



Insolvent Builders

NHBC's arrangements in the event of insolvency



This leaflet contains details of NHBC's special arrangements for dealing with the sale of homes when a Builder or Developer on its Register:

- goes into liquidation
- becomes bankrupt
- has a Receiver, Administrative Receiver or Voluntary Arrangement Supervisor appointed
- has an administration order made in connection with its business, or
- has a mortgagee take possession of all or part of its assets.

Definitions

Approved Agreement

As defined in NHBC's Rules, Approved Agreement means an agreement made with the purchaser of a home in a form approved by the NHBC, including an agreement contained in NHBC Scheme Documents as defined in the NHBC Rules of registration.

NHBC Scheme Documents means Offers of Cover, Acceptance Forms and NHBC Buildmark Booklets in the forms specified by NHBC.

Builder

House Builder or Developer entered on NHBC's Register.

Insolvency Practitioner

Liquidator, Trustee in Bankruptcy, Receiver, Administrative Receiver, Administrator, Mortgagee in Possession, Law of Property Act, Receiver or Voluntary Arrangement Supervisor.

Buildmark Cover

Buildmark cover is the NHBC warranty and ten year insurance scheme (contained in an Approved Agreement) that may be offered to a first purchaser of a new home by an NHBC registered Builder or Developer who owns the land, has registered the plot and is selling the completed home.

NHBC Rules

The Rules as amended from time to time setting out the conditions of builder registration.

NHBC Requirements

The mandatory requirements we publish in the NHBC Standards, amended from time to time, with which a Builder must comply in order for the Insurance Certificate (formerly the Ten Year Notice) to be issued.

1 Deletion from the NHBC Register

On the date of appointment of an Insolvency Practitioner in connection with the Builder's business the Builder is automatically deleted from NHBC's Register.

From the date of deletion the Builder is no longer able to offer or exchange an Approved Agreement for any home that he has registered with NHBC.

The Insolvency Practitioner cannot use Approved Agreements bearing the deleted Builder's name but must make new arrangements with NHBC if he wishes to sell homes with Buildmark cover.

2 Insolvency Practitioners' Options

The possibilities when a builder becomes insolvent are that building work has or has not been started, the homes are in various stages of construction or are complete, and contracts have or have not been exchanged.

2.1 If the Insolvency Practitioner wishes to complete and sell the homes with the benefit of Buildmark cover he has three options:

2.1.1 He may register with NHBC as a Builder or Developer (a Developer does not carry out building work but must employ as main contractor a Builder on NHBC's Register) and have the homes built in accordance with NHBC's requirements. If the Insolvency Practitioner exercises this option he will offer Approved Agreements in his own name and will have full responsibility for the homes under the Buildmark scheme, which includes the obligation to correct defects reported to him.

NHBC will require the Insolvency Practitioner to provide it with a bond calculated at 2.5% of the full market value of each completed home which is to be sold. This bond provides NHBC with security for the obligations of the Insolvency Practitioner under the Approved Agreements and NHBC's Rules. It will run for five years from the date of the last Ten Year Notice or Insurance Certificate to which this option applies or, if longer, two years and six months from the date of the last sale.

2.1.2 He may sell the unsold part(s) of the site as it stands. In that case if the homes are eventually to be sold with Approved Agreements to purchasers who fall within that definition in the Agreements, the Insolvency Practitioner must sell to a Builder on NHBC's Register. The Builder will need to make arrangements to transfer the registrations from the original Builder to himself. The Builder will then build the homes and offer them for sale with Approved Agreements and accept the obligations incurred. If the finance for the purchase by the Builder of all these homes comes from the source which financed the insolvent Builder, NHBC will require that source to provide a bond to cover the Builder's obligations for the homes mentioned above in the event of the Builder's default. The Builder will also have to comply with 2.3.

- 2.1.3 He may contract with a Builder to offer Approved Agreements on sale by the Insolvency Practitioner. The Builder will need to make arrangements to transfer the registrations to himself from the original Builder. He will complete the homes and offer the Approved Agreements, taking full responsibility for the homes under the Buildmark Insurance scheme. The Insolvency Practitioner will be required to provide security to NHBC for the Builder's obligations. This will be in the form of a bond calculated at 2.5% of the market value of the homes to be sold with Buildmark warranty and will run for two years and six months from the date of the Notice of Insurance Cover issued for the last of the homes to be sold.
- 2.2 Where contracts have been exchanged on one or more homes on the site, the Insolvency Practitioner has the same options as in 2.1 above in respect of unsold homes, but whoever offers the Approved Agreements will have to undertake to NHBC to complete the homes for which contracts were exchanged by the original Builder but have not yet been completed, so that the Ten Year Notices or Insurance Certificates can be issued. Once the homes have been completed and the Ten Year Notices or Insurance Certificates issued, the Insolvency Practitioner will have no further responsibility for these homes. NHBC will deal with later claims under its insurance cover.
- 2.3 Where NHBC has already paid out, or may have to pay out, for claims for unfinished work or lost deposits on homes for which contracts have been exchanged but where the building work has not been completed, the Insolvency Practitioner will have to reimburse NHBC whatever has been paid or may be paid for those claims. This will be a condition of NHBC permitting the unsold homes to be sold with the benefit of Approved Agreements. If a Builder buys the site outright (2.1.2) reimbursement must be made even if the Insolvency Practitioner is no longer involved, if homes on the site are to be sold with NHBC cover.

3 The Undertaking and Bond

NHBC will provide a draft undertaking and/or bond in standard terms.

4 Clearing Banks

Where the Insolvency Practitioner has been appointed on the petition or application of or by a bank which is a member of the Committee of London Clearing Banks the bank may carry out the functions mentioned above in place of the Insolvency Practitioner.

5 Registration Fees

Where the homes are transferred on NHBC's records from the registration of the Insolvent Builder to the Insolvency Practitioner (if on NHBC's Register) or another Builder, an administration fee for each home transferred is payable. Details can be obtained on request.

6 NHBC Road and Sewer Bonds

NHBC provides Bonds for some of its registered Builders and Developers. If the site is the subject of an NHBC Road or Sewer Bond NHBC will advise the registered Builder or Developer, or Insolvency Practitioner taking over the site of NHBC's requirements. In general NHBC will require the Insolvency Practitioner or registered Builder or Developer to ensure that the work is completed to the Local Authority's standards at no cost to NHBC.

Builder Registration Department

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