

## SEVEN DAYS, THREE NEW PROPERTY-RELATED ACTS SIGNED INTO LAW

The President has signed three new acts into law, each of which impact property law. The *Expropriation Act* has received much media attention, less so *the Preservation and Development of Agricultural Land Act* (which repeals the Subdivision of Land Act) and the *Housing Consumer Protection Act* (which repeals the Housing Consumer Protection Measures Act). Below we outline the provisions of each new Act and highlight the most significant changes from a property law perspective.

### THE PRESERVATION AND DEVELOPMENT OF AGRICULTURAL LAND ACT

#### BACKGROUND AND PURPOSE

In essence, the Preservation and Development of Agricultural Land Act aims to protect and preserve agricultural land and its productive use, to ensure that agricultural land is available and viable for the development of the agricultural sector and to ensure that agricultural land is actively used to its optimal potential to support long-term food production, which will have a positive impact on the SA economy.

The Act establishes a national policy and regulatory framework for the preservation and development of agricultural land, which—

- encourages food production and farming activities on agricultural land in collaboration with other role-players;
- encourages provincial and local spheres of government to enable and promote the use of agricultural land farming purposes and compatible uses in their policies, legislation and other planning frameworks and procedures;
- through the establishment of a national framework, will promote and encourage viable farming units from a long-term economic, environmental and social perspective;
- discourages and prohibits the subdivision of high potential cropping and grazing land that results in the fragmentation of such land, a reduction in agricultural productivity and land degradation;
- encourages mitigation measures to address the lost agricultural productive capacity; and
- promotes and encourages long-term, viable farming units from an economic, environmental and social perspective.

The Act has seven chapters with 39 sections.

#### CHAPTER 1

##### Section 1: Definitions

There are various important definitions, notably the following:

“agro-	“means a spatially and functionally coherent unit of agricultural activity, that can
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ecosystem”	be defined on varying spatial scales, and includes the interactions between the living and non-living components of the unit as contained within larger landscapes.”
“farmer”	“means a person or entity who uses agricultural land for agricultural purposes, and excludes a person employed by the farmer.”
“land owner”	“means a natural or juristic person, or a community, who holds a right in land, registered or unregistered, over which such person or community enjoys protection under any law.”
“farming unit”	“means an institutional unit, in its capacity as a producer of agricultural goods and services, with— (a) autonomy in respect of financial and investment decision-making; and (b) authority and responsibility for allocating resources for the production of agricultural goods and services.”
“protected agricultural area”	“means a national or provincial protected agricultural area...which is a cartographically delineated area of agricultural land— (a) which is preserved for purposes of ensuring that agricultural land is protected against non-agricultural land uses in order to promote long-term agricultural production and food security; and (b) which includes all areas demarcated as such in accordance with section 11”

**Section 2: Act’s objectives**

This section sets out the objectives of the Act, which are mainly the preservation and sustainable development of agricultural land.

It introduces classification systems of agricultural land to make provision, i.a.,

- For demarcation of protected agricultural areas;
- For implementation of a national framework of norms, standards and use of agricultural land;
- For promotion of viable farming units; and
- To discourage changes to non agricultural use.

**Section 3: Application**

The Act applies in respect of all agricultural land in SA and binds all organs of state in all spheres of government.

**CHAPTER 2**

**Section 4: Principles**

This section lists certain principles underpinning the Act’s provisions and which will apply to all agricultural land authorisations, classification systems, provincial agricultural sector plans, and the like.

These principles are: agro-ecosystem management, productivity, stability, resiliency, viability and equitability.

## **Section 5: Agricultural land evaluation and classification**

The Minister may establish evaluation and classification systems to appraise agricultural land and to spatially delineate agricultural areas.

## **Section 6: Preparation of provincial agricultural sector plans**

This section sets the national criteria and guidelines for compiling and preparing provincial agricultural sector plans. Here again food security and preservation of agricultural land are highlighted as outcomes.

## **Section 7: Purpose of provincial agricultural sector plans**

This purpose is stated to include the coordination of agricultural land use policies, plans, programmes and decisions of organs of state aimed at promoting, achieving and preserving a sustainable agricultural environment.

## **Section 8: Content of provincial agricultural sector plans**

This section prescribes the information that must be contained in provincial agricultural sector plans. These include “a description of agricultural opportunities and planned interventions to enable the optimal agricultural use”, and a “programme for implementation and its costing.”

