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THE CONSTRUCTION CONTRACTORS BILL, 2011

A BILL FOR AN ACT TO PROVIDE FOR THE REGISTRATION AND LICENSING OF CONSTRUCTION CONTRACTORS FOR THE REGULATION AND CONTROL OF THE CONSTRUCTION CONTRACTING INDUSTRY AND FOR RELATED PURPOSES

Enacted by the Parliament of The Bahamas

PART I

PRELIMINARY

1. Short title and commencement.

- (1) This Act may be cited as the The Construction Contractors Act, 2011.
- (2) This Act shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

2. Interpretation.

- (1) In this Act, unless the context otherwise requires —
 - “Accreditation Committee” means the Committee established by section 8(2);
 - “applicant” means a person applying for registration under the provisions of this Act as a contractor;
 - “association” means the Bahamian Contractors Association or any other registered associations;
 - “Board” means the Construction Contractors Board;

- “builder” means a building contractor or general contractor as outlined in the First Schedule who constructs residential homes and who has coverage with a registered insurance company;
- “Builders Defects Insurance” means an insurance taken out by the builder to cover the home owner in the event defects are noted in the newly constructed residential homes;
- “Builders Defects Insurance Scheme “hereinafter referred to as the “Scheme” means a Scheme set up by the Board pursuant to section 37 to cover the home owner in the event of any defective works by the builder in the newly, constructed , residential home;
- “Chairman” means the officer functioning as head of the Board;
- “client” means a person who has entered into an agreement with the builder for the construction of a residential home;
- “Code of conduct” means a set of rules governing the profession of a contractor;
- “Contractors All Risk Insurance” means insurance taken out by the contractor and home owner to cover any material damage to the residential home under construction, such as theft from the site, fire damage, storm and flood damage;
- “construction contracting” means the giving of an undertaking, at a stated price, to construct, repair, alter, remodel, add to, demolish or improve, any building, place, structure, or land, or part thereof, personally or by employing others;
- “contracting firm” means any partnership, any corporation or any other association of persons (corporate or unincorporated), which engages in, or intends to engage in construction contracting;
- “contractor” means a person registered and licensed under this Act and defined in the First Schedule who, by reason of his knowledge and experience, is qualified in accordance with this Act, to engage in the practice of construction contracting;
- “Contractors Register” means the Construction Contractors Register provided for in section 9;
- “disciplinary committee” means a committee appointed under section 22(1);
- “foreman” means a construction worker in a particular trade who is charged with organizing the overall construction of a particular project, reads blueprint drawings and coordinate the trades on a project;

“home owner” means a person who owns a residential home constructed by a builder;

“insurance company” means a registered insurance company under the Insurance Act, (Ch. 347);

“licence” means a licence issued under section 14;

“Minister” means the Minister responsible for Public Works.

“Public Liability Insurance” means insurance taken out by the contractor with a registered insurance company to cover any legal liability that the contractor may incur as a result of his negligence for injury to third party persons and damage to their property;”;

“tradesman” means a skilled manual worker in a particular trade or craft who start out as an apprentice, then move up to a journeyman and finally attains the title of master for his particular trade or craft.

3. Application of Act.

Subject to section 15, this Act shall apply to all contractors in The Bahamas.

PART II

THE CONSTRUCTION CONTRACTORS BOARD

4. Establishment of the Board.

- (1) There is hereby established a body, to be known as the Construction Contractors Board, which shall discharge the responsibilities assigned to the Board under this Act.
- (2) Subject to the provisions of subsection (3), the Board, shall consist of the following members —
 - (a) the Director of Public Works ex officio;
 - (b) three registered general contractors appointed by the Minister;
 - (c) four other registered contractors appointed by the Minister on the advice of the Association; and
 - (d) two other individuals, not being contractors, appointed by the Minister acting in his discretion.
- (3) The Minister shall not —
 - (a) appoint more than three persons from the same category of contractors, to be members of the Board at the same time; or
 - (b) appoint as a member of the Board any person who, under the law of The Bahamas, is not a citizen or permanent resident of The

Bahamas except he is a public officer such as the Director of Public Works.

- (4) The Chairman shall be elected by the Board from among its members.

5. Terms of office of Board members.

- (1) A member of the Board shall hold office until the 31st day of December in the year next following the date of his appointment and shall be eligible for reappointment, but for not more than three consecutive terms.

- (2) The Minister may, if he thinks it expedient so to do, at any time revoke the appointment of any member of the Board:

Provided that where the member was appointed under section 4(2) (c) the Minister shall not, without the prior concurrence of the Association, revoke the appointment of the member.

- (3) If any vacancy occurs among the members, such vacancy shall be filled by the appointment of another member, who shall hold office for the remainder of the period for which the previous member was appointed but such appointment shall be made in the same manner and from the same category of persons as the appointment of the previous member.
- (4) A member other than the Chairman may at any time resign his office by instrument addressed to the Minister and transmitted through the Chairman.
- (5) The Chairman may at any time resign his office by instrument addressed to the Minister.

6. Meetings of the Board.

- (1) The Board shall meet at times as may be necessary or expedient for the transaction of its business, and the meetings shall be held at the places and the times and on the days as the Board may determine:

Provided that the meetings shall take place at least once per quarter.

- (2) The quorum of the Board shall be five.
- (3) The decisions of the Board shall be by a majority of votes and in addition to an original vote, the Chairman, or other person presiding at a meeting, shall have a second and casting vote in any case in which the voting is equal.
- (4) Subject to the provisions of the Act, the Board may regulate its own proceedings.

- (5) The Chairman shall cause to be given to each member of the Board, ten days written notice of a meeting of the Board, stating therein the agenda for the meeting.

7. Registrar and other staff, etc.

- (1) The Minister shall appoint a Registrar who shall hold office for a period of three years and shall perform the functions assigned to the Registrar by or under this Act; and
- (2) The Registrar shall provide the Board with such other staff and accommodation, services and other facilities as appear to the Minister to be necessary or expedient for the performance of the functions of the Board.

8. Functions of the Board.

- (1) In addition to any other functions conferred on the Board by this or any other written law, the functions of the Board are —
- (a) to assess the qualifications and experience of applicants;
 - (b) to conduct or arrange for the conduct of an examination or interview, where appropriate, for the purpose of assessing the professional ability of individuals applying for registration as contractors;
 - (c) to register contractors and to issue certificates of registration;
 - (d) to license registered contractors and constructing firms and to issue licences;
 - (e) to safeguard against illegal, improper or unethical construction contracting practices, and to develop a Code of Conduct for registered contractors;
 - (f) to publish in the Gazette a list of qualifications and institutions recognized by the Board in respect of the construction contracting academic training required for eligibility to sit the prescribed examination;
 - (g) to exercise disciplinary control over registered contractors;
 - (h) to make recommendations to the Minister regarding amendments to the law relating to contractors;
 - (i) to advise the Minister on any matter which the Minister refers to the Board relating to the practice of construction contracting;
 - (j) to regulate the practice of construction contracting in accordance with this Act;
 - (k) to advise the Minister on such matters of professional concern to registered contractors as the Association may refer to the Board;

- (l) to regularly review the activities of the Association;
 - (m) to set the minimum limits on the amount of liability insurance for contractors; and
 - (n) to regulate the Builders Defects Insurance Scheme outlined in the Consumer Code in the Second Schedule.
- (2) The Board shall establish a Committee to be known as the Accreditation Committee to —
- (a) assist the Board with establishing standards for the various contractors;
 - (b) assist the Board in devising examinations for registration and licensing and continuing education programmes for the contractors and;
 - (c) make recommendations to the Board regarding qualifications of an applicant to sit prescribed examinations.

