

# Home builders: No NHBRC registration, no protection

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22 May 2023

The National Home Builders Registration Council (NHBRC) was established in terms of section 2 of the Housing Consumers Protection Measures Act 95 of 1998 (the Act). Some of the objectives of the NHBRC are to regulate the home building industry and to provide protection to housing consumers in respect of the failure of home builders to comply with their obligations in terms of the Act.



Image source: Steffen Coonan from [Pexels](#)

## Section 10 of the Act provides that:

(1) No person shall-

- a. carry on the business of a home builder; or
- b. receive any consideration in terms of any agreement with a housing consumer in respect of the 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 a registered home builder.

## Section 10(1) raises a pertinent question, namely:

If a home builder is not registered with the NHBRC at the time of construction, does it render the building contract invalid and unenforceable, alternatively, does it disqualify the home builder from receiving (or suing for) the balance of the remuneration arising from a building contract?

In the case of *Cool Ideas 1186 CC v Hubbard and Another*, heard in the Constitutional Court, the plaintiff (Cool Ideas) undertook to construct a residence for the defendant (Ms Hubbard) and concluded a building contract for consideration of R2,695,600.

The plaintiff enlisted the services of a close corporation (Velvori) to execute the building project. Velvori was registered as a home builder with the NHBRC but the plaintiff was not registered at the time it entered into the building contract.



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1 Jun 2020



The project commenced and payments were made to the plaintiff and the building works reached practical completion. At this point the defendant refused to make final payment to the plaintiff due to a dispute concerning the quality of the building works. The plaintiff only became registered as a home builder with the NHBRC after completion of the work and during the litigation between the parties.

The Court thus had to determine whether the building contract between the plaintiff and defendant remained valid in terms of section 10(1)(b) of the Act and noted that the purpose of the Act was to protect housing consumers. This protection is achieved by requiring the registration of home builders upfront and not during the course of, or at the end of, construction.

Section 10(1)(b) must therefore be interpreted to mean that registration as a home builder is a prerequisite for building works to be undertaken by a home builder and a failure to register would result in the home builder being ineligible to seek consideration for work done in terms of a building agreement.

The Court further held that the provision does not invalidate the building agreement; rather, the unregistered home builder is barred from receiving any consideration for work done in the absence of prior registration as a home builder.

## ABOUT THE AUTHOR

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