## **Section 9: Status of provincial agricultural sector plans**

Deals with the status of provincial agricultural sector plans and notes that a municipality must take the provincial agricultural spatial plan into account when it prepares its own municipal spatial development framework and land use schemes.

## **Section 10: Compliance with provincial agricultural sector plans**

MECs must monitor compliance with provincial agricultural sector plans.

## **Section 11: Declaration of protected agricultural areas**

Minister may pronounce certain areas to constitute “protected agricultural areas” to “protect high value agricultural land capable of producing significantly higher levels of agricultural goods or best suited to produce acceptable levels of high value agricultural goods within a defined geographical area, in a sustainable manner” and to “preserve the area primarily for food and other agricultural production.

This declaration will also be noted in the Deeds Office against the land.

## **Section 12: Procedure to declare protected agricultural areas**

This section outlines the procedure for the declaration of protected agricultural areas by the Minister or MEC.

## **Section 13: Review, withdrawal and amendment of protected agricultural areas**

The Minister and the MEC must, every 5 years, review (and withdraw or amend, as necessary) the list of protected agricultural areas.

## **CHAPTER 3**

### **Section 14: General objectives of agro-ecosystem management**

The general objectives of agro-ecosystem management are listed here. These include to “identify, predict and evaluate the actual and potential impact of activities on the agro-ecosystem, the risks, consequences, alternatives and options for mitigation of activities, with a view to minimising negative impacts, maximising benefits”, and to “ensure that the effects of activities on the agro-ecosystem receive adequate consideration before actions are taken in connection with them;

### **Section 15: Agro-ecosystem authorisations**

Deals with the process of application for agro-eco-system authorisations. (This is probably the process to be followed should an owner wish to subdivide agricultural land.)

### **Section 16: Listing of activity and agricultural area**

This section provides for the listing of activities which may not commence without an agro-ecosystem authorisation and agricultural areas in which listed activities may not commence without an agro-ecosystem authorisation.

### **Section 17: Procedure for listing an activity and agricultural area**

This section provides the procedure which must be followed before an activity or agricultural area may be listed in terms of section 16.

### **Section 18: Procedure for delisting or amending an activity or agricultural area**

This section prescribes the procedure for delisting or amending an activity or agricultural area.

### **Section 19: Identification of competent authority**

Lists who the appropriate authorities are to approach for the granting agro-ecosystem authorisations.

### **Section 20: Consideration of application by competent authority**

This section provides for the consideration of agro-ecosystem authorisation applications by competent authorities.

## **CHAPTER 4**

### **Section 21: Establishment of committees**

This section provides for the establishment of an advisory committee and technical committees.

## **Section 22: Appointment of technical and other advisers**

This section provides for the appointment of technical and other advisers to advise the Minister or a competent authority on the performance of their functions under the envisaged Act.

## **Section 23: Performance assessment framework**

This section provides that the Minister must, after consultation with the relevant MECs, publish a monitoring, evaluation and assessment framework on the administration of the envisaged Act.

## **CHAPTER 5**

### **Section 24: Establishment of national agro-eco information system**

Provides for the establishment, operation and maintenance of a national agro-eco information system.

### **Section 25: Objectives of national agro-eco information system**

The objectives of the national agro-eco Information system rare to serve as a repository for data on the preservation, use and development of agricultural land; provide information on agricultural activity, serve as tool for research, and the like.

### **Section 26: Content of national agro-eco information system**

This section provides for the detail that should be included in the register. Amongst other things, details of the owner must be provided, and if a natural person, also his/her gender and nationality.

## **CHAPTER 6**

### **Section 27: Right to appeal**

This section provides for an appeal process for any person aggrieved by the decision of a competent authority in respect of an application for an agro-ecosystem authorisation. The section further provides that a lodged appeal suspends any agro-ecosystem authorisation, which is the subject of the appeal, pending the finalisation of the appeal.

### **Section 28: Appointment of advisory appeal panel**

This section provides for the appointment and composition of an advisory appeal panel.

### **Section 29: Investigation and consideration by advisory appeal panel**

This section provides for the investigation and consideration of appeals by an advisory appeal panel.

### **Section 30: Consideration of appeal by Minister**

This section gives the Minister authority to consider an appeal and to make a decision.

