



The original scheme known as the National House Building Guarantee Scheme and now known as HomeBond/Guarantee was set up by the Construction Industry Federation with the approval of the Department of the Environment in September 1977.

Broadly the scheme is intended to give the Purchasers of a new dwelling house, purchased within the terms of the scheme a guarantee in respect of “major structural defects” arising within ten years of the completion of the dwelling. Under the old scheme up to the 1st January 1995, the term of the guarantee was six years. There was also introduced on the 1st January 1995 an extension of the guarantee to cover the loss of deposit or stage payments before the house is completed.

To broadly summarise, therefore, HomeBond guarantees

1. The dwelling against major structural defects for ten years.
2. The dwelling against water and smoke penetration for the first two years of the warranty period.
3. Protection against loss of deposit or stage payments before the house is completed.

It must be borne in mind that these guarantees are only available through builders who are HomeBond registered with the National House Building Guarantee Company Limited. HomeBond does not affect contractual and common law rights and in fact is an added protection and further attaches to the property even if the property is sold within the warranty period.

The Structural Defects Indemnity

From enquiries with the guarantee company there appears to be a limit of £30,000 for any one house and £400,000 in respect of any one builder. However, this is an arrangement between the builder and HomeBond but if a purchaser has serious defects in his house, the position appears to be that HomeBond will cover the cost of the repairs even if these repairs are in excess of £30,000. The procedure is that one must first write to the builder setting out the details of the defects requesting the necessary repairs to be carried out and advising how access can be arranged during working hours. The owner should keep a copy of the letter and if the builder does not respond within 14 days he should then write to HomeBond and enclose a copy of the letter sent to the builder. HomeBond will then write formally to the builder and send the owner of the house a special complaints form. When the form is returned together with £50.00 inspection deposit (which will be refunded if the complaint is well founded) a HomeBond technical expert will examine the complaint and visit the site and carry out the inspection where necessary. The owner and the builder will be notified of the result of the investigation and what, if any, specific remedial work is to be carried out. If the builder fails to repair the defect within a reasonable time, the owner must contact



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HomeBond who will arrange for another builder to carry out the repairs at no expense to the owner.

If the owner or the builder wish to dispute HomeBond's findings provision is made for independent arbitration to adjudicate on the matter.

The Stage Payment Bond

The Conveyancing Committee was very pleased with the introduction of the Loss of Deposit Cover on the Insolvency of Builders as an extension of the existing structural defects cover. Where a builder has this cover there should be no need to have the stage payments held by the builders solicitors as stakeholder subject to the limits of the scheme (and subject to the limits of the scheme, such money can be paid direct to the registered builder, his auctioneer or sales agent). The only foreseeable risk that can arise in this respect is that some agent might purport to take the deposit on behalf of the builder without any authority. If however the advice with regard to the payments is followed when the builder is registered, it is hard to see how this could happen. The present limit of the scheme is as follows:-

HomeBond will repay lost deposits or contract payments resulting from the bankruptcy or liquidation of registered builders subject to a maximum of 15% of the purchase price or £20,000 whichever is the lower. It operates from the date of registration with HomeBond for a period of two years. The second part of the protection operates from the date of issue of the Final Notice (usually after the main structural inspection) to the completion and handover of the dwelling. Financial indemnity cover for the remainder of the contract period increases to 50% of the purchase price or £50,000 whichever is the lower. This cover is important particularly where there is a drawing down of a mortgage under a stage payments arrangement. It must be made quite clear however, that the only circumstances under which HomeBond would guarantee the refund of the deposit is on the insolvency or fraud of the member builder and it is not the intention of HomeBond to get involved in the type of arguments and disagreements which regularly arise between builders and purchasers in any other matters. The purchaser must satisfy the scheme that he has been unable (having used reasonable endeavours) to obtain reimbursement of the amount of the deposit on the insolvency or fraud of the member. HomeBond has assured the Conveyancing Committee that in cases where their members are in liquidation/receivership or bankruptcy there would be no question of purchasers having to take legal proceedings. The time limits on the cover are, with regard to the initial deposit, two years from the date of registration with HomeBond and, with regard to the additional cover, same expires 6 months after the Final Notice unless the purchaser requests an extension of time. Solicitors should make sure that their clients are aware of the rules and that it is up to the client to



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monitor the time limits to seek assistance if the construction of the house does not seem to be proceeding and if time seems to be running out.

Even if deposits are protected under the scheme it is advisable that the solicitor should obtain the client's instructions to pay over the deposit to the builder. The HomeBond scheme have a new form called the HB 10 which includes the guarantee agreement, the stage payment bond and the guarantee certificate and no payments should be made until this document issues. There should also be obtained and made available to the purchaser's lending agency the form HB 47 which is an acknowledgement of the registration of the dwelling under the scheme.

Stage payments outside the HomeBond Protection Scheme

The Conveyancing Committee is concerned that the practice of builders requiring stage payments to be made for the purpose of a new estate type houses still persists in a number of areas. In general the Committee disapproves of the stage payments purchase practice and is making representations to the Construction Industry Federation, the Department of the Environment and the Director of Consumer Affairs.

While the protection afforded by the HomeBond stage payment bond is welcome, it cannot of itself protect purchasers from the difficulties and problems which would arise if a developer were to become insolvent after stage payments were made on or above the limit set out in the scheme and before a transfer of title had been executed in the purchaser's favour.

Accordingly, for so long as the stage payment purchase practice persists the Committee emphatically advises practitioners that in order to protect their purchaser clients they should ensure that title to the site should pass from the developer to the clients on the occasion of the making of any stage payment outside the protection offered by the scheme.

In issuing this recommendation the Committee wishes to state that it is not intended to apply to purchases of once-off new houses where such matters are negotiated by and between the parties involved.

Important points to remember:

1. Make sure the builder is a HomeBond member and if in doubt contact HomeBond at Construction House, Canal Road, Dublin 6.
2. All lenders require that new dwellings are HomeBond protected and registered with the HomeBond scheme. Make sure you receive the HB47 as this will be required by the lender before the loan cheque will issue.



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3. Before a solicitor allows his client enter into a building contract with a builder he should ensure that the Form HB10 has issued which incorporates the protection that comes to his client from HomeBond.
4. Before completion and before the balance of purchase monies is paid over the solicitor should ensure that the final Certificate HB11 has issued and he should not accept an undertaking with regard to same.
5. The Rules governing the HomeBond Scheme are entitled “HomeBond HB1 – Rules effective from 1st March 1997” and are published by HomeBond. Every solicitor should have to hand a copy of the Rules.