

CONSTRUCTION AND ENGINEERING AND DISPUTE RESOLUTION ALERT



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A SMALL LEAK DOES NOT HAVE TO MEAN A BIG HEADACHE – HIDDEN REMEDIES IN THE HOUSING CONSUMERS PROTECTION MEASURES ACT

A leaking roof is unfortunately something that most homeowners are all too familiar with. Fortunately the law provides a possible solution to this problem: the builder who originally built the home is obliged to fix the problem. The solution for the homeowner lies in s13(2) of the Housing Consumers Protection Measures Act, No 95 of 1998 (Act).

A SMALL LEAK DOES NOT HAVE TO MEAN A BIG HEADACHE – HIDDEN REMEDIES IN THE HOUSING CONSUMER PROTECTION MEASURES ACT

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Section 13(2) states that the builder is required, at its own cost, to repair any major structural defects; repair any deviation from the plans and specifications; and specifically repair roof leaks when the leak is attributable to poor workmanship, design or materials.



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Section 13(2) of the Act can be divided into two parts: The first deals with the warranties that the builder provides to the owner, which are guarantees, or promises, that the builder makes in terms of the construction work performed. The second part of s13(2) following on the warranties, identifies the remedies available should the builder breach these warranties.

What promises does the builder make when he builds your home?

According to s13(2) the builder warrants that the house will be constructed in a workmanlike manner and shall be fit for habitation. In addition, the Act requires that the builder build according to the NHBRC Technical Requirements (prescribed national building standards) and in accordance with the plans and specifications for the home.

So what then when the roof starts leaking?

The second part of s13(2) entitles you as the homeowner to demand that the builder act on the warranties provided. Section 13(2) states that the builder is required, at its own cost, to repair any major structural defects; repair any deviation from the plans and specifications; and specifically repair roof

leaks when the leak is attributable to poor workmanship, design or materials.

The protection explained above is also available to persons who purchased homes rather than built them. This is so because the warranty that the builder extends is transferred from one homeowner to the next whenever the home is sold.

A limitation on the ability of the new homeowner to enforce these remedies, would be if an agreement had been reached between the builder and the original housing consumer limiting the number of years for which the builder would provide these warranties. The period of the warranties would then be whatever the parties agreed to but cannot be less than the minimum periods prescribed for in s13(2). In the case of leaking roofs the minimum period is 12 months as from the date of occupation.

The duty of the builder to repair will be triggered on a demand being sent to the builder to repair the leaking roof in accordance with the builder's warranties. Should the builder fail to act on the demand, a specific performance application for compliance with the warranty would be the next step.

Adine Abro and Ernst Müller



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