## **Section 31: Compliance inspections**

This section makes provision for the appointment of an official or any other person as an inspector to investigate any non-compliance with the envisaged Act.

## **Section 32: Contravention directives**

This section provides for the issuing of contravention directives by a competent authority to persons who contravene the envisaged Act.

## **Section 33: Investigation and gathering of data on agricultural land**

This section provides for a competent authority to authorise the investigation and gathering of data on agricultural land.

## **CHAPTER 7**

### **Section 34: Delegations**

This section authorises the Minister and the Director-General to delegate certain powers or duties vested in them under the envisaged Act.

### **Section 35: Regulations**

This section authorises the Minister to make regulations which may provide that any person who contravenes or fails to comply with a provision thereof is guilty of a criminal offence and liable on conviction to a fine or imprisonment, or to both such fine and imprisonment.

### **Section 36: Offences**

This section provides a list of criminal offences which a person may be guilty of under the envisaged Act.

### **Section 37: Penalties**

This section prescribes penalties for the offences listed in section 36.

### **Section 38: Amendment of laws**

This section amends the Subdivision of Agricultural Land Repeal Act, 1998 (Act No. 64 of 1998) ("SALRA"), to the extent reflected in the Schedule, which makes provision for transitional arrangements in respect of any application, appeal or other process in terms of the Subdivision of Agricultural Land Act, 1970 (Act No. 70 of 1970) ("SALA"), to be continued as if the SALA had not been repealed. Furthermore, it provides that any consent granted or deemed to have been granted in terms of the SALA remains valid for the specified period, or if not specified then for a period of five years from the date of the commencement of the SALRA.

## EXPROPRIATION ACT 13 of 2024

### Objectives

The Act seeks will repeal the Expropriation Act of 1975 once operational. It aims to establish a common framework, in line with the Constitution, to guide the processes and procedures for expropriation of property by organs of state and to provide for instances where expropriation with nil compensation may be just and equitable.

### Chapter 1: Definitions and application of Act

**Sections 1 and 2** contain definitions and deal with the application of the Act and records that an expropriating authority may not expropriate property arbitrarily or for a purpose other than a public purpose or in the public interest.

The expropriating authority is obliged to enter into negotiations with the owner of property required for such purposes and attempt to reach an agreement on the acquisition of the property before resorting to expropriation, except in circumstances where the right to use property temporarily is taken on an urgent basis (section 22). An expropriating authority may not expropriate the property of a state-owned corporation or state-owned entity without the concurrence of the executive authority responsible for that corporation or entity.

No property may be expropriated unless the prescribed procedures have been followed.

### Chapter 2: Powers of Minister of Public Works and Infrastructure to expropriate

**Sections 3 and 4** grant a general power to expropriate to the Minister of Public Works and Infrastructure (the “Minister”) for purposes connected with the execution of his or her mandate, which includes the provision and management of the accommodation, land and infrastructure needs of organs of state.

The Minister may delegate or assign his or her powers and duties contained to an official of the Department of Public Works and Infrastructure (“Department”), except for the power to—

- (a) expropriate;
- (b) expropriate urgently on a temporary basis;
- (c) withdraw an expropriation; or
- (d) make regulations.

### Chapter 3: Investigation and valuation of property

**Sections 5 and 6** deal with the pre-expropriation phase and detail various procedures to be followed by an expropriating authority prior to an expropriation.

These procedures are used to ascertain:

- the suitability of the property for the purpose for which it is required;
- to gather information on the existence of registered and unregistered rights in such property;
- the impact of such rights on the intended use thereof.

The expropriating authority may authorise persons to enter the property with a view to surveying and valuating the property, amongst other things.

In gathering the information, the expropriating authority is obliged to consult with other organs of state that may be affected by the expropriation. The Departments responsible for rural development and land reform, for mineral resources and for water affairs and sanitation and the relevant municipality must be consulted to ascertain the impact of the proposed expropriation on the rights administered by those Departments and in the case of municipalities, to ascertain the effect which an expropriation will have on spatial development and engineering services.

#### **Chapter 4: Intention to expropriate and expropriation of property**

**Sections 7 to 11** deal with the *post-investigation phase*.

At this stage of an expropriation, the expropriating authority would have gathered all information, consulted with all parties affected by the expropriation and decided to expropriate.