PART III

REGISTRATION OF CONTRACTORS

9. Register of Construction Contractors.

- (1) The Board shall cause the Registrar to keep a register, to be known as “the Construction Contractors Register”, which shall contain the names and addresses of every contractor registered under this Act, the qualifications by virtue of which the contractor is registered and such particulars as may be prescribed.
- (2) The Contractors Register shall be divided into sections adapted to contain the particulars of the several categories of contractors who may be registered under this Act.
- (3) Subject to the provisions of this Act, a contractor may be registered under this Act in any category set out in the First Schedule.
- (4) The Contractors Register shall be open to inspection by any member of the public at the office of the Registrar during normal office hours.

10. Qualifications for registration.

- (1) An individual is entitled to be registered in the relevant section of the Contractors Register if, upon his written application to the Board for registration as a contractor, he satisfies the Board that, in relation to a category set out in the First Schedule —

- (a) he has obtained one of the following criteria relevant to the category for which he is applying—
 - (i) a Bachelor of Science Degree (or equivalent) in a construction-related area from an accredited college and two years proven experience under a licensed contractor, one of which must be at the level of foreman;
 - (ii) a Three Year Diploma or Associate Degree (or equivalent) in a construction-related area and three years experience under a licensed contractor, one of which must be at the level of foreman;
 - (iii) one year Certificate (or equivalent) in a construction-related area and five years experience under a licensed contractor, two of which must be at the level of foreman;
 - (iv) a High School Diploma (or equivalent) and ten years experience as a tradesman, three of which must be at the level of foreman, under a licensed contractor; or
 - (v) he has passed an examination set by the Board or recognized by the Board as an equivalent examination set by another licensing authority and has demonstrated to the satisfaction of the Board that he is proficient in the construction related area; and
 - (b) he is a fit and proper individual to practice as a registered contractor by fulfilling the following requirements—
 - (i) he has an affidavit on a form provided by the Board verifying financial responsibility endorsed by a reputable, financial institution on behalf of himself or his business;
 - (ii) he has a current police certificate and has submitted to background checks as prescribed by the Board; and
 - (iii) he has provided a declaration of nationality.
- (2) For the purpose of subsection (1), an individual is qualified to be registered if—
- prior to the date of commencement of this Act —
- (a) the individual carried on business as and to the standard of a General Contractor, a Civil & Marine Contractor or a Roads Contractor, for a period of not less than five years in the aggregate; or
 - (b) the individual carried on business as and to the standard of an Air Conditioning Contractor, an Elevator Contractor,

a Landscape Contractor, a Mechanical Contractor, a Painting Contractor, a Plumbing Contractor, a Roofing Contractor or a Swimming Pool Contractor, for a period of not less than three years in the aggregate;

- (c) the individual carried on any other business listed in the First Schedule of this Act for a period of not less than three years; and
- (d) the individual was licensed as an Electrical Contractor pursuant to the Electricity (New Providence) Rules and Electricity (Out Islands) Rules (Ch. 194) and a LPG Contractor pursuant to the Liquefied Petroleum Gas Act, (Ch. 218),

Provided that an applicant for registration as a contractor by virtue of subsection 2 (a) to (d) of this section shall only be entitled to such registration over the period commencing on the relevant date of the Act and ending twenty-four months thereafter, after which the provisions of subsections (2) (a) to (d) shall be discontinued.

All applications from thenceforth shall be considered by the Board in accordance with subsection (1) of this section.

- (3) The Minister may by Order amend the categories of registered contractors in the First Schedule.

11. Application for registration.

- (1) Every individual wishing to be registered shall make application therefore to the Board in writing and shall furnish to the Board —
 - (a) proof of his identity and residential status in The Bahamas;
 - (b) the documents conferring or evidencing his qualifications and experience;
 - (c) proof that he is a builder of residential homes and that he has complied with the Consumer Code for Home Builders in relation to the requirement to have Builders Defects Insurance which must be renewed annually;
 - (d) such other particulars as may be prescribed or as may be required by the Board in any particular case.
- (2) An application for registration made under this Act by an individual who is not a citizen of The Bahamas or permanent resident with the right to work, shall not be favorably determined without the advice of the Minister responsible for Immigration.

right to work, shall not be favorably determined without the advice of the Minister responsible for Immigration.

- (3) Not more than ninety days after receipt of an application under subsection (1), the Board shall consider the application and make a determination as to whether or not the applicant should be registered.
- (4) The determination made by the Board in respect of an application for registration shall be communicated to the applicant and, in the case of a favourable determination the Board shall, upon receipt of the prescribed fee from the applicant, direct the Registrar to enter the name of the applicant, in the relevant section of the Contractors Register and to issue to the applicant a certificate of registration.

12. Insertion of additional qualifications in the Register.

Every individual registered under this Act who obtains a degree, diploma or certificate approved by the Board as being higher than or additional to that in respect of which that individual is registered shall be entitled to have such higher or additional qualifications inserted by the Registrar in the Contractors Register in substitution for or in addition to, as the case may be the qualifications in respect of which he is already registered.

PART IV

CERTIFICATES OF REGISTRATION

13. Certificate of registration.

- (1) A certificate of registration shall be in such form as may be prescribed by the Board.
- (2) A certificate of registration shall be subject to such conditions (if any) as the Board may determine and upon payment of the prescribed fee, unless the name of the holder has been removed from the Contractors Register.
- (3) A certified copy of a certificate of registration made by the Registrar shall be *prima facie* evidence in any court that the individual, to whom the certificate relates, is a registered contractor.
- (4) A letter signed by the Registrar stating that an individual is not a registered contractor, shall be *prima facie* evidence in any court of that fact.

- (5) The holder of a certificate of registration shall display it in a prominent position at the holder's office or place of work.
- (6) Where a certificate of registration has been lost, destroyed or mutilated, it may be replaced by the Board by the issue of a copy thereof upon the application of the holder thereof, and on the payment of the prescribed fee.

