

REPUBLIC OF SOUTH AFRICA



National Department of Housing

**NHBRC WARRANTY SCHEME ENROLMENTS
AND REQUIREMENTS**

Project Linked Greenfield Subsidy Project Developments

*Generic Specification GFSH-6
August 2002*

Introduction

The Housing Consumers Protection Measures Act (Act 95 of 1998) states in Section 10 that:

(1) No person shall:

- a) carry out the business of a home builder ; or*
- b) receive any consideration in terms of an agreement with a housing consumer in respect of a sale or construction of a home*

unless that person is a registered home builder.

(2) No home builder shall construct a home unless that home builder is registered home builder.

State subsidised housing falls within the ambit of the Act. For this reason, Developers (Provincial Housing Departments or Municipalities who undertake state subsidised housing projects) need to be registered to satisfy the requirements of section 10(1)b of the Act and may only subcontract work relating to the construction of homes to registered home builders.

The National Home Builders Registration Council Rules issued under section 7(1) of the Act establishes procedures for:

- the conditional approval of subsidies;*
- in-principle enrolment of housing development projects;*
- enrolment of housing development projects;*
- confirmation of subsidies and subsequent agreements with the home builder; and*
- enrolment of homes.*
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*In the **Risk Identification Phase**, the NHBRC will review a project description including the preliminary geotechnical investigation report and confirm the status of the Home Builder as being registered or not with the NHBRC. In-principle enrolment will usually be granted on the basis that:*

- the Home Builder becomes registered with the NHBRC for the size of project contemplated, if not already registered for the same category; and*
- the Home Builder conducts a dolomitic stability investigation or any other assessment that the NHBRC deems necessary.*

*In the **Risk Assessment Phase**, the NHBRC will review the feasibility report submitted by the developer and in particular the phase 1 geotechnical investigation report. The NHBRC will also confirm that the Home Builder is in fact registered and has financial and management capacity to undertake the development.*

*In the **Construction Phase**, which may take place during or following installation of infrastructure, the NHBRC will review the phase 2 geotechnical investigation and housing types for compliance with requirements and design calculations for house foundations. The NHBRC will scrutinise house plans and details as well as rational designs for foundations.*

*In the **Selling Phase** a beneficiary is issued with a standard Home Warranty on a home for which a completion certificate has been issued.*

*In the **Warranty Phase** any complaints relating to defects under the Warranty Scheme are handled and rectified to the provisions of the Act.*

The Act also requires that Council enter into agreements with MECs regarding services to be rendered in respect of the project

This generic specification was prepared by the Task Team: Implementation of National Housing Programmes to facilitate compliance with the requirements of Chapter 3 of Part 3 of the National Housing Code and the provisions of the Housing Consumers Protection Measures Act (Act 95 of 1998).

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1. SCOPE

This specification contains requirements that are generally applicable for:

- a) obtaining enrolments required in terms of the Act;
- b) managing the construction of project linked subsidy housing in accordance with the requirements of this Act;
- c) issuing Standard Home warranties to Beneficiaries; and
- d) honouring warranties and handling of complaints in terms of the Act.

2. NORMATIVE REFERENCES

Department of Housing: National Housing Code.

Department of Housing: Generic Specification GFSH-1: Securing Land for a Housing Development.

Department of Housing: Generic Specification GFSH-2: Geotechnical Site Investigations for Housing Developments.

Department of Housing: Generic Specification GFSH-11: Design and construction of Houses.

The Joint Structural Division of the South African Institution of Civil Engineering and Institution of Structural Engineers: .Code of Practice for Foundations and Superstructures of Single Storey Residential Buildings of Masonry Construction.

National Home Builders Registration Council: Home Building Manual

3. DEFINITIONS

Act: the Housing Consumers Protection Measures Act (Act 95 of 1998)

Agrément Certificate: a certificate confirming fitness-for-purpose of a non-standardised product, material or component and/or the acceptability of the related non-standardised design and the conditions pertaining thereto issued by the Board of Agrément of South Africa.

Beneficiary: a natural person who qualifies for a particular housing subsidy.

Competent Person (Geotechnics): a person described as such in the generic specification GFSH-2: Geotechnical Site Investigations for Housing Developments.

Competent Person (Homes): a person registered in terms of the Engineering Professions Act, 2000 (Act No. 46 of 2000), 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.

Note: The regulations to the Act require Competent Persons to hold professional indemnity insurance in an amount of not less than R500 000.

Construction Phase: the period in the project from the conclusion of the Project Agreement to the completion of the Home.

Council:the National Home Builders Registration Council.

