexure 5 in terms of section 14(2)(c) of the Act; and
- (b) forward a copy to the provincial housing development board.

#### **PHDB Approval**

9. On receipt of a copy of the project enrolment certificate, the provincial housing development board may approve the housing development project subject to any conditions required by Council and subsequently enter into an agreement with the home builder.

10. Such an agreement as contemplated in regulation 8 above, shall also be subject to any conditions contained within Part 3 of the National Housing Code.

#### **First Phase Geo-technical Survey**

11. The home builder shall submit to the Council a copy of the first phase of a geo-technical investigation of the project in terms of the Code of Practice for Geo-technical Surveys of the South African Institute of Civil Engineering.

12. This first phase geo-technical investigation shall:

- (a) comprise of a stability investigation;
- (b) comprise of an investigation into the foundation characteristics of the near surface soil horizons;
- (c) shall culminate in a report in a format in compliance with the Code of Practice;
- (d) recommendations from competent persons for compliance of the project with the NHBRC technical requirements and, in particular, in relation to stormwater management and drainage.

13. The Council shall assess the first phase geo-technical investigation and recommendations of the competent persons for compliance with the stormwater management, drainage and any other relevant NHBRC technical requirements.

14. The Council may require the home builder to comply with any conditions the Council may have following its assessment of the first phase geo-technical investigation and the recommendations of the competent persons.

#### **Second Phase of Geo-technical Investigation**

15. Prior to the commencement of construction of the top structure, the home builder shall carry out the second phase of geo-technical investigation in terms of the Code of Practice for Geo-technical Surveys of the South African Institute of Civil Engineering.

16. The home builder shall submit to the Council a copy of the second phase of a geo-technical investigation of the project providing the soil classification of the project on a stand by stand basis and the recommendations from competent persons for compliance of the project with the NHBRC technical requirements.

17. The Council shall assess the second phase geo-technical investigation and recommendations of the competent persons for compliance with the NHBRC technical requirements.

18. The Council may require the home builder to comply with any conditions the Council may have following its assessment of the second phase geo-technical investigation and the recommendations of the competent persons.

#### **Enrolment of homes**

19. (1) Following enrolment of the housing development project with the Council, the home builder must enrol each home on an individual basis with the Council.

(2) The enrolment of individual homes in a housing development project shall be subject to regulations 3, 4, 9, 10, 11, 14, 15, 16 and 17 of the Council's Rules promulgated by Government Notice No. R 1408 of 1<sup>st</sup> December 1999.

(3) When the home builder receives the approved township establishment layout or the Surveyor General's approved general plan, he or she shall submit the layout to the Council with enrolment forms in the form of Annexure 6.

(4) The home builder shall provide details of:

- (a) the phasing of the housing development project and expected start and completion dates for each phase;
- (b) the method of delivery (e.g. owner built, contractor built);
- (c) the type of subsidy to apply on each stand;
- (d) the names and NHBRC registration numbers of the subcontracting home builders to be used in the construction of specific stands or phases;
- (e) the Competent Person confirmation of the soil classification applying to each plot; and

(f) the names, ID details and experience of the project manager and key staff.

(5) The Council must enter the stand numbers, the details of the subcontracting home builders and other relevant information into its records.

(6) Where certain homes need to be enrolled in terms of section 14(1) of the Act, exempted, or excluded in terms of section 1(i) of the Act, the relevant stands must be identified by the home builder in consultation with the Council.

(7) The Council shall provide the home builder and the provincial housing development board with a listing in the form of Annexure 7 of the stands enrolled with the Council.

#### **Competent person certification of completion**

20. The Council shall require the home builder to provide a competent person's completion certificate, in the form of Annexure 9 for each phase or part of the housing development project being submitted for payment to the provincial housing development board.

21. The certification contemplated in regulation 19 above shall relate to structural integrity of the homes in relation to:

- (a) compliance with any conditions required by NHBRC in terms of the preliminary, first and second phases of the geo-technical survey; and
- (b) the NHBRC technical requirements.

#### **Council Inspections and phased payments**

22. (1) The Council shall confirm to the provincial housing development board that the enrolment of that home has not been cancelled or suspended in terms of section 14(4) to (9) of the Act prior to final payment of the fifth progress payment for the top structure of a home.

#### **Occupation date**

23. In the absence of proof to the contrary, the occupation date shall be deemed to be the date on which the Council issued confirmation of completion of the home in the form of Annexure 8 to the home builder and the provincial housing development board.

## **DOCUMENTS REQUIRED**

### **ANNEXURE 1**

#### **Notification from PHDB of provisional approval of project:**

Must contain:

1. Name of PHDB
2. Unique PHDB provisional approval number;
3. Estimated total value of project;
4. Location of Project and estimated number of homes;
5. Details of Developer (and where already registered his Council Registration Number);
6. Proof of Scheduled payment to Council.