PART V

LICENSING OF CONTRACTORS AND OF CONTRACTING FIRMS

14. Licence of registered contractor.

- (1) An individual who wants to be licensed as a contractor in any year must fulfil the following requirements—
 - (a) he must be registered under section 11(4);
 - (b) he must possess a current business licence;
 - (c) he must apply in the prescribed form to the Board for a licence;
 - (d) he must pay a prescribed fee to the Board;
 - (e) he must be an individual responsible as a builder for residential homes and he must present his certificate of registration as having Builders Defects Insurance under the Scheme; and
 - (f) he must have Public Liability Insurance of a minimum of one million dollars.
- (2) The Board shall on payment of the prescribed fee issue to the individual a licence, of a kind appropriate to the category in which he is registered, authorizing him to undertake work as a licensed contractor to the extent specified in the licence.
- (3) Any firm which wishes to undertake work as a contracting firm in any year shall apply in the prescribed form to the Board for a licence, stating in the application that the work will be carried out under the supervision of a licensed contractor—
 - (a) who is named in the application;
 - (b) who has the authority to submit bids on behalf of the firm; and
 - (c) whose name does not appear on a licence issued under this subsection to another firm;
 - (d) who possesses a current business licence;
 - (e) that the licensed contractor has Builders Defects Insurance;

- (f) that the licensed contractor has Public Liability Insurance of a minimum of one million dollars; and
 - (g) any other particulars as the Board may find necessary.
- (4) The Board, if satisfied with the application shall, on payment of the prescribed fee, issue to the firm a licence, of a kind appropriate to the category in which that contractor is registered, authorizing the firm to undertake work as a contracting firm to the extent specified in the licence.
- (5) A licence issued under subsection (4) shall specify the name and category of the licensed contractor responsible, pursuant to subsection (4), for supervising the work of the licensed contracting firm and, where that contractor ceases to be responsible for such supervision, the licensed contracting firm shall —
- (a) within seven days of the cessation, inform the Board of the cessation; and
 - (b) within fifty-six days of the cessation, inform the Board of the name of the licensed contractor who is responsible for such supervision.
- (6) Every licence shall be numbered and shall take effect on the date specified on the licence as the date on which it is to take effect and shall expire on the 31st day of December in the year in which it was issued.
- (7) Licences shall be in such form and of such kind as may be prescribed and different fees may be prescribed by the Board in respect of different kinds of licences.

15. Exceptions to Licensing under this Act.

Subsection (1) of section 14 does not apply in relation to licensing of—

- (a) a Liquefied Petroleum Gas Contractor, licensed under section 9(2) of the Liquefied Petroleum Gas Act, (Ch. 218).
- (b) an Electrical Contractor, licensed under the Electrical (New Providence) Rules and the Electrical (Out Island) Rules (Ch. 194).

16. Advertisement of licence number.

The licence number of a licensed contractor or licensed contracting firm shall be specified by the contractor or the contracting firm, as the case may be —

- (a) in any newspaper or other media advertisement;
- (b) in any telephone directory; or
- (c) in any correspondence from the contractor or the contracting firm.

and a licensed contractor or licensed contracting firm shall also specify the licence number in any forms submitted to the Ministry of Public Works for the purpose of requesting a building permit, inspection and certificate of occupancy and shall tender, together with the forms, evidence that the licence is valid.

17. Renewal of licence.

- (1) The Board may renew a licence annually upon the application of the holder thereof and the payment of the prescribed fee once the Board is satisfied that there is no malpractice proceedings against the applicant that is , in the case of a licensed contractor, the name of the contractor no longer appears on the Contractors Register due to any disciplinary proceedings (2) The annual renewal licence fee is payable not later than the 31st day of January in each year.
- (3) A person who is required to pay the annual licence fee under this section and who fails to pay that fee within the time specified in subsection (2) shall, in respect of the licence for that year pay, in addition to that fee, a sum equal thereto.
- (4) A person who fails to comply with subsection (2) and whose licence expires on the 31st day of December of the immediately preceding year shall not be considered to be unlicensed for the purposes of section 14(4) during the period commencing with that date and ending on the 31st day of January of the succeeding year.
- (5) Where a licence has been lost, destroyed or mutilated it may be replaced by the Board by the issue of a copy thereof upon the application of the holder of the licence and on the payment of the prescribed fee.

18. Register of licensed contractors.

- (1) It shall be the duty of the licensee to inform the Registrar of any changes of address.
- (2) The Registrar shall maintain a register of licensed contractors and licensed contracting firms, which shall be current.
- (3) The Board shall cause to be published in the Gazette —
 - (a) as soon as practicable after the expiration of thirty days after the commencement of this Act, a list containing the names and addresses of every person or firm who, at the thirtieth day after such commencement, is a licensed contractor or a licensed contracting firm; and
 - (b) thereafter in the month of February in each year, a list containing the names and addresses of every contractor or contracting firm

licensed, or who or which ceased to be licensed, at the 31st day of January in that year.

- (4) A certified copy of any licence made by the Registrar shall be *prima facie* evidence in any court that the person or firm to whom the licence relates is a licensed contractor or a licensed contracting firm, as the case may be, and a letter signed by the Registrar stating that a person or firm is not licensed shall be *prima facie* evidence in any court of that fact.

19. Licensee to give evidence of insurance.

- (1) Before providing a construction contracting service to a client, a licensed contractor or a licensed contracting firm must provide to the client a certificate of insurance, evidencing Contractors All Risk Insurance and Public Liability Insurance of one million dollars.
- (2) The licensed contractor or licensed contracting firm may ask the client to sign an acknowledgment that the client has been told about the licensee's insurance and the acknowledgment must state the time and date it was given.
- (3) The licensed contractor or licensed contracting firm is taken to have given evidence of what insurance the licensee holds before providing a construction service to a client, if the licensee advertised the insurance in a way likely to come to the attention of the client.

PART VI

DISCIPLINE

20. Professional misconduct.

- (1) For the purposes of this Act, "professional misconduct" means, in relation to a registered contractor —
 - (a) negligence;
 - (b) failure to make reasonable provisions for the safeguarding of life, health or property of a person who may be affected by the work for which the registered contractor is responsible;
 - (c) failure to correct or report a situation that he believes may endanger the safety or welfare of the public;
 - (d) failure to make responsible provision for complying with applicable Acts, rules, regulations, bye-laws, standards and codes in connection with work being undertaken by him or under his responsibility;

- (e) failure to present clearly to his employer the consequences to be expected from a deviation proposed in work, if his judgment is overruled by a non-technical authority in cases where he is responsible for the technical adequacy of construction work;
 - (f) undertaking work which he is not competent to perform by virtue of his training or expertise;
 - (g) conduct or an act relevant to the practice of construction contracting which, having regard to the circumstances, would reasonably be regarded by the construction contracting profession as disgraceful, dishonourable or unprofessional;
 - (h) failure to abide by the terms or conditions of his certificate of registration or his licence;
 - (i) permitting, counselling or assisting a person who is not registered nor licensed under this Act to engage in the practice of construction contracting except as provided for in this Act;
 - (j) procuring his registration by a statement which is false in a material particular;
 - (k) a conviction by a court in The Bahamas or elsewhere of a criminal offence which, in the opinion of the Board, renders him unfit to be registered;
 - (l) the repeated performance of defective work to which adequate checks have not been applied;
 - (m) making any report in connection with the performance of construction contracting containing any information which he knows to be erroneous in any material particular; or
 - (n) being otherwise guilty of negligence or incompetence in the performance of his functions as a contractor.
- (2) In this section, “negligence” means an act or an omission in the carrying out of construction contracting which constitutes a failure to maintain the standards which a reasonable and prudent registered contractor would maintain in the circumstances.

21. Complaints of professional misconduct.

- (1) A complaint that an individual registered under this Act has been guilty of professional misconduct may be made to the Board by any person in a prescribed form and shall be accompanied by such affidavits as may be prescribed.
- (2) Where the Board is of the opinion that any complaint so made might, if established, call for the exercise of any of the disciplinary powers conferred by section 23, the Board shall appoint a disciplinary committee and shall refer the complaint to it.