The expropriating authority must serve all the affected parties known to him or her with a notice of intention to expropriate.

This notice will amongst other things include the description of the property, the purpose for which the property will be expropriated, the reason for the expropriation and a directive to the owner and holders of rights to furnish particulars of holders of unregistered rights known to them.

The notice must also call upon the owner or a holder of a right to provide a written statement stipulating the amount claimed as just and equitable compensation. However, failure to stipulate the amount claimed by him or her will not affect the owner's rights contained in clause 7(4). Rights must be expropriated individually and separate notices must be given to separate right holders. All affected parties are given the opportunity to submit written objections within a stipulated period. The expropriating authority must consider all objections and submissions timeously before proceeding with an expropriation. If no agreement on the amount of compensation payable can be reached between the expropriating authority and the owner or holder of a right within a specified period, the expropriating authority must take the decision whether or not to expropriate.

Provision is made for further negotiation on compensation with the owner or holder of a right.

#### **Section 8 deals with the notice of expropriation.**

If the expropriating authority decides to expropriate a property, the expropriating authority must cause a notice of expropriation to be served on the relevant owner and holder of an unregistered right and on all affected parties of whom the expropriating authority is aware (such as bondholders).

Extensive provision is made regarding the contents of the notice of expropriation. It must, amongst others, contain a full description of the property, a description of the purpose for which the property is expropriated, the reason for the expropriation, the date of expropriation and the amount of compensation offered or agreed to. The notice must furthermore be accompanied by documents setting out the date of payment of the compensation, an explanation of what the offer of compensation is based on.

An expropriating authority is further obliged to inform the owner of the right to approach a competent court including conditions applicable to that right.

Section 9 states the effect expropriation will have on the property

This includes that ownership of the property vests in the expropriating authority, and that all unregistered rights in the property are expropriated, subject to certain exceptions.

Furthermore, the expropriating authority, or the person on whose behalf the property was expropriated, must take possession of the expropriated property on the date stated in the



expropriation notice or such other date as may be agreed upon with the expropriated owner.

Until the date of possession, the expropriated owner or expropriated holder who is still in possession of the property must take care of and maintain the property and must be compensated for costs necessarily incurred for the maintenance of the property.

Section 10 deals with claims made in respect of unregistered rights in property, which property has already been expropriated.

### Chapter 5: Compensation for expropriation

**Sections 12 to 20** deal with the determination and payment of compensation to persons whose property or rights are expropriated.

The factors listed in section 25(3) of the Constitution to determine the amount of compensation in instances of expropriation, is duplicated word for word in the Expropriation Act. The Constitution (and Expropriation Act) further dictate that the time and manner of payment must be just and equitable, reflecting an equitable balance between the public interest and the interests of those affected, having regard to all relevant circumstances, including—

- (a) the current use of the property;
- (b) the history of the acquisition and use of the property;
- (c) the market value of the property;
- (d) the extent of direct state investment and subsidy in the acquisition and beneficial capital improvement of the property; and
- (e) the purpose of the expropriation.

Provision is made in **section 12** for factors which must not be taken into account when the amount of compensation is determined. These are—

- (a) the fact that the property has been taken without the consent of the expropriated owner or expropriated holder;
- (b) the special suitability or usefulness of the property for the purpose for which it is required by the expropriating authority, if it is unlikely that the property would have been purchased for that purpose in the open market;
- (c) any enhancement in the value of the property, if such enhancement is a consequence of the use of the property in a manner which is unlawful;
- (d) improvements made on the property after the date on which the notice of expropriation was served upon the expropriated owner and expropriated holder, except where the improvements were agreed on or were undertaken in pursuance of obligations entered into before the date of expropriation;
- (e) anything done with the object of obtaining compensation therefor; and
- (f) any enhancement or depreciation, before or after the date of service of the notice of expropriation, in the value of the property in question, which can be directly attributed to the purpose in connection with which the property was expropriated.

