

CLIENT
MEMORANDUM
ON HOMEBOND

Since January 1995 the former National House Building Guarantee Scheme has been known as HomeBond.

This scheme was first established in January 1978 to guarantee purchasers of new dwellings, defined as "house, bungalow, maisonette or flat", protection against major structural defects for a certain number of years where they could not get satisfaction from the original builder. It has been expanded over the years to protect against major non-structural defects and loss of deposits or stage payments.

The first document a purchaser gets under the scheme is a form HB47. This acknowledges registration of the dwelling under the scheme and must be given by the purchaser to its building society or lending institution when applying for a loan.

When a purchaser enters into a contract to buy a dwelling in the course of construction he/she usually signs two contracts. One is the building contract whereby the builder agrees to build the dwelling in accordance with plans and specifications for a particular price. The other is the agreement for sale which deals with the transfer of ownership of the site on which the dwelling is built to the purchaser. If the builder is registered with HomeBond, in addition to these contracts, the purchaser enters into a guarantee agreement. The guarantee agreement is called "Form HB10". It is two forms in one and it must be signed by both parties. In the guarantee agreement the builder undertakes, at his own expense, to obtain the HomeBond final notice in respect of the dwelling provided the purchaser complies with the rules of the scheme. The final notice, which is called the "Form HB 11", is evidence that the HomeBond cover is in place. Under the scheme as it now exists, this cover lasts for ten years. When the contracts are exchanged the builder's solicitor retains one part of each contract and the guarantee agreement and the purchaser's solicitor retains the other parts.

While the construction work on the dwelling is in progress, two inspections are made by the Department of the Environment inspectors on behalf of HomeBond. Upon receipt of a satisfactory final inspection report, HomeBond will issue the final notice form (HB11). The last inspection on behalf of HomeBond should be arranged by the builder when the property is roofed and watertight, i.e. some time before it is finished, so that the final notice form HB11 should be available by the time the property is finished. The final notice is issued to the builder who passes it on to the purchaser on the closing of the sale. If the final notice is not available on the closing of the sale it may be because the builder was late in arranging the inspection or it may be because there was a problem with the final inspection and the certificate will never issue. **A purchaser should not complete a purchase without getting the final notice** or being satisfied that it is going to issue.



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The HomeBond cover guarantees the house against:-

1. Major structural defects for ten years. Such defects are defined as any major defect in the foundations of a dwelling or the load bearing part of its floors, walls and roof or retaining walls necessary for its support which affects the structural stability of the dwelling;
2. Major non-structural defects which might lead to smoke or water penetration of the completed home.

Minor structural defects and other non-structural defects are not covered by the HomeBond scheme. The cover also specifically **excludes** the following:-

1. any defect consequent upon negligence other than that of the Member (i.e. the builder) or a sub-contractor;
2. any defect for which compensation is provided by legislation or which is covered by insurance;
3. any defect arising in consequence of drawings, materials, design or specification provided by or on behalf of the purchaser;
4. any defect caused by or damage to anything not built into the dwelling pursuant to the contract for sale or building contract entered into by the builder and the purchaser;
5. hair cracks, shrinkage, expansion or dampness due to normal drying out of the dwelling or condensation;
6. wear and tear or gradual deterioration;
7. consequential loss whatsoever or howsoever arising;
8. any defect in central heating;
9. any defect consequent upon installation in or upon the dwellinghouse by the builder or otherwise of any lift or swimming pool.

The ceiling on the amount of compensation that will be given by HomeBond (in cases of the defects covered under the Scheme) is now £30,000 per dwelling and in respect of stage payments and defects £400,000 per builder. These limits are important, particularly the latter. A limit of £30,000 per dwelling might be inadequate in a bad case. If a substantial builder became insolvent a limit of £400,000 might be completely inadequate. Some comfort can be obtained from the fact that HomeBond take some precautions and try to limit the number of houses registered for any one builder.

In the event of a problem arising within the first two years of the ten year cover a purchaser must seek redress from the builder in the first instance. After the first two years a purchaser



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may apply to HomeBond directly in the event of a claim. Previously under the scheme first recourse had to be to the builder regardless of when the claim was made.