Developer: the agency that undertakes an approved project by concluding a project agreement with the MEC responsible for housing matters.

Note: Only a municipality or a Provincial Housing Department, where a municipality does not yet have appropriate technical, financial or managerial capacity to act as a Developer, may be a Developer.

Dolomitic Zone Designation: geographical areas underlain by dolomite or limestone rock directly or at shallow depth that are designated as having a common development risk exposure in accordance with the provisions of the Part 1 of the Home Building Manual.

Enrolled Housing Project: a project enrolled with the Council in terms of the Housing Consumer Protection Measures Act.

Expected Damage: an approximation of the probable damage that may occur in the masonry walls and concrete floors of a Home as described in terms of Part 1 of the Home building Manual issued in terms of the Act.

Feasibility report: a document prepared by a Developer in accordance with the requirements of the generic specification GFSH-1: Securing Land for a Housing Development.

Home: a dwelling unit constructed for residential purposes in terms of a Housing Development including:

- i) the private drainage system from the structure up to the municipal connection or the cess pit connection;
- ii) any store room; and
- iii) any retaining wall.

Home Builder: a natural or juristic person who carries on the business of a home builder as contemplated in the Housing Consumer Protection Measures Act (Act 95 of 1998), appropriately registered with the National Home Builders Registration Council in relation to work executed in terms of the Enrolled Housing Project.

Note: The regulations include a Developer in the definition of a Home Builder.

Home Enrolment Certificate: the certificate of proof of enrolment of a Home issued by the Council in terms of Section 14 (1) c of the Act.

Housing Development: a project approved in terms of Chapter 3, Part 3 of the National Housing Code for the servicing of land and construction of houses for sale to beneficiaries using housing subsidy funds.

In-principle Enrolment: enrolment by the Council on the basis of satisfactory analysis of the Project Descriptions and proposed subsidy variations, subject to any conditions including confirmation of subsidies by an MEC.

Inspector: a natural or juristic person appointed by the Council to perform inspections in terms of Section 19 of the Act.

Major Structural Defect: 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 are prescribed in terms of the Act.

Occupation Date: the date on which the Beneficiary acquiring the Home accepts the home as reflected in a document confirming such acceptance and, in the event of such document not having been received by the Council or the Council for any reason not being able to determine such date, the date reflected in the certificate of occupancy issued by the relevant local government body contemplated in section 14 of the National Building Regulations and Building Standards Act. 1977 (Act No. 103 of 1977);

Project Agreement: the contract between an MEC responsible for housing and the Developer for a Housing Development enrolled under the NHBRC Warranty Scheme.

Project Description: a document prepared in accordance with the requirements of the generic specification GFSH-1: Securing Land for a Housing Development.

Risk Assessment Phase: the period in the project cycle from the completion of the Feasibility Report to the confirmation of subsidies.

Risk Identification Phase: the period in the project cycle from the granting of the conditional approval for a Housing Development to the commencement of the preparation of the Feasibility Report.

Selling Phase: the period in the project cycle from the time that a Beneficiary is declared eligible for a subsidy to the occupation of a Home by that Beneficiary.

Site Class: areas that are designated as having common foundation and engineering characteristics in accordance with the provisions of Part 1 of the Home Building Manual issued in terms of the Act.

Standard Home Warranty: a document published by the Council describing the terms and conditions of the warranty provided for in the Act.

Warranty Phase: the period from the completion of the home to the end of the Standard Home Warranty period.

4. OBJECTIVES

4.1 Objective of the Risk Identification Phase

The objective of the Risk Identification Phase is to obtain, if at all possible, the Council's in-principle enrolment for a Housing Development.

4.2 Objective of the Risk Assessment Phase

The objective of the Risk Assessment Phase is to obtain, if at all possible, the Council's project enrolment for a Housing Development.

Note: The regulations to the Act do not permit the Council to grant project enrolment unless the Home Builder is registered with the Council.

4.3 Objectives of the Construction Phase

The objective of the Construction Phase is to obtain the Council's home enrolment for individual homes in a Housing Development and to satisfy the Council's technical requirements as described in the Home Building Manual.

4.4 Objectives of the Selling Phase

The objectives of the Selling Phase are to:

- a) conclude a contract with a Beneficiary for the provision of a Home; and
- b) issue the Beneficiary with a Standard Home Warranty.

4.5 Objectives of the Warranty Phase

The objective of the Warranty Phase is to:

- a) rectify non-compliance with, or deviation from, the contract with a Beneficiary, any deficiency relating to design, workmanship or material defects covered by the Act or any Major Structural Defects; and
- b) handle complaints relating to defects in accordance with the provisions of the Act.