22. Disciplinary Committee.

- (1) A Disciplinary Committee shall consist of five members, of whom -
 - (a) four shall be selected by the Board from among registered and licensed contractors and shall be as far as possible individuals of professional standing comparable to or senior to that of the individual complained against, and of a similar category;
 - (b) one shall be selected by the Minister from among individuals other than contractors or members of a related trade or profession, but none of whom shall be a member of the Board; and
 - (c) one (who shall be the chairman) shall be selected by the disciplinary committee.
- (2) In the conduct of the hearing of any complaint, the disciplinary committee shall ensure —
 - (a) that adequate notice of the proceedings is given to the individual complained against and to the person making the complaint; and
 - (b) that any party to the proceedings may, if he or she so requires, be heard by the committee either in person, by a counsel and attorney or by any other person authorized in writing for that purpose.
- (3) At any such hearing the committee may require evidence to be given on oath, and the Chairman of the Committee shall have the power to administer an oath for that purpose and to issue summonses under his hand requiring the attendance of any person before it, at a time and place to be specified in any such summons, to give evidence on oath or to produce any document relevant to the subject matter of the proceedings.
- (4) Any such summons shall be served as if it had been issued by a Magistrate, and the attendance before the committee of any person so summoned may be enforced by a Magistrate, upon application made to him by the Chairman of the Committee, as if the proceedings before the Committee were proceedings before the Magistrate, under the provisions of the Magistrates Act, (*Ch. 54*).
- (5) If at any time during the proceedings, the Committee is of the view that it ought to meet at any site (such site being the subject of the proceedings), the Chairman of the Committee may convene the meeting on that site, and the owner of the site shall be given reasonable notice of the date and time of the meeting and thereupon shall permit all reasonable access, by the Committee, to the site.

23. Disciplinary powers of the Board.

- (1) On the hearing of a complaint the Disciplinary Committee shall make its recommendations to the Board and the Board may either dismiss the complaint or make such order of a disciplinary nature as it thinks fit, and

such order may, in particular, provide for any of the following matters in relation to the individual complained against, that is to say —

- (a) removal of his name from the Contractors Register;
 - (b) suspension of his registration for a period not exceeding one year;
 - (c) payment, by him, of a penalty (to be forfeited to the Crown) not exceeding five thousand dollars;
 - (d) payment, by any party to the proceedings, of costs or of such sum as the Board may consider to be reasonable contribution towards the costs incurred in connection with those proceedings.
- (2) Any payment ordered to be made by any person under paragraph (c) or (d) of subsection (1) may be enforced in the case of an individual registered under this Act, by the Board ordering his registration to be suspended until payment is made and as a judgement debt owed to the Board.

24. Order of the Board.

- (1) Every order made by the Board under section 23 shall be prefaced by a statement of the Disciplinary Committee's findings on the facts of the case and shall be signed by the Chairman of the Committee.
- (2) Every such order shall be filed with the Registrar and shall take effect—
 - (a) where no appeal under section 34 is brought against the order within the time limited for the appeal, on the expiration of that time;
 - (b) where such an appeal is brought and is withdrawn or struck out for want of prosecution, on the withdrawal or striking out of the appeal;
 - (c) where such an appeal is brought and is not withdrawn or struck out as aforesaid, if and when the appeal is dismissed and not otherwise.
- (3) The Registrar shall cause a note of the effect of every order filed with him pursuant to subsection (2) to be entered in the Contractors Register against the name of the individual to whom the order relates and, except in the case of an order making provision only for costs, shall forthwith upon the taking effect of the order cause a notice stating the effect of the order to be published in the Gazette.

25. Power to order immediate suspension.

- (1) On making an order for removal or an order for suspension in respect of any individual the Board, if satisfied that to do so is necessary for the protection of members of the public or would be in the best interests of

that individual, may order that his registration in the Contractors Register shall be suspended forthwith in accordance with this section.

- (2) Where an order under subsection (1) is made in respect of an individual, his registration shall be suspended (that is to say, shall not have effect) from the time when the order is made until the time when the relevant order takes effect in accordance with section 23(2) or an appeal against it under section 34(1)(b) is determined.
- (3) The Supreme Court may terminate any suspension of an individual's registration which has effect by virtue of subsection (2), and the decision of the Court on any application under this subsection shall be final.
- (4) In this section "order for removal" means an order under section 23(1) for the removal of an individual's name from the Contractors Register and "order for suspension" means an order under that subsection for the suspension of an individual's registration in the Contractors Register.

26. Removal of name from Register.

- (1) The Registrar shall remove from the Contractors Register the name of any individual —
 - (a) upon the application of the individual; or
 - (b) upon the taking effect of an order of the Board under section 23, in relation to that individual:

Provided that where a complaint has been made against any individual under section 23(1) his name shall not be removed under paragraph (b) of this subsection until the complaint, or any appeal in relation thereto, has been finally disposed of under this Act.

- (2) Where the name of any individual has been removed from the Contractors Register or his registration has been suspended, any certificate of registration, or licence, issued to him shall cease to have effect for as long as his name remains off the Contractors Register or, as the case may be, suspension continues in force.
- (3) Where the name of any individual has been removed from the Contractors Register, the Board shall, in writing, require such individual—
 - (a) to return to the Registrar his certificate of registration and licence; and
 - (b) to cease using the licence number in any correspondence and advertising media,and such individual shall comply with those requirements.
- (4) Any individual who fails without reasonable excuse to return his certificate of registration and licence, as required by subsection (3), is guilty of an offence and liable on summary conviction to a fine of one

thousand dollars and to a further fine of two hundred dollars for each day during which the offence continues.

27. Restoration to Register.

- (1) The Board may at any time, upon application being made by an individual whose name has been removed from the Contractors Register or whose registration has been suspended determine if it thinks fit, that such individual's name shall be restored to the Contractors Register or, as the case may be, that his suspension shall cease with effect from such date as the Board may appoint, and shall forthwith give notice of any such determination to the Registrar.
- (2) On receipt of notice of a determination made by the Board under subsection (2) in relation to any individual, the Registrar shall forthwith cause the name of that individual to be restored to the Contractors Register or, as the case may be cause a note of the cessation of the suspension to be entered therein, and in either such case —
 - (a) shall cause notice of the determination of the Board to be published in the Gazette; and
 - (b) shall cause the certificate of registration, and the licence, returned under section 26(3) (a) to be reissued to that individual.