### **ANNEXURE 2**

#### **Prescribed form of Preliminary Geo-technical survey**

### **ANNEXURE 3**

#### **Submission of Project for Enrolment by Home Builder**

Must contain:

1. Details of Developer and his Council Registration Number;
2. Name of PHDB
3. Unique PHDB provisional approval number;
4. Estimated total value of project;
5. Location of Project and estimated number of homes;
6. Proof that the land availability agreement is signed and a service agreement is in place;
7. A completed and certified competent person's geo-technical survey in the prescribed format;
8. Competent person certified basic house types;
9. Competent person certification of project layout and services details are in compliance with the Council technical requirements.
10. NURCHA or equivalent completion guarantees;
11. Copies of elemental cost breakdowns, material quotations, project costings and cashflow projections.



12. Banking details: bank, branch code, account no, bank contact person and tel. no.
13. Price of serviced land, units and total price of units.

#### **ANNEXURE 4**

**Competent Person Certificates for project: foundations, structures and house types.**

#### **ANNEXURE 5**

##### **Project Enrolment Certificate**

Must contain:

1. Council Project Enrol No.;
2. PHDB Number;
3. PHDB Name;
4. Developer's Name and Council Reg. No.;
5. Project Name and location;
6. Estimated No. of Units.
7. Conditions applying or where these can be found.

Don't use existing forms. Create a new one specific for projects.

#### **ANNEXURE 6**

##### **Enrolment of Project Units**

Based on existing Sectional Title Enrolment Form. To be accompanied by the approved Surveyor General's Layout. Must contain:

1. PHDB name and PHDB Project Ref. No.
2. Council Project Enrol No.;
3. Council Developer name and Registration Number;
4. Council Contractor name and reg. No. for units they have been allocated;
5. Competent person confirmation of soil classifications per plot;
6. Site details and plot numbers based on approved Surveyor General's Layout;
7. Phasing details and estimated start and completion dates of each phase;
8. Plot numbers with type of subsidy applying in each case.

**ANNEXURE 7****Confirmation of Acceptance by Council of Units for Enrolment with Fund**

Reprint of the above but checked and signed off by Project Assessor. Anything not accepted must also appear with reasons.

**ANNEXURE 8****Finalled Units Report**

Confirmation to PHDB and Developer of units where satisfactory work completed and homes protected by the Council fund.

Must include:

1. PHDB name and PHDB Project Ref. No.
2. Developer's name and Council Reg. No.
3. Council Contractor Name and Council Reg. No. per units enrolled
4. Council and PHDB Project Numbers
5. Units covered by fund with finalled date (deemed occupation date)
6. Units suspended or cancelled with reasons with Non-compliance Nos.
7. Declaration to approve payment
8. Signature of Project Assessor.

**ANNEXURE 9****Competent Person's Project or (Phase of Project) Completion Certificate**

Current D1 Certificate but adapted to phase of project or project as a whole.

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## GENERAL NOTICE

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### NOTICE 381 OF 2002

#### Department of Housing

#### **CALLS FOR COMMENTS ON DRAFT REGULATIONS PUBLISHED UNDER THE HOUSING CONSUMERS PROTECTION MEASURES ACT, 1998 (Act No. 95 of 1998)**

1. The following draft regulations relating to the subsidy sector are published for information and comment in terms of section 27 of the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998):
  - (a) Minister's Regulations
  - (b) Council's Regulations
2. All interested parties are invited to comment in writing on the draft regulations and to send their comments to:

The Director-General  
Department of Housing  
Private Bag X644  
PRETORIA  
0001  
Attention: Mr R Thatcher (Tel: (012) 4211 629)
3. Comments may also be faxed to the Department on fax no. (012) 341-8893 or 341-8512.
4. Comments must reach the Department not later than 17 April 2002.