5. REQUIREMENTS

5.1 Requirements for the Risk Identification Phase

A Home Builder shall, as a minimum, in order to satisfy the objectives of the Risk Identification Phase:

- a) prepare and submit an application to the Council for In-principle Enrolment of the Housing Development containing the following:
 - i) details of the Developer and Developer's Council Registration Number;
 - ii) the name of MEC;
 - iii) a unique conditional approval number issued by the MEC;
 - iv) a copy of the project description including the report of the preliminary geotechnical investigation prepared in accordance with the provision of the generic specification GFHS-2;
 - v) a schedule of proposed subsidy variations for the project;
 - vi) an indicative project programme; and
 - vii) proof of scheduled payment to the Council;
- b) provide the Council with any further particulars that it may request;
- c) review any reasons given by the Council, in the event that Council declines to register the Home Builder in accordance with the provisions of the section 10(9) Act, and where deemed necessary make written representations to the Council.

5.2 Requirements for the Risk Assessment Phase

A Home Builder shall, as a minimum, in order to satisfy the objectives of the Risk Assessment Phase:

- a) prepare and submit an application to the Council for project enrolment of the Housing Development containing the following:
 - i) details of Developer and Developer's Council Registration Number;
 - ii) name of MEC;
 - iii) unique confirmed approval number;
 - iv) value of confirmed subsidies, including any approved subsidy variations;
 - v) a copy of the feasibility report and all reports referenced in this report;
 - vi) an indicative project programme;
 - vii) financial and management information as may be required by the Council;
 - viii) proof of scheduled payment to Council;
- b) provide the Council with any further particulars that it may request.

5.3 Requirements for the Construction Phase

5.3.1 Minimum requirements

A Home Builder shall, as a minimum, in order to satisfy the objectives of the Development Phase satisfy the requirements of 5.3.2 to 5.3.5:

5.3.2 Home enrolment report

5.3.2.1 The Home Builder shall, prior to the construction of any Homes, prepare comprehensive designs, based on the site class designations certified by the Competent Person (Geotechnics) in accordance with the provisions of the requirements generic specification GFSH-2: for Phase 2 Geotechnical Site Investigations for a Phase 2 Geotechnical Site Investigation, for the different Home types in the Housing Development in accordance with the provisions of the Home Building Manual in respect of each site class designation.

5.3.2.2 The Home Builder shall prepare and submit to the Council for their approval in respect of each phase of a Housing Development, a home enrolment report that includes:

- a) a copy of the report of the second phase geotechnical site investigation prepared in accordance with the provision of the generic specification GFHS-2;
- b) the township layout plan and schedule containing the assigned site class in respect of each and every Home in the Housing Development which is to be enrolled;
- c) comprehensive drawings, specifications and descriptions of the typical home types in respect of each site class within a Housing Development that are to be enrolled;
- d) certification by a Competent Person (Homes) in a form acceptable to the Council that the design of the home complies with the provisions of the Home Building Manual and Part 3 of the Housing Code;
- e) rational designs and Agrément Certificates that may be required in terms of the Home Building Manual; and
- f) documentation, including assumptions made, loads applied and calculations, which demonstrate that the foundation system, where the deemed to satisfy rules contained in the Home Building Manual are for whatever reason not adopted, satisfies the Council's requirements.

5.3.3 Enrolment of homes

The Home Builder, following the receipt of the approved township establishment layout or the Surveyor General's approved general plan and the preparation of a home enrolment report, shall:

- a) submit an application to the Council for the enrolment of each individual home within an Enrolled Housing Project containing the following particulars:
 - i) Council project enrolment number;
 - ii) MEC name and unique project approval number;
 - iii) Home Builder's name and Council Registration Number;
 - iv) project name, location and phase;
 - v) number of units covered by the application;

- vi) home enrolment report;
 - vii) site details and erf numbers based on approved Surveyor General's Layout;
 - viii) phasing details and estimated start and completion dates of each phase;
 - ix) plot numbers with type of subsidy applying in each case; and
 - x) names and Council registration numbers of any subcontracting Home Builders to be used in the construction of specific homes and the erf numbers of the homes that they are to build; and
- b) provide the Council with any further particulars that it may request.