**Section 12** further provides for situations wherein it may be just and equitable and in the public interest to pay nil compensation for land earmarked for expropriation. These instances include the

following:

- (a) Where the land is not being used and the owner's main purpose is not to develop the land or use it to generate income, but to benefit from appreciation of its market value;
- (b) where an organ of state holds land that it is not using for its core functions and is not reasonably likely to need the land for its future activities in that regard, and the organ of state acquired the land for no consideration;
- (c) notwithstanding registration of ownership in terms of the Deeds Registries Act, where an owner has abandoned land by failing to exercise control over it;
- (d) where the market value of the land is equivalent to, or less than, the present value of direct state investment or subsidy in the acquisition and beneficial capital improvement of the land; and
- (e) when the nature or condition of the property poses a health, safety or physical risk to persons or other property.

When a court or arbitrator determines the amount of compensation in terms of section 23 of the Land Reform (Labour Tenants) Act, it may be just and equitable for no compensation to be paid having regard to all circumstances.

**Section 13** makes provision for the payment of interest on any outstanding amount of compensation once the expropriating authority has taken possession.

**Section 14** deals with certain obligations of an owner or holder of an unregistered right who receives a notice of expropriation in terms of section 8(1).

The owner must within 20 days of receiving the notice indicate whether he or she agrees to or rejects the amount of compensation payable. If the offer is rejected, the owner or holder must indicate the amount he or she claims as just and equitable compensation. Provision is made for particulars which the owner or holder must furnish. Provision is also made for the expropriating authority to extend the period of 20 days in terms of section 25.

**Section 15** provides that if the expropriating authority rejects the amount claimed by a claimant, the executing authority must within 20 days of delivery of the statement containing the amount claimed, make an offer of just and equitable compensation and furnish full particulars of how the amount is made up and calculated.

**Section 16** provides for certain particulars the expropriating authority or claimant may request regarding claims and offers.

**Section 17** deals with the manner in which the payment of the amount offered as compensation must be made.

**Section 18** deals with instances where expropriated property is subject to a mortgage or a deed of sale and provision is made as to whom payment of the amount of compensation must be paid.

Provision is made in section 19 for the payment, from the compensation money, of property rates, taxes and other charges relating to the property concerned by the expropriating authority. Should a municipal manager fail to inform the expropriating authority of outstanding municipal property rates, taxes or other charges, the expropriating authority may pay the compensation to the expropriated owner or expropriated holder without regard to outstanding municipal property rates, taxes or other charges.

**Section 20** makes provision for instances where the amount of compensation may be deposited with the Master of the High Court.

## **Chapter 6: Mediation and determination by court**

**Section 21** provides that in the absence of agreement on compensation, either party may institute legal proceedings in a competent court within a stipulated period.

The disputing party has the option to request the expropriating authority, in writing, to institute legal proceedings (but it says nothing about who is liable for payment of legal services obtained in these circumstances). Both the request by the disputing party and the institution of the proceedings by the expropriating authority must take place within a stipulated time period.

## **Chapter 7: Urgent expropriation**

In the case of a disaster, urgent and exceptional circumstances, real and imminent danger, or if a court so orders, an expropriating authority may exercise a right to use property temporarily for a period not exceeding 12 months.

The expropriating authority is exempted from certain provisions of the Act should it exercise the right to take property temporarily on an urgent basis. The expropriating authority must within 30 days of the notice to use the property temporarily make a written offer of compensation to the owner or holder. Provision is made for compensation in the case of damage to the property concerned and for the extension of the period of 12 months by order of court.

## **Chapter 8: Withdrawal of expropriation**

**Section 23** authorises an expropriating authority to withdraw an expropriation if the withdrawal is in the public interest or the reason for which the property was expropriated is no longer applicable. Under certain specified instances, an expropriating authority may not withdraw the expropriation. Provision is also made for the effect a withdrawal of an expropriation has on ownership of the property. Provision is made that the expropriating authority will be liable for all reasonable costs and damages incurred or suffered by the claimant as a result of the withdrawal.

## **Chapter 9: Related matters**

**Sections 24 to 32** deal with—(a) service and publication of documents; (b) extension of time allowed for certain actions; (c) a register of all expropriations; (d) offences and other related matters; (e) the power of the Minister to make regulations; (f) validity of regulations, legal documents and steps under certain circumstances; (g) impact on existing legislation; (h) repeal of the Expropriation Act; (i) transitional arrangements and savings; and (j) the short title and commencement of the envisaged expropriation

As far as existing laws dealing with expropriation are concerned, **clause 30** proposes that those laws continue to apply to the extent that they are consistent with the provisions of the envisaged Act. In the event of a conflict between the envisaged Act and such existing laws, the envisaged Act will prevail.