PART VII

OFFENCES AND PENALTIES

28. Prohibition of unlicensed persons performing contractors' work.

- (1) It shall be an offence for any person —
 - (a) whether registered to act as a contractor or to carry out any construction contracting unless there is in force in relation to that person, a valid licence and a Public Liability Insurance of a minimum of one million dollars;
 - (b) being licensed to carry out construction contracting otherwise than in accordance with the terms and conditions of the licence; or
 - (c) being registered and licensed, to assist any other person to engage in the practice of construction contracting, if that person is not registered or licensed under this Act.
- (2) No person shall —
 - (a) use any name, title, word or description (whether by initial, numbers abbreviations or otherwise) which leads to the belief that the person is —

- (i) a registered or licensed contractor; or
 - (ii) a licensed contracting firm;
 - (b) advertise that the person is a registered or licensed contractor, or a licensed contracting firm;
 - (c) act in a manner so as to create or induce the belief that the person is a registered or licensed contractor, or a licensed contracting firm;
 - (d) sign or stamp any contracts inclusive of , plans, drawings, designs or specifications while purporting to be acting in the capacity of a registered or licensed contractor, or a licensed contracting firm; or
 - (e) affix or use in connection with any premises occupied by the person, any name, title, word, or description (whether by initials, numbers, abbreviations or otherwise) reasonably calculated to suggest that the person is a registered or licensed contractor, or a licensed contracting firm, unless there is in force in relation to the person a valid certificate of registration or certificate of licence, as the case may be.
- (3) A registered contracting firm shall not engage in the practice of construction contracting except under the supervision of a licensed contractor.
- (4) The provisions of subsection (1) shall not apply to the practice of construction contracting by a person who so practices under the supervision, direction and control of an individual who holds a licence.
- (5) Any person who contravenes subsection (1), (2) or (3) is guilty of an offence and liable on summary conviction-
- (a) in any case where the person convicted is an individual, to a fine of ten thousand dollars or to imprisonment for a term of six months or to both such time and imprisonment; and
 - (b) in any other case, to a fine of ten thousand dollars and to a further fine of five thousand dollars for each day during which the offence continues.

29. Penalty for wrongfully procuring registration.

Any person who —

- (a) wilfully makes or causes to be made any entry in the Contractors Register which is to the knowledge of that person false; or
- (b) wilfully procures or attempts to procure the registration of himself or any other person in the Contractors Register by means of any

representation or declaration whether oral or in writing, which is to the knowledge of that person false, is guilty of an offence and liable on summary conviction —

- (i) in any case where the person convicted is an individual, to a fine of ten thousand dollars or to imprisonment for a term of six months or to such fine and imprisonment; and
- (ii) in any other case, to a fine of twenty thousand dollars.

PART VIII

FINANCIAL PROVISIONS

30. Funds of the Board.

The funds of the Board shall consist of such monies as may from time to time be placed at its disposal for the purposes of this Act by Parliament and such other monies as may lawfully be paid to the Board.

31. Accounts and audit.

The Board shall keep proper accounts of its receipts, payments, assets and liabilities and such account shall be audited annually by an auditor appointed in each year by the Board.

32. Annual reports and estimates.

- (1) The Board shall in each year prepare and submit to the Minister on or before the 30th day of September, a report of its proceedings during the period of twelve months ending on the 30th day of June in the preceding year, including a statement of its accounts audited in accordance with section 31.
- (2) The Minister shall ensure that the Annual Report in subsection (1) is to be laid before Parliament annually.
- (3) The Board shall, on the 1st day of February, in each year or such earlier date as may be required by the Minister submit to the Minister for approval, its estimates of revenue and expenditure in respect of the twelve month period commencing on the 1st day of July next following.

33. Expenses under this Act.

Any expenses incurred in carrying this Act into effect shall be defrayed out of monies provided by Parliament.

PART IX

MISCELLANEOUS PROVISIONS

34. Appeal to the Supreme Court.

- (1) Any person aggrieved —
- (a) by the determination of the Board under this Act refusing an application for registration or licensing, as a contractor or a contracting firm, as the case may be; or
 - (b) by an order made by the Board under section 23(1) in relation to a complaint made by or against the person,
- may appeal on that account to the Supreme Court in accordance with rules to be made by the Rules Committee under section 76 of the Supreme Court Act (Ch. 53) within fourteen days in a case falling within paragraph (a) of this subsection, after receipt by him of the notification provided for by this Act and in a case falling within paragraph (b) thereof, after publication in the Gazette of the notice required by section 24(3).
- (2) The Supreme Court on the hearing of any such appeal may confirm, reverse or vary the determination of the Board and the Board shall give effect to the decision accordingly.

35. Certificate of Registrar to be evidence.

A certificate under the hand of the Registrar as to an entry in the Contractors Register or as to any act or proceeding of the Board shall, until the contrary is proved, be sufficient evidence in any court of any matter so certified.

36. Review of Board activities.

In addition to the powers and duties assigned to the Minister elsewhere in this Act, the Minister shall have the power to —

- (a) review the activities of the Board; and
- (b) request the Board to undertake activities which in the opinion of the Minister are necessary and advisable for the purpose of giving effect to the intent of this Act.

37. Consumer Code for builders.

- (1) Every builder shall comply with the Consumer Code for builders in the Second Schedule before performing any type of construction work for a client.

- (2) The Board shall establish a Builders Defects Insurance Scheme called the “Scheme” to deal with the defective workmanship of the builder towards a home owner of a residential home.
- (3) The Second Schedule has effect with respect to the Scheme and its constitution and procedure.
- (4) The Minister may by Order amend the Consumer Code in the Second Schedule so that it may apply to other classes of contractors and construction works.

38. Dispute Resolution.

- (1) The client and the builder may enter into a written agreement to be bound by dispute resolution processes, in the first instance of mediation and where that fails then they may agree to be bound by a written arbitration agreement.
- (2) The dispute resolution agreements in subsection (1) should be included in a written contract between the parties in the event a dispute arises between the client and the builder about the performance of construction work by the builder.
- (3) The procedure for mediation in construction contracts shall be prescribed by regulations and in relation to arbitration, the Arbitration Act, No. 42 of 2009 shall apply.
- (4) The client and the builder, in the event a dispute arises may also seek to proceed by litigation by filing a claim in the Supreme Court.

39. Immunity of certain persons acting under this Act.

Nothing in this Act shall make the Registrar or any member, employee, agent or appointee of the Board, liable to any action or proceeding for any act done in good faith by any such person in the performance of a function, or in the intended exercise in good faith of a function, under this Act.

40. Regulations.

The Minister on the advice of the Board shall make regulations —

- (a) prescribing the form of and the method of keeping the Contractors Register;
- (b) prescribing the particulars which the Contractors Register shall contain;

- (c) prescribing the form of any application, certificate of registration, licence, or other document required for the purposes of this Act;
- (d) prescribing the fees payable in respect of the registration of individuals, the issue, renewal and replacement of certificates of registration and licences, and any alterations or additions to the Contractors Register;
- (e) regulating the proceedings of the Board and any other matter necessary for the efficient discharge of its functions under this Act;
- (f) for establishing criteria for the registration of the contractors;
- (g) prescribing general standards of conduct for registered and licensed contractors;
- (h) prescribing general standards of conduct for licensed contracting firms;
- (i) prescribing the stages of construction and progress payments required under the contract between the client and the builder pursuant to the Consumer Code for builders in the Second Schedule;
- (j) prescribing the procedure for mediation;
- (k) prescribing the procedures for the regulating of the Builders Defects Insurance Scheme in the Consumer Code for builders in the Second Schedule;
and
- (l) prescribing penalties up to a fine of twenty thousand dollars for the breach of any such regulation;
- (m) for any other matter or thing which may be or is required to be prescribed under this Act.

41. Transitional Provisions.

- (1) Notwithstanding any provision of this Act, any person who immediately before the date of commencement of this Act was practising in The Bahamas as a contractor or as a contracting firm, may continue to do so, without being registered or without holding a certificate of registration or a licence —
 - (a) for the period of twenty four months beginning with that date; and
 - (b) if before the expiration of that period he applies for registration under this Act, until he is registered and a certificate of registration and a licence are issued or until such application is finally refused or is withdrawn.
- (2) Notwithstanding any provision of this Act the first Construction Contractors Board shall consist of ten individuals who are eligible to be

registered as construction contractors and who shall be appointed by the Minister acting in his discretion.