5.3.4 Construction

The Home Builder shall when constructing Homes:

- a) construct foundations and superstructures appropriate to Site Class and degree of Expected Damage provided for in the Data to the Standard Home Warranty;
- b) ensure that the Home is constructed in a workmanlike manner and is fit for habitation;
- c) not subcontract the construction of a complete home to a builder who is not registered as a Home Builder with the Council;
- d) satisfy the Council's technical requirements by constructing homes in accordance with the requirements of the latest edition of the Home Building Manual;
- e) not proceed with the construction of Homes without obtaining the necessary Home enrolment certificate issued by the Council;
- f) adhere to all conditions laid down by the Council associated with the granting of the enrolment of the Housing Development;
- g) provide all reasonable access to the works for the appointed Competent Person (Geotechnics) to conduct the second phase geotechnical investigation associated with the confirmation of the site class designations made in the first phase investigation; and
- h) afford Inspectors all reasonable access to undertake inspections which are necessary to confirm compliance with the Council's requirements.

5.3.5 Competent person certification of completion

The Home Builder shall provide a completion certificate certified by a Competent Person in the form prescribed by the Council which certifies, in respect of each home:

- a) compliance with any conditions required by Council in terms of the preliminary, first and second phases of the geotechnical survey as described in the generic specification GFSH-2; and
- b) compliance with the Council's technical requirements.

5.4 Requirements for the Selling Phase

The Home Builder shall, as a minimum, in order to satisfy the objectives of the Selling Phase:

- a) enter into a written agreement with the Beneficiary; and
- b) issue a Standard Home Warranty to the Beneficiary which includes in a schedule attached thereto, the categories of expected damage and nominated user performance levels in respect of mandatory attributes provided for in terms of the generic specification GFSH-11.

5.5 Requirements for the Warranty Phase

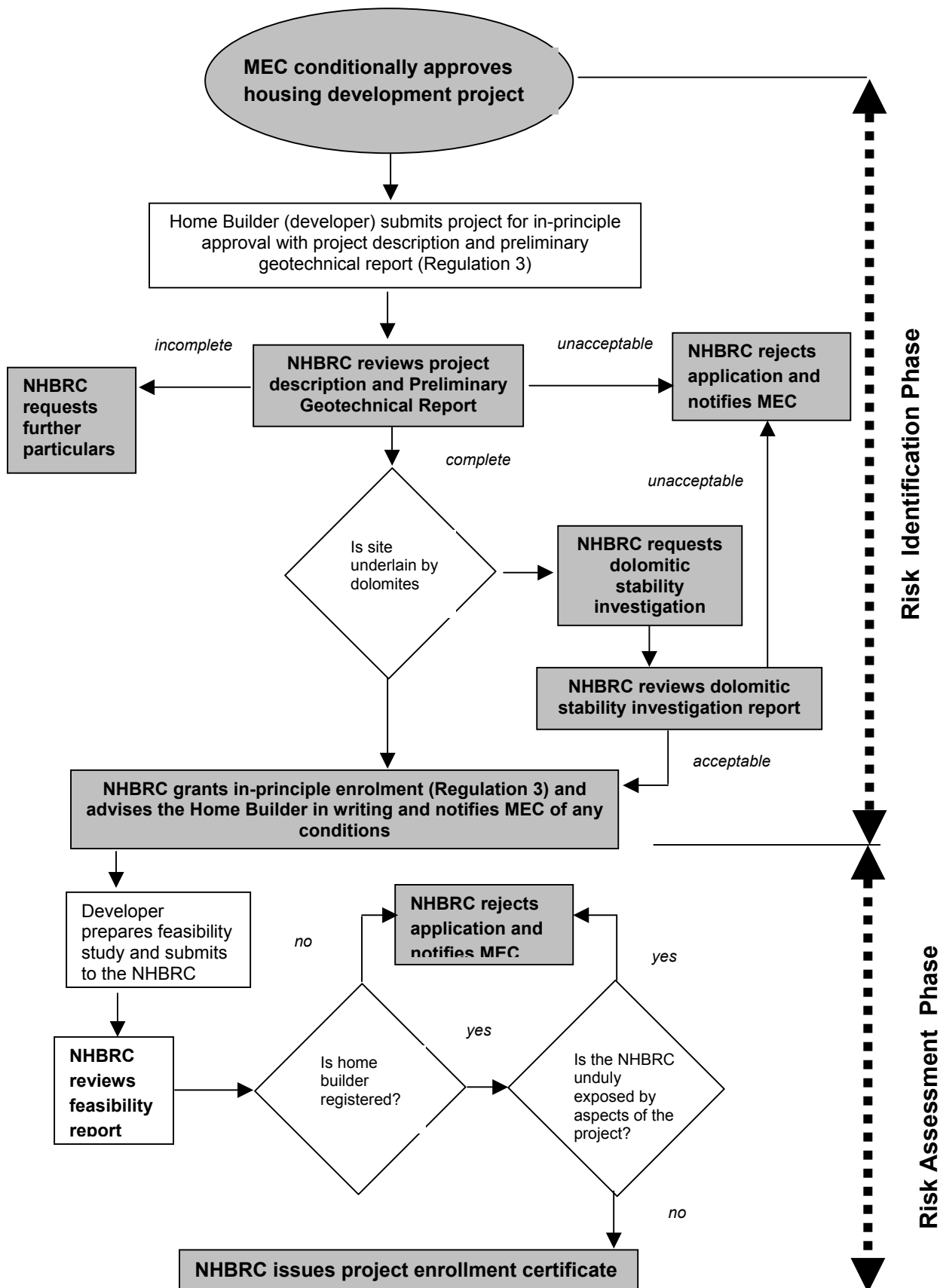
The Home Builder shall, as a minimum, in order to satisfy the objectives of the Warranty Phase:

