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**IMPORTANT INFORMATION**

## **HOMEOWNER PROTECTION ACT**

**[SBC 1998] CHAPTER 31**

*Assented to July 30, 1998*

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## **Part 1 — Introductory Provisions**

## Definitions

**1** In this Act:

**"advisory council"** means the Provincial Advisory Council on Homeowner Protection established under section 13;

**"appeal board"** means the appeal board established under section 43 of the *Safety Standards Act*;

**"authorization"** means an authorization issued by the registrar under section 20;

**"chief executive officer"** means the person appointed under section 4 (2.1) as the chief executive officer of the Homeowner Protection Office;

**"compliance officer"** means a person appointed under section 5 (1) as a compliance officer;

**"compliance order"** means a compliance order issued under section 28.1;

**"director of research and education"** means the person designated under section 11 (b) as the director of research and education for the office;

**"home warranty insurance"** has the same meaning as in section 189.1 (1) of the *Insurance Act*;

**"monetary penalty"** means a monetary penalty imposed under section 28.3;

**"new home"** means a building, or portion of a building, that is newly constructed or being constructed and is intended for residential occupancy, and includes

(a) a self-contained dwelling unit that is

(i) detached, or

(ii) attached to one or more other self-contained dwelling units,

(b) a building having 2 or more self-contained dwelling units under one ownership,

(c) common property, common facilities and other assets of a strata corporation,

(d) any building or portion of a building of a class prescribed by the regulations as a new home to which this Act applies, and

(e) a home that is or is being substantially reconstructed,

but does not include a manufactured home unless otherwise prescribed;

**"office"** means the Homeowner Protection Office established under section 3 (1);

**"owner"** means a person who

(a) purchases a new home, or

(b) contracts with a residential builder to construct a new home,  
and includes

- (c) a person who purchases a life interest in a new home,
- (d) a strata corporation in respect of the common property, common facilities and other assets,
- (e) a cooperative, corporation or society having an ownership interest in a new home, and
- (f) a subsequent purchaser of a new home;

**"owner builder"** means an individual with a valid authorization issued by the registrar under section 20;

**"program"** means the Reconstruction Program established under section 24;

**"public registry"** means the registry established under section 29.5 (1);

**"registrar"** means the person designated under section 7 (1) as the registrar;

**"renovation"** means a change, addition or alteration to a home, or a repair to a home, as prescribed by the regulations;

**"residential builder"** means a person who engages in, arranges for or manages all or substantially all of the construction of a new home or agrees to do any of those things, and includes a developer and a general contractor;

**"vendor"** means a person who sells their ownership interest in a new home;

**"warranty provider"** means a person who has a business authorization under the *Financial Institutions Act* to carry on insurance business.

## Purposes of the Act

**2** (1) The purposes of this Act are

- (a) to strengthen consumer protection for buyers of new homes,
- (b) to improve the quality of residential construction, and
- (c) to support research and education respecting residential construction in British Columbia.

(2) A further purpose of this Act is to establish a Reconstruction Program to provide financial assistance to eligible homeowners for home reconstruction.

## Part 2 — Homeowner Protection Office

## Homeowner Protection Office

**3** (1) The Homeowner Protection Office is established consisting of the board appointed under section 4 (1).

(2) The purposes of the office are

- (a) to license residential builders and other persons required to be licensed under this Act,
- (b) to carry out research and education respecting residential construction in British Columbia, and
- (c) to administer the program.

(3) [Repealed 2007-20-2.]

(4) Subject to the approval of the Lieutenant Governor in Council, the office, for the purpose of carrying out any power, right, function or duty conferred or imposed on it under this or any other Act, may borrow the sums of money it considers necessary or advisable.

(5) The office is a corporation and has the power and capacity of a natural person of full capacity.

(6) The office is, for all purposes, an agent of the government and its powers may be exercised only as an agent of the government.

(7) The *Public Service Act* and the *Public Service Labour Relations Act* do not apply to the office or to a member, officer or employee of the office.

(8) The *Business Corporations Act* does not apply to the office but the Lieutenant Governor in Council may order that one or more provisions of that Act apply.

## Board

**4** (1) The Lieutenant Governor in Council must

- (a) appoint as members of the board at least 3 persons who hold office during pleasure, and
- (b) designate one of the members as chair of the board.