- (3) A member of the Board appointed under subsection (2) of this section shall hold office for a period of twenty four months.
- (4) The provisions of this Act shall apply *mutatis mutandis* to the Board constituted under subsection (2) of this section, except in relation to the appointment of the transitional Board members.

42. Savings provisions.

Save as otherwise provided in this Act, nothing in this Act shall extend or be construed to extend or prejudice or in any way affect the practice by any person of any profession or occupation under and in accordance with any written law authorizing such practice.

43. Repeals.

Rules 2 and 3 of the Licensed Plumbers Rules, 1933 is hereby repealed.

FIRST SCHEDULE

CATEGORIES OF REGISTRATION OF CONTRACTORS

(Sections 9, 10 & 40)

Air Conditioning Contractors /HVAC Contractors
Building Contractors–Levels One, Two and Three
Civil Marine Contractors
Drywall Contractors
Electrical Contractors
Elevator Contractors
Fire Alarm & Sprinkler System Contractors
General Contractors

Landscape Contractors
Liquefied Petroleum Gas Contractors
Masonry Contractors
Mechanical Contractors

Owner-Build Contractors
Painting Contractors
Plumbing Contractors
Roads Contractors
Roofing Contractors
Specialty Contractors
Swimming Pool Contractors
Utilities Contractors

Any and all Trades that the Board may from time to time deem to include.

DESCRIPTION OF TRADES

“Air conditioning/HVAC Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in installing, maintaining, repairing, fabricating, or altering central air conditioning, refrigeration, heating and ventilating systems (including duct work to make a complete air distribution system or installing a condensate drain from an air conditioning unit to an existing safe waste or other disposal other than a direct connection to a sanitary system or sewer line);

“Building Contractor Level One” means a contractor capable of executing contracts requiring experience, knowledge and skill in the construction of public, industrial and commercial buildings, and single-family or multi-family residential buildings, none of which shall exceed a single story in height and of a size no greater than five thousand square feet under roof; or the remodeling, repair or improvement of a building of any size if these works do not affect the structural members of the building;

“Building Contractor Level Two” means a contractor capable of executing contracts requiring experience, knowledge and skill in the construction of public, industrial and commercial buildings, and single-family or multi-family residential buildings, none of which shall exceed two stories in height and of a size no greater than ten thousand square feet under roof; or the remodeling, repair or improvement of a building of any size;

“Building Contractor Level Three” means a contractor capable of executing contracts requiring experience, knowledge and skill in the construction of public, industrial and commercial buildings, and single-family or multi-family residential buildings, of height not to exceed three stories and of a size no greater than fifteen thousand square feet under roof or the remodeling, repair or improvement of a building of any size;

“Civil, Marine Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in the construction and maintenance of civil and marine structures of any size, including the provision of services which may be provided by a Roads Contractor and services in respect of docks, harbours, bridges, pipelines, retaining walls and any other works designed by civil or structural engineers;

“Drywall Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in the preparation of the surface over which drywall product is to be applied. This includes the application of base and finish coats;

“Electrical Contractor” means a contractor who has obtained a certificate in competency in the category of —

- (a) Three Phase Electrician, and who is capable of executing contracts requiring experience, knowledge and skill in installing electrical services in any building or premises from the point therein or thereon where the electric power or energy is delivered from any source of supply, to the point where such power or energy can be used therein or thereon by any electrical equipment, including connecting any wiring with any such equipment and maintaining, repairing, altering and extending such wiring or electrical equipment including low voltage direct current devices;
- (b) Single Phase Electrician, and who is capable of executing in respect of single phase work only, contracts requiring experience, knowledge and skill in installing, maintaining, repairing, altering or extending electrical services as mentioned in paragraph (a) of this definition;

“Elevator Contractor” means a contractor who is capable of executing contracts requiring experience, knowledge and skill in installing, maintaining, repairing, fabricating or altering all vertical and horizontal transporter systems, including electrical conduits and control wiring associated therewith;

“Fire Alarm and Sprinkler System Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in lay out, fabrication, installation, maintaining, altering, repairing, monitoring, inspecting, replacing all types of alarms and sprinkler systems for all purposes;

“General Contractor” means a contractor whose services include three stories or structures in excess of fifteen thousand square feet under roof;

“Landscape Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in the laying out and construction of parks and gardens (including water gardens, fountains, ponds and pools but excluding swimming pools involving pumps &

filters) landscaping, irrigation systems, landscape lighting, landscape maintenance, golf course construction, and the installation of paving, retaining walls not exceeding four feet in height and landscape furniture; but excludes direct connections to potable water lines, sanitary sewer systems or any electrical circuit other than via a grounded power socket;

“Liquefied Petroleum (Volatile) Gas Contractor” means a contractor who has obtained a Certificate of Competency in Liquefied Petroleum (Volatile) Gas, and who is capable of executing contracts requiring experience, knowledge and skill in installing, LPG services in any building or premises from the point therein or thereon where the LPG or gas is delivered from any source of supply, to the point where such LPG or gas can be used therein or thereon by any LPG equipment, including connecting any piping with any such equipment and maintaining, repairing, altering and extending such piping, container or LPG equipment;

“Masonry Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in the erection, bracing, materials, handling and quality control related to masonry;

“Mechanical Contractor” means a contractor with a certificate of competency in the relevant trades and who is capable of executing contracts requiring experience, knowledge and skill in, the construction, maintenance, repair and servicing of mechanical systems requiring such certificates (including but not restricted to plumbing, heating and ventilation, air conditioning, fire sprinkler protection systems) unrestricted as to the size of the project;

“Owner-Build Contractor” means a contractor whose licence is issued every thirty-six months who is capable, based on his own knowledge and experience to construct a single family dwelling, where a building permit is required, on his own property for his occupation;

“Painting Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in the painting trade, including but not limited to the preparation of surfaces, application of sealants, primers, block fillers, application of latex and enamel finishes to interior and exterior surfaces, and the application of Elastomeric and other specialty coatings;

“Plumbing Contractor” means a contractor who has obtained a certificate of competency in the category of —

- (a) Master Plumber or licenced plumber, who is capable of executing contracts requiring experience, knowledge and skill in installing, maintaining, fabricating, altering or extending plumbing, including sanitary drainage, waste and venting systems, storm drain facilities, water distribution piping and pumping systems, fire sprinkler systems, sewage pumping and treatment systems and solar thermal

installation systems all with no restrictions as to the size of the project;

- (b) Journeyman Plumber, and who is capable of executing contracts for the provision of plumbing systems throughout The Bahamas for structures not exceeding two storeys in height or two thousand five hundred square feet in area, in cases where the plumbing facilities consist of fewer than eight fixtures;

“Road Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in the construction of roads, runways, aprons, parking lots, driveways and sidewalks, the laying out of services therein and the provision of culverts masonry work, swales and other forms of drainage used in connection therewith;

“Roofing Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in installing, maintaining, repairing, altering or extending roofing and using materials and items normally used in the installation, maintenance, extension and alteration of roofing and waterproofing;

“Specialty Contractor” means a contractor whose scope of works and responsibilities is limited to a particular phase of the construction and whose range is limited to a subset of the activities in the categories established in the First Schedule;

“Swimming Pool Contractor” means a contractor capable of executing contracts requiring experience, knowledge and skill in the construction of any swimming pool, including in relation thereto, the laying out, excavation, steelwork, pouring of floors, guniting and fibre-glassing, the installation of perimeter and filter piping, filter equipment, package pool heaters and chemical feeders and the re-plastering and re-pouring of decks, but excluding direct connections to potable waterlines or sanitary sewer systems;

“ Utilities Contractor” means a contractor whose services are limited to the construction, installation and repair of main sanitary sewer collection systems, main water distribution systems and storm sewer collection systems, the continuation of utility lines from the main systems to a point of termination up to and including the meter location for the individual occupancy, install empty underground conduits in rights-of-ways, easements, and platted rights-of-ways in new site development.