**THE HOUSING CONSUMER PROTECTION ACT**

Towards the end of 2019, the Department of Human Settlements published the Housing Consumer Protection Bill. After some amendments, the Bill was sent to the National Council of Provinces for concurrence in March 2023. It has been signed into law on 29 January 2025, but is not yet operational. However, when a date for coming into operation is gazetted, it will repeal the Housing Consumers Protection Measures Act 95 of 1998 ('the HCPMA').

**1. What does the Act set out to achieve?**

The main aim of the Act, similar to that of the current Act, is to provide for the protection of housing consumers, in other words, those for whom homes are built. In the Act's preamble, its additional aims are listed, being to:

- provide for the registration of homebuilders;
- provide for the enrolment of homes in order to be covered by the home warranty fund;
- provide for the regulation of the conduct of homebuilders;
- provide for the continuance of the home warranty fund;
- provide for claims against the fund;
- to provide for the funds of the Council and for the management of those funds;
- provide for procurement and contractual matters in relation to the building of a home;
- provide for the enforcement of this Act;
- provide for the enforcement of the Act; and
- repeal the Housing Consumers Protection Measures Act, 1998.

Little herein appears, on the face of it, to constitute a notable variation from the current Act: Enrolment of homes and registration of homebuilders remain compliance requirements, claims against a warranty fund may be lodged by consumers in certain instances, and a regulatory body remains. There are however quite a few changes in the details of the proposed new legislation and these are highlighted below.

**2. The Act has a wider reach than the current Act****Definition of 'build', 'homebuilder' and 'home'**

The HCPMA essentially aims to regulate persons who are in the business of home building. In order to achieve this, the Act requires builders who erect homes to register with council, to pay annual fees, and to enrol every home that they have contracted to build. The Act allows for owner builders (i.e., an owner that builds a home himself for occupation, or a builder who is not registered with the NHBRC who assists the owner in building a home for his own occupation) to be exempted from the requirement to comply with the Act. Homebuilding is not defined in the Act but the wording of the Act refers to the construction of homes which, in turn, refers to erecting a home from the start.

Against this background, the pool of builders who will be required to comply with the new provisions, is extended. This is achieved by the broad new definitions of the terms 'build', 'homebuilder' and 'home'. The wider application is achieved as follows:

- Firstly, by defining the word 'build' to include the building of a new home as well as the "installation, repair, renovation, alteration or extension" of a home, in so far as the proposed building work will require that the owner must obtain municipal approval of the proposed

building plans. (It is recorded in the definition that the terms 'construct' and 'construction' carry the same meaning as 'build'.) In addition, where the building activities relate to the conversion of commercial premises to a home, compliance with the new law will be required.

- In the second place, the scope is extended by not providing an exclusion for owner builders. A person who uses his own labour to build a home for his own occupation, will no longer enjoy exemption.
- Thirdly, it is informative to refer to the range of building activities which will require the builder to comply with the new provisions. Whilst the HCPMA regulates homebuilders who erect homes for 'residential or partially residential' purposes from the beginning, the Act extends its application to regulate building activity which constitutes the "installation, repair, renovation, alteration or extension" of a 'home', the latter term including:
  - a home forming part of a housing programme initiated by an organ of the state;
  - a private drainage system from home to the municipal connection;
  - water services in connection with the home from point of supply to point of discharge at fixtures and appliances;
  - any ancillary building including but not limited to storerooms, covered walkways, garages, and common facilities;
  - any retaining walls required for structural integrity; and
  - any adjacent building or wall on common property that has the potential to damage the home should it for any reason collapse.

There are some exclusions where, if the above work is performed, it would not require compliance with this law. Dwellings that do not have an own bathroom or kitchen; temporary buildings (as defined in the National Building Regulations and Building Standards Act), shacks and caravans are excluded, as well as hotels and motels.

- In the fourth place, no exemptions exist from the requirement to register with the NHBRC and to enroll homes for those who do not construct homes, but who specialize in renovation or alteration work to homes. (As mentioned, in the present Act a homebuilder is understood to be someone who carries on the business of a home builder and who builds homes from scratch.) 'Homebuilders' must register. 'Homebuilders' are defined as persons that build homes, the latter two words carrying broad definitions as highlighted above.
- Lastly, note that a 'developer' is now defined in the Act and refers to a person or organ of state that "initiates or executes a project" that aims to provide homes for housing consumers. Although residential property developers are presently required to comply with the HCPMA because of their building activities, there is no definition specifically for a developer. In future, also the developer initiating the project must register, whether or not it is also the builder.