- a) resolve differences with a Beneficiary in a reasonable manner prior to referring the complaint to the Council;
- b) rectify any non-compliance with, or deviation from, the contract with a Beneficiary or any deficiency related to design, workmanship or material within a 90 (ninety) day period from the Occupation Date, subject to the Beneficiary notifying the Home Builder of such deficiencies within this period;
- c) rectify any Major Structural Defect in the Home caused by the non-compliance with the Council's technical requirements occurring within five years from the Occupation Date, subject to the provisions of Annexure 2 and the Beneficiary notifying the Home Builder of such defects within this period;
- d) repair roof leaks attributable to workmanship, design or materials occurring with a Beneficiary or any deficiency related to design, workmanship or material within a 90 (ninety) day period from the Occupation Date, subject to the Beneficiary notifying the Home Builder of such deficiencies within this period;

- e) lodge a complaint with the Council, in the event that differences cannot be resolved with a Beneficiary, only after obtaining written consent of the Beneficiary and payment of the prescribed conciliation fee; and
- f) respond to complaints raised by Beneficiary within the following time frames and in the following manner:

Period commencing from the Occupation Date	Time period to respond from receipt of a complaint by the Housing Consumer	Written action by Home Builder
Three month non-compliance	Within 21 day	1) Confirm whether the home builder denies or accepts liability for the complaint. 2) Confirm when any rectification work will commence and finish. 3) Request, where necessary, access to effect the rectification.
Five year Major Structural Defects		
One year roof leakage	Within seven days	1) Confirm whether the home builder denies or accepts liability for the complaint. 2) Confirm when any rectification work will commence and finish. 3) Request, where necessary, access to effect the rectification.

Annexure 1: Schematic diagram of the enrolment of a project under the NHBRC Warranty Scheme



Annexure 2: Limitations, qualifications and exclusions contained in the regulations to the Act.

The limitations, qualifications and exclusions for the warranty in respect of which a Home Builder is not liable for loss, damage, destruction or threat of collapse are:

- i) wilful acts or wilful omissions of the Housing Consumer or persons residing in the home;
- ii) fire, explosion, lightning or damage caused by a third party;
- iii) storm, flood or earthquake or any other convulsion of nature;
- iv) structural alterations, repairs, modifications or alterations to the Home as originally constructed and which affected the original structure of the Home;
- v) inadequate maintenance or abnormal use of the Home or the imposition of any load greater than that for which the structure of the Home was designed or the use of the Home for any purpose other than that for which it was designed;
- vi) subsidence or landslip from any cause not related to non-compliance with the Council's technical requirements;
- vii) any change in colour, texture, opacity or staining or other aging process;
- viii) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds or the impact of aircraft or other aerial devices or articles dropped or falling there from;
- ix) destruction of or damage to the Home or any loss of expense arising there from, or any liability of whatsoever nature related to ionising radiations or contamination by radio-activity from whatever cause or from nuclear weapons material;
- x) war, invasion, act of foreign enemy hostilities (whether declared or not), civil war, revolution, rebellion, insurrection or military or usurped power, strike, riot, civil commotion;
- xi) loss of damage to any finishes unless they must be repaired or replaced due to a Major Structural Defect in the residential structure;
- xii) wear and tear, deterioration caused by neglect or damage occasioned by the failure of the Housing Consumer timeously to notify a Home Builder of any defects;
- xiii) any costs, loss or liability for which compensation is provided by other legislation;
- xiv) anything which is of a petty nature which any reasonable Home Owner or Housing Consumer could be expected to rectify him or herself; and
- xv) misuse or abnormal use of private drainage system.