Since 1990 the HomeBond scheme also gives protection to purchasers who lose deposits or stage payments on homes due to the insolvency of a builder who is registered under the scheme.

This deposit protection is in two tiers. In the first tier HomeBond will repay lost deposits and contract payments resulting from the builders' bankruptcy or liquidation subject to a **maximum of 15% of the purchase price or IR£20,000, whichever is the lower**. It operates from the date of registration with HomeBond for a period of two years.

The second tier operates from the date of issue of the final notice for a period of six months and gives similar cover up to a maximum of 50% of the purchase price or £50,000, whichever is the lower.

Where a final notice has issued, any claim under the stage payment cover must be submitted within six months of the date of the issue of the final notice.

A purchaser may request HomeBond to extend either of the above time limits. The request in either case must be made before the time limit runs out. Where such a request is received then the time period will be extended for an additional period of six months.

A purchaser should monitor the construction of the dwelling on a regular basis to make sure that it is proceeding at a satisfactory pace and take action if the time limit on the deposit or stage payment cover is running out. It is important to note that your solicitor will not monitor these time limits. Your solicitor will however advise you if you are not sure what action to take.

Where a deposit is covered under the HomeBond scheme solicitors would normally agree on the purchaser's behalf to the deposit being paid to the builder (as an alternative to requiring it to be held by the builder's solicitor) unless they receive written instructions to the contrary from their clients. Therefore if a purchaser does not wish the deposit or stage payment to be paid to the builder he/she should notify his/her solicitor in writing without delay.

If a purchaser pays a deposit to a selling agent it is of vital importance that the purchaser ascertains on whose behalf the selling agent is accepting the deposit in order to establish whether or not the company or builder on behalf of which the deposit is being received is a registered member of HomeBond.



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Membership of HomeBond does not automatically entitle the builder member to deposit cover. In every case therefore it is important to ensure that deposit cover does apply. **Any deposit paid whether to a builder or selling agent, before the house is registered with HomeBond is NOT covered.**

A purchaser paying a deposit or booking deposit before knowing whether the dwelling is registered with HomeBond should ensure that it is held by the solicitor for the builder as stakeholder.

The only circumstances in which HomeBond will guarantee the refund of a deposit is where a purchaser is at a loss due to the insolvency or fraud of the builder member. HomeBond does not cover a situation where a builder refuses to refund a deposit in other circumstances, for example, where a dispute has arisen as to a purchaser's entitlement to a refund.

A purchaser must satisfy HomeBond that he/she has been unable (having used reasonable endeavours) to obtain a refund of the deposit paid and that this arises by reason of the insolvency or fraud of the builder member. Except in very unusual circumstances a purchaser would not be required to take legal proceedings against the builder before HomeBond would deal with this claim.

Stage payments are not usual in the greater Dublin area but elsewhere in the country are very common. In the case of stage payments being made often the total amount paid prior to completion of the transaction may exceed the monetary limit imposed by HomeBond. **In such circumstances while a purchaser would be entitled to the protection of the cover given by HomeBond up to the limit imposed, the excess would not be protected and could be lost in the event of the builder's insolvency or fraud. Once it is paid over to the builder it makes no difference whether this was done through the purchaser's solicitors and/or the builder's solicitors.**

Over two thousand builders are now members of HomeBond. A small percentage of builders are still not covered and it is wise to double check that a builder is registered under the scheme. It is a fact that some builders advertise that houses are covered by HomeBond before they are registered and indeed before they are sure that they will secure registration. **If you phone HomeBond at 1 850 306 300 they will check and tell you if a particular builder and house are registered.**



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Our advice is not to buy a new property unless it is covered by HomeBond.

The major advantage of HomeBond is a degree of peace of mind given by the knowledge that it investigates. HomeBond does its best to ensure that its members have the technical know-how necessary to do the job and also check the financial affairs of every builder that joins the scheme.

NOTE

This client memorandum may be copied and given to clients who are buying new homes that are registered with HomeBond

*Thanks to
Mr. Rory O'Donnell who
provided the Conveyancing
Committee with this client
memorandum on
9th June 2000.*

UPDATE: Please consult current HomeBond documentation for any increase in the level of cover provided and for any other changes in terms and conditions.