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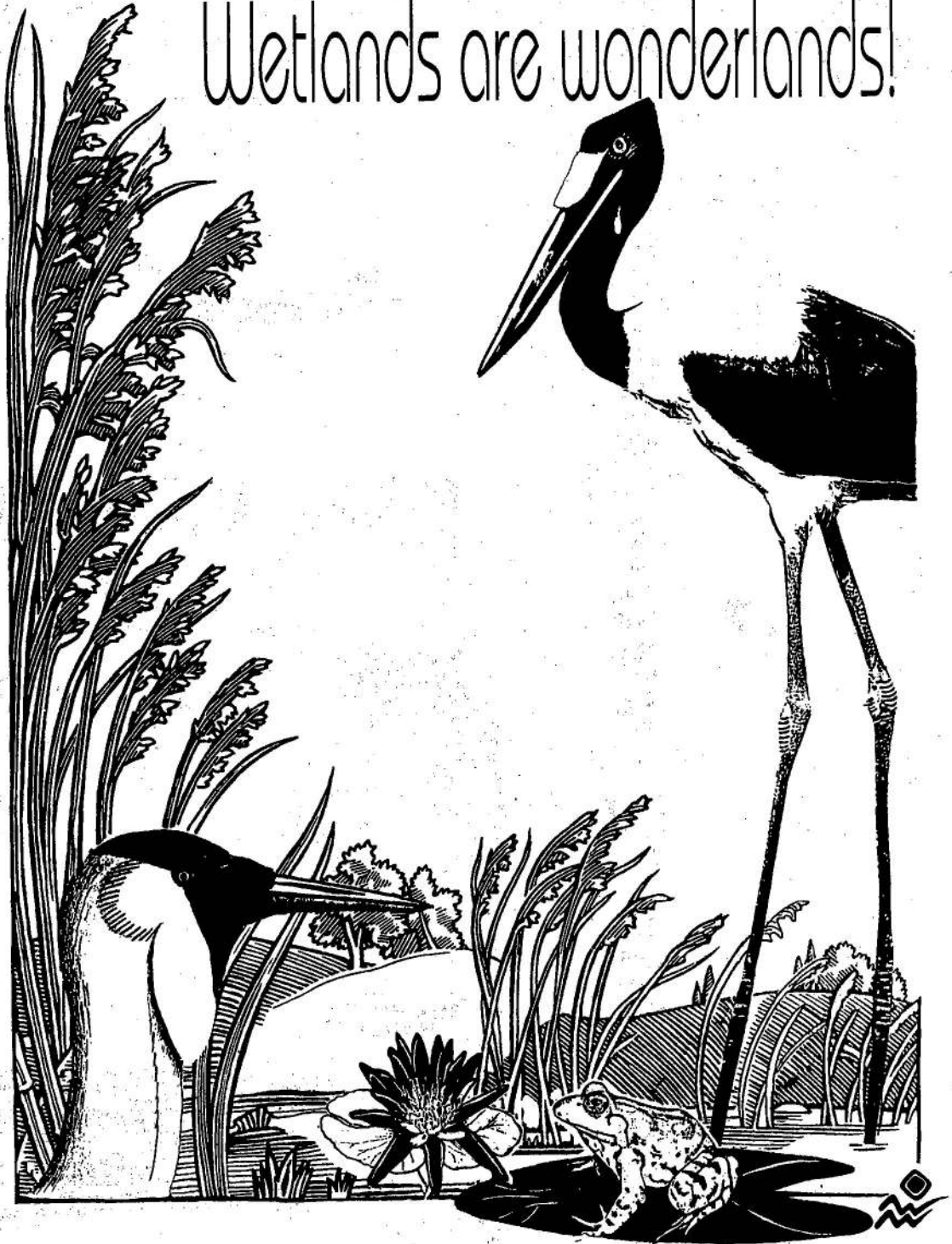
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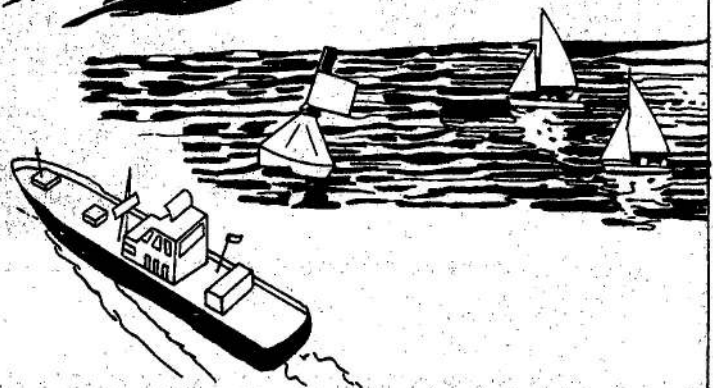
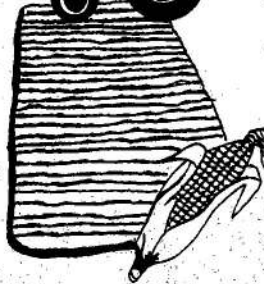
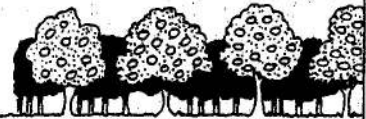
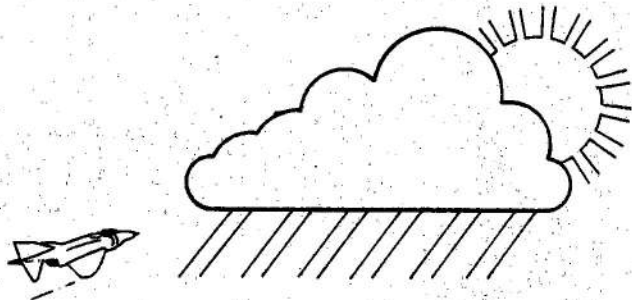
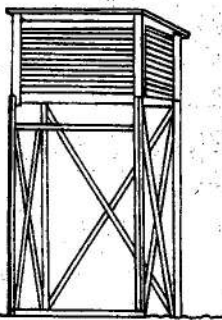
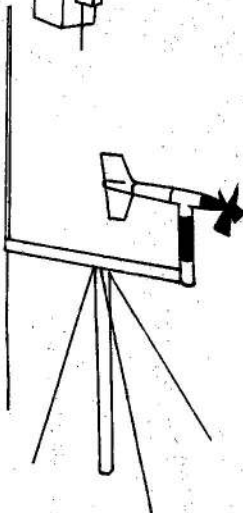


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