SECOND SCHEDULE

(section 37)

CONSUMER CODE FOR RESIDENTIAL HOME BUILDERS

- “agent” means a person, firm or company used by a builder to deal with any matter on behalf of a builder (for example, an estate agent or contractor);
- “builder” means a building contractor or general contractor as outlined in the First Schedule who constructs residential homes and who has coverage with a registered insurance company;
- “Builders Defects Insurance” means an insurance taken out by the contractor to cover the home owner in the event defects are noted in the newly constructed residential homes;
- “Builders Defects Insurance Scheme ” hereinafter referred to as “Scheme” means a Scheme set up by the Board under this Code to cover the home owner in the event of any defective works by the builder in the newly constructed residential home;
- “Claims Committee” hereinafter referred to as “Committee” means a Committee set up by the Scheme Manager under this Code to determine the veracity of claims;
- “client” means a person who has entered into an agreement with the builder for the construction of a residential home;
- “consumer code or code” means a set of requirements to be adopted by builders;
- “Contractors All Risk Insurance” means insurance taken out by the contractor and the home owner to cover any material damage to the residential home under construction such as theft from the site, fire damage, storm and flood damage;
- “contract to build, contract exchange, legal completion” means the legal document and the formal stages used during the building of the home;
- “the Fund” means all the funds of the Scheme as outlined in this Code;
- “the Fund Manager” means a person appointed by the Board to administer the Fund of the Scheme outlined in the Code;
- “home owner” means a person who owns a residential home constructed by a builder;

“Reservation” means a written statement of intent made by a client and a builder jointly (subject to contract and whether or not a fee is paid) to build a residential home;

“the Scheme Manager” means a person appointed by the Board to administer the Scheme outlined in the Code.

Introduction

1. The Consumer Code comes into force on the commencement of this Act. It sets mandatory requirements that all builders must meet in their marketing and building of homes.
2. The purpose of the Code is to ensure that clients—
 - (a) are treated fairly;
 - (b) know what service levels to expect;
 - (c) are given reliable information upon which to make their decisions; and
 - (d) know how to apply to the Builders Defects Insurance Scheme in the Code in order to have their claims heard and dealt with speedily by the Scheme Manager.
3. The Code applies to all clients' homes as set out in the scope on page 5.
4. Nothing in this Code affects the client's existing legal rights.

ADOPTING THE CODE

1.1 Adopting the Code

The builder must comply with the requirements of the Code and have regard to the good practice guidance.

1.2 Making the Code available

The builder must display the Code.

The builder should also inform the customer that further guidance is available and how he can get a copy of the Code.

1.3 Customer Service

The builder must have suitable systems and procedures to ensure he can reliably and accurately meet the commitments on service, procedures and information in the Code.

1.4 Appropriately trained customer service staff

The builder must provide suitable training to all staff who deal with the client about his responsibilities to him and what the Code means for the company and its directors

1.5 Construction and advertising

Construction and advertising material and activity must be clear and truthful.

2. Information – pre-contract

2.1 Pre-contract information

The client must be given enough pre-contract information to help him make suitably informed contracting decisions.

In all cases this information must include—

- (a) a written reservation;
- (b) a proposal of the home insurance coverage for the protection of clients the contractor shall provide the client with evidence that he, the contractor, is covered by the Builders Defects Insurance under the Scheme set up under this Code;
- (c) a description of any management services and organisations to which the clients will be committed and an estimate of their cost;
- (d) a plan approved by the Ministry of Public Works reliably showing the layout, appearance and plot position of the home or building;
- (e) a list of the home's contents that the contractor proposes to provide; and
- (f) the standards to which the home or building is being built.

2.2 Contact Information

The client must be told how his questions will be dealt with and whom to contact during the construction and completion of the home.

2.3 Insurance Coverage

The client must be given accurate and reliable information about the Contractors All Risk Insurance and the Builders Defects Insurance provided on the Home.

2.4 Health and Safety for visitors to developments under construction

The client must be informed about the health and safety precautions he should take when visiting a home under construction.

2.5 **Reservation**

The client must be given a Reservation that sets out clearly the terms of the Reservation including, but not limited to—

- (a) the amount for the Reservation fee;
- (b) the residential home being constructed by the builder;
- (c) the construction price;
- (d) how and when the Reservation will end;
- (e) how long the construction price will remain valid;
- (f) the estimated cost and nature of any management services the client must pay.

The Reservation Fee must be reimbursed if the Reservation Agreement is cancelled. The client must be told of any deductions that may be made.

While the Reservation Agreement is in force, the builder must not enter into a new Reservation Agreement with another customer on the same home or building.

3. **Information —exchange of contract**

3.1 **The Contract**

The Contract to build terms and conditions must—

- (a) be in writing;
- (b) be clear and fair;
- (c) indicate stages of construction and progress payments which may be prescribed for the building of the home;
- (d) indicate the types of materials to be used in the construction; and
- (e) clearly state the contract termination rights.

3.2 **Timing of construction, completion and handover**

The client must be given reliable and realistic information about when construction of the home may be finished, the date of legal completion, and the date for handover of the home.

3.3 **Contract termination rights**

The client must be told about his right to terminate the contract.

3.4 **Contract deposits and pre-payments**

The builder must clearly explain how the client's

contract deposits are protected and how any other pre-payments are dealt with.

4. Builders Defects Insurance Scheme

4.1 Appointment of Scheme Manager by the Board

The Board shall appoint a Scheme Manager to administer the Builders Defects Insurance Scheme hereinafter called the “Scheme” so that the insurance taken out by the builder would cover his defective workmanship as a builder in relation to a newly constructed residential home of a home owner under this Code.

4.2 Functions of the Scheme Manager

The functions of the Scheme Manager is to—

- (a) deal with reports from the home owner in relation to the defective workmanship of the builder of a private residential home;
- (b) receive all the reports of defective works by the builder;
- (c) first have the builder who is responsible correct the said damage without referral to the Scheme; and
- (d) only use the Scheme when the builder is no longer in business or he is financially unable to correct the damage.

4.3 The Board is to appoint a Fund Manager to manage the Fund of the Scheme.

The Fund of the Scheme is to be managed by a Fund Manager appointed by the Board.

4.4 Funding

The Scheme is to be self-funded by the builder in the following manner—

- (a) the builder is to pay a premium to an insurance company insuring himself under this Scheme;
- (b) any monies received for the purposes of the Scheme in relation to a policy of insurance taken out by the builder;
- (c) the builder's income shall be levied by the Fund Manager; and
- (d) the builder shall contribute to the seed money of the Fund so that claims can be easily met;

4.5 The level of premium

The level of premium for this Scheme shall be set by the Board annually.

