

HomeBond: peering through the cracks

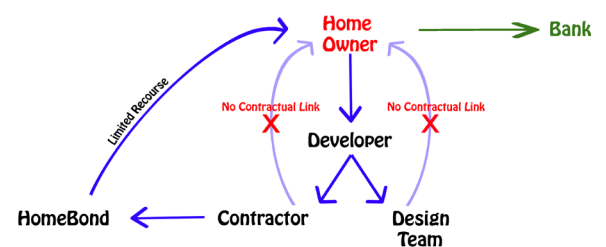
For most people, the purchase of a new house is the biggest investment they are likely to make. However, have such purchasers protected this asset well enough? While HomeBond claims to provide “essential protection” against a number of risks, a close inspection of the HomeBond documentation reveals many cracks through which a homeowners’ claim may fall. Purchasers need to understand that the HomeBond policy is taken out by the builder and that the benefits conferred upon the purchaser are limited.

New homeowners who buy a house from a member builder should be informed that the HomeBond policy has many expressed exclusions. Some of which are expected (e.g. wear and tear, hair cracks); others may surprise. For example:

(A) Negligent acts of third parties

The HomeBond policy excludes cover for defects arising from the negligence of third parties. If HomeBond does not cover the acts of these third parties (e.g. an architect who had responsibility for the design of a house) and defects arise as a consequence of that third party’s negligence, how can a homeowner recoup the cost of repair? This exclusion represents a major gap in the so-called “essential protection”.

A collateral agreement could fill this crack as it creates a direct contractual link between a purchaser and a contractor and/or a design team. In this simple agreement, the contractor/design team covenants to the homeowner that they have complied with their obligations under the building agreement and/or letters of appointment. This is critical if a purchaser wishes to sue a builder or member of the design team for breach of their respective building agreement or letter of appointment for defects in the building. It is not standard practice to seek such agreements in residential purchases; however, they are part and parcel of almost all commercial property transactions. Without such a contractual link, a homeowner is reliant on a claim under tort law for negligence which can be difficult to establish. Perhaps it is time to review traditional practices.



(B) Financial Limits

A further snag arises from the imposition of the following two tiered financial ceilings by HomeBond;

- (a) a maximum amount payable on each dwelling, regardless of the cost of repair; and
- (b) an aggregate maximum payable for each member builder.

For homes registered prior to 1 October 2004, the limit of HomeBond’s liability in relation to any one dwelling with major defect(s) is €38,000. This is hardly sufficient to remedy any major defect. Furthermore, this figure must be considered as a best case only as each HomeBond member has a cumulative liability of €508,000. Therefore, when faced with a claim, HomeBond may take into account the anticipated claims when calculating a payout, potentially reducing the monies available to an aggrieved homeowner. HomeBond does not provide guidance as to the application of the “anticipated claims” principle and this principle is open to exploitation by HomeBond to reduce its exposure.

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For houses registered post 1 October 2004, the limit increased to €200,000 per home and the limit per subscribing builder increased to €2 million for structural defects.

An example might clarify this:

Houses registered pre 1 October 2004

ABC Builders built 500 houses and have no previous claims against them. John claims against ABC Builders for the cost of repairing structural defects in his house built by ABC Builders. HomeBond's maximum liability for the house is €38,000. However, HomeBond may consider the number of potential claims when calculating a payment – total members liability (€508,000), divided by number of potential claims (500), leaving a payout of €1,016.

Whilst increasing the thresholds represents a move in the right direction, based on the above example, HomeBond could still possibly pay out only €4,000 for a home registered after 1 October 2004, irrespective of the cost of repairs.

Both figures have the potential of being further reduced where previous payouts have been made by HomeBond in respect of that member builder.

At a time when builders and homeowners are at their most vulnerable, it must be acknowledged that the protection afforded to homeowners by HomeBond is insufficient as liability is severely limited. Homeowners who believe they have “essential protection” will be bitterly disappointed and may have to bear substantial costs in remedying defects in their home. The request of a collateral warranty might, in my opinion, provide better and cheaper cover. Such weaknesses must be highlighted to those who rely on HomeBond as an “insurance policy”. We must examine the true value of the HomeBond policy and what alternative protection can be afforded to the homeowner.

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