### 3. Warranty fund

In section 35, the Act provides that the existing warranty fund shall remain in place. The types of claims for substandard building work allowed in terms of the Act, is the same as those in the current Act, but with some adaptations. Presently the warranty covers major structural defects (for 5 years from the date of occupation) if it resulted from non-compliance with the NHBRC Technical Requirements, as well as roof leaks (for a 12-month period) if the problem is attributable to inadequate workmanship, design or materials.

In the Act, the time periods in which the warranty in respect of major structural defects will be in place, is altered to start running from the date that construction commences until five years after finalisation of the construction. In the case of roof leaks, the duration of the warranty cover is similarly extended to commence from the time of construction of the roof until 24 months after finalisation of the construction of the home.

Clause 49(3) states that should a housing consumer detect a major structural defect after occupation of the home, and has to vacate the home and move into suitable alternative accommodation for repairs to take place, then either:

- (i) the homebuilder or developer; or
- (ii) in the case where both the homebuilder and the developer are involved, both are jointly and severally liable for the reasonable cost of that relocation and accommodation.

#### 4. Grading and a public register

All registered builders' details must be reflected on a public register which the National Home Building Regulatory Council must maintain. The register must now also include a grading of the relevant builder.

It is not indicated in the Act how the grading of homebuilders will be determined, except that the grading categories and criteria will be made by the Board (of the National Home Building Regulatory Council) on recommendation of the Council. The Act further indicates that:

- If a home builder fails to complete a project within the time agreed upon, the consumer may report this to the Council and it could affect the builder's grading.
- The Council may differentiate between different categories of enrolment fees in relation to different categories of homes and different categories of homebuilders and developers based on grading status.

#### 5. Obligations on conveyancers and the Registrar of Deeds

In section 18 of the current Act, an obligation is imposed on conveyancers attending to bond registrations for 'housing consumers' who are borrowing funds to purchase a home from a home builder (such as plot-and-plan transactions), to ensure that the home builder is registered in terms of the Act and the home enrolled. Failure to comply is an offence (section 21) and the conveyancer can be fined up to R 25 000.

Clause 84 of the Act takes this obligation further. It requires of conveyancers, both in the registration of a mortgage bond and transfer of ownership, to determine whether the home on the property being transferred or mortgaged, is a home which has to be enrolled. If it transpires that it is such a home and it is not enrolled, the conveyancer has an obligation to inform the Council and the Registrar of Deeds accordingly. The Council may report a conveyancer who does not comply with the provisions of this clause to the applicable law council. Similarly, estate agents selling homes are also tasked with determining whether the home was enrolled, and to advise the Council of a transgression.

A parallel duty is placed on the Registrar of Deeds, before he or she registers a deed, to determine whether that registration relates to a home which has to be enrolled as required in the Act. No registration is allowed in the case of non-compliance. (In conveyancing practice this will presumably involve a new practice requirement from the Deeds Office to demand that conveyancers either certify regarding enrolment, where required; or that conveyancers provide some certification from the Council or builder to this effect.)

It appears that, inadvertently, the conveyancer will be required to police compliance with the municipal requirement to obtain approved building plans, for the benefit of the local authority and purchaser! This is likely to cause long delays in the registration process. Perhaps exemptions will in due course be made to exclude instances where the conveyancing transaction does not relate to the transfer of a newly erected home and one will watch this space.

If these parties do not comply with this duty, they may be reported to the Property Practitioners Regulatory Authority, the Financial Service Board, the Law Society or the Auditor-General (as applicable). This extends the watchdog function over homebuilders and developers further to also include these parties who now have an obligation to confirm compliance with the Act.

## CONCLUSION

The Act introduces many far-reaching changes to the existing system of consumer protection for housing consumers. Some of these relate to the duties of conveyancers when registering transfers of property or mortgage bonds. The additional duties are quite substantial, and the extent thereof possibly unintended. Changes may still be forthcoming and we will in due course furnish a further discussion of the provisions.