4.6 Application of Scheme

This Scheme shall apply to a private residential home with estimated preconstruction valued up to \$500,000.00 and the builder shall have Builders Defects Insurance coverage for defects in the construction of this residential home up to 10% of the value of the home which is up to a maximum of \$50,000.00 in coverage.

4.7 Builder has to register as part of the Builders Defects Insurance Scheme annually.

4.7.1 The builder shall register with the Board as part of the Scheme at the beginning of each year and shall be presented with a certificate in relation to the Scheme from the Board.

4.7.2 The certificate of registration issued by the Board to the builder in relation to the Scheme shall also be presented to the licensing authority by the builder since this is a requirement of licensing.

4.8 Coverage of a residential home.

4.8.1 Only a residential home covered by the Scheme shall be covered for losses and such coverage shall be granted to the builder by a insurance company before the construction of the residential home.

4.8.2 The home owner shall be presented by the builder with a copy of his Builders Defects Insurance coverage before the construction of the residential home.

4.9 Claims

4.9.1 The Scheme Manager shall be responsible for the handling of claims.

4.9.2 The Scheme Manager shall refer the claim to the builder who is responsible for the defective work to allow him the opportunity to correct the damage.

- 4.9.3 If the home owner files a claim and he still owes funds to the builder, those funds, must be placed into an Escrow Fund by the Fund manager before the claim is heard.
- 4.9.4 This filing of funds owing to the builder into an Escrow Fund by the Fund Manager, shall prevent the home owner from filing any false claims to avoid payment to the builder.
- 4.9.5 The Scheme Manager must investigate the claim made by the home owner of defective workmanship by the builder and if the claim is found to be genuine then the builder shall be required to correct it before any funds owing to him are released from the Fund by the Fund Manager.
- 4.9.6 If the builder fails to correct the defective damage to the residential home then the Fund manager of the Scheme will release certain funds to hire a substitute builder to correct the damage up to the insured limit.
- 4.9.7 The Fund Manager shall deduct from the funds held in escrow for the original builder, who did the defective works, to pay for the cost of correction by a substitute builder.
- 4.9.8 Any residual amount remaining in the Escrow Fund, after payment has been made to a substitute builder, by the Fund Manager in satisfaction of a claim, shall be issued to the original builder.

5. A Claims Committee:

- 5.1 A Claims Committee shall be established by the Scheme Manager to ensure that the claims received are genuine.
- 5.2 The Committee would consist of persons prescribed by the Board.
- 5.3 The Committee should review the damage themselves or appoint other professionals to review the claims and report to them on the same.
- 5.4 Once the Committee verifies a claim then the contractor who is responsible for the defective work should correct it as soon as possible under the supervision of the Scheme Manager .

6. Release Forms

- 6.1 The Scheme Manager has to obtain Release Forms from the home owner once the damage to the residential home has been corrected by a builder hired by the Scheme Manager to do so.
- 6.2 If the amount paid by the Scheme Manager to correct the defective works of the offending builder does not cover the full cost of repair the Release Form must state this.

6.3 The Scheme is to be a last resort if the builder responsible cannot or will not correct the damage.

7. The Scheme Manager to recover outlay.

7.1 The Scheme Manager shall make an effort to recover the outlay of the Scheme at all times from the negligent builder.

7.2 The Scheme Manager shall set up a system requiring a negligent builder to reimburse the fund so that costs shall be kept down for other members.

8. Annual Review of all claims.

8.1 The Scheme shall have an annual review set up by the Board to review all claims.

8.2 This review by the Board will allow the Board to note which builder is producing losses so that it could deal with such persons whose losses appear to be excessive.

8.3 As a final resort, the Scheme Manger shall deny the negligent builder coverage under the Scheme if the builder's defective workmanship is excessive.

8.4 The Board shall not allow a builder to obtain a licence to build residential homes nor to produce shoddy work.

OBJECTS AND REASONS

This Bill seeks for the first time to make provision for the registration and licensing of construction contractors and, in this connection, to establish a Construction Contractors Board with responsibility for registering and licensing construction contractors and advising the Minister responsible for Public Works on certain matters relating to the practice of construction contracting.

Clauses 1, 2 and 3 provide for a short title, application commencement and interpretation of the legislation.

Clause 4 seeks to establish the Board which shall consist of ten persons. Clauses 5 and 6 set out provisions relating to the terms of office of Board members and to Board meetings. Clause 7 deals with the provision of a Registrar and staff, accommodation and facilities for the performance of the functions of the Board.

Clause 8 sets out the functions of the Board; these include the regulation of the practice of construction contracting. Clause 9 makes provision for the maintenance of a construction Contractors Register.

Clause 10 seeks to prescribe the qualifications requisite for registration in the categories set out in the First Schedule of construction contractors, and the system of registration which essentially will be under the control of the Board. Clause 11 makes provision as to the procedure for the registration of contractors one of which is that the applicant has complied with the Code in the Second Schedule.

Clause 12 would enable the insertion in the Contractors Register, of additional qualifications acquired by a registered contractor. Clause 13 makes provision in respect of certificates of registration issued to registered contractors. The clause also makes provision for the certified copy of a certificate of registration to be prima facie evidence, in a court, for the registration of the contractor.

Clause 14 provides for the issue of a licence to contractors and contracting firms, respectively. Clause 16 prescribes the period for which the licence remains valid.

Clause 18 deals with the register and list of names being kept in relation to licensed contractors and licensed contracting firms.

Clause 19 indicates how a licensee is to give evidence of a certificate of insurance to his client.

Clauses 20 to 27 deal with disciplinary matters. Where a complaint of improper conduct is made against a registered contractor, a disciplinary committee may be appointed by the Board and the complaint referred to the Committee. On hearing of the complaint the committee is empowered to make recommendations to the Board and thereupon the Board may make orders of a disciplinary nature including an order providing for the removal of a name of a contractor from the Contractors Register.

Clause 28 makes it an offence for an unlicensed person to perform construction contracting.

Clause 29 makes it an offence for a person to wrongfully procure registration.

Clauses 30 to 33 makes provision in respect of financial matters, for example, the defrayal of expenses incurred under the legislation.

Clause 34 provides for an appeal to the Supreme Court against the Board's determination, for example, as to an applicant's registration or against a disciplinary order of the Board.

Clause 35 prescribes the evidential value of a certificate of the Registrar.

Clause 36 enables a Ministerial review of Board activities.

Clause 37 provides for a Consumer Code for builders in the Second Schedule.

Clause 38 provides for disputes to be settled by dispute resolution process.

Clause 39 confers immunity from civil action upon certain persons acting under the legislation, for example, the Registrar and members of the Board.

Clause 40 empowers the Minister after consultation with the Board to make regulations for the purposes specified.

Clause 41 sets out transitional provisions allowing a person who, immediately before the commencement of the legislation, was practising as a construction contractor or contracting firm to continue, for a specified period, to do so without being registered or without holding a licence. Clause 42 contains saving provisions. Clause 43 concerns the repeal of rules 2 and 3 of the Licensed Plumbers Rules, 1933.

The First Schedule of the Bill outlines the categories of construction contractors. The Second Schedule of the Bill deals with a Consumer Code for builders.