(2) The board must manage the affairs of the office or supervise the management of those affairs.

(2.1) The board must appoint a person as chief executive officer for the office and may determine the remuneration and the terms and conditions of the appointment.

(3) The office may pay to a member

- (a) an allowance for reasonable travelling and incidental expenses necessarily incurred in carrying out the business of the office, and
- (b) if the member is not a member of the Legislative Assembly or a public servant, remuneration at rates set by the Lieutenant Governor in Council.

## **Powers and duties of the chief executive officer**

**5** (1) The chief executive officer must do all of the following:

- (a) designate the registrar and the director of research and education;
- (b) appoint officers, including compliance officers, and hire employees as the chief executive officer considers necessary, and set the terms and conditions of their employment, including their remuneration and duties;
- (c) advise the minister respecting home warranty insurance or any other matter under this Act;
- (d) perform other prescribed powers and duties.

(2) The chief executive officer may act as the registrar or the director of research and education, and may perform the duties of either of them.

## **Financial administration of the office**

**6** (1) The office must establish and maintain an accounting system satisfactory to the Minister of Finance and must, whenever required by that minister, render detailed accounts of its revenues and expenditures for the period or to the day that minister designates.

(2) All books or records of account, documents and other financial records of the office must at all times be open for inspection by the minister or a person designated by the minister.

(3) The Minister of Finance may direct the Comptroller General to examine and report to the Minister of Finance on any or all of the financial and accounting operations of the office.

(4) Unless the Auditor General is appointed in accordance with the *Auditor General Act* as the auditor of the office, the office must appoint an auditor to audit the accounts of the office at least once each year.

(5) The office must, within 90 days of the fiscal year end, submit annually to the minister, in a form approved by the minister,

- (a) a report of the office on its operations for the preceding fiscal year,
- (b) a financial statement showing the revenues, expenditures, assets and liabilities of the office as of the end of the preceding fiscal year, and
- (c) the annual report of the auditor of the office.

(6) The financial statement referred to in subsection (5) (b) must be prepared in accordance with generally accepted accounting principles.

(7) The financial statement and reports referred to in subsection (5) must be laid before the Legislative Assembly by the minister as soon as practicable.

(8) The Minister of Finance is the fiscal agent of the office.

(9) The Lieutenant Governor in Council may designate administrative services that the office must obtain from the government or from any government corporation, agency, branch or ministry or other government organization or entity that is specified in the order making the designation.

### **Part 3 — Registrar**

#### **Registrar**

**7** (1) The chief executive officer must designate a person as the registrar for the purposes of this Act.

(2) The registrar may designate a person who may, in the absence of the registrar, perform the duties of the registrar.

#### **Duties of the registrar**

**8** (1) The registrar has the following duties:

(a) to receive and review applications for licensing from residential builders and other persons required to be licensed under this Act;

(a.1) to receive and review applications for authorizations from persons who apply to be authorized as owner builders under this Act;

(b) to issue licences to, and renew the licences of, residential builders and other persons required to be licensed under this Act who meet the requirements of this Act and the regulations;

(b.1) to issue authorizations to persons referred to in paragraph (a.1) who meet the requirements of this Act and the regulations;

(c) subject to sections 15 and 20.2, to suspend or cancel licences and authorizations;

(d) to maintain a register of

(i) owner builders, licensed residential builders and other persons licensed under this Act, and

(i) new homes;

(e) to make entries in the registers in accordance with this Act and the regulations;

(f) to keep records, including records of decisions made by the registrar;

(g) subject to the regulations, to provide information to the public about persons licensed or authorized under this Act;

(h) to perform any other duties imposed on the registrar by this Act or the regulations.

(2) Subject to the regulations, the registrar may request reports from licensed residential builders and

other persons licensed under this Act.

## Enforcement

**9** (1) For the purposes of this Act and the regulations, a compliance officer may at any reasonable time do one or more of the following:

- (a) subject to subsection (2), enter and examine any premises;
- (b) question any person about
  - (i) the qualifications of workers,
  - (ii) the work performed by workers, or
  - (iii) any matter that relates to licensing or authorization under this Act;
- (c) inspect the records of a person who is authorized or licensed or is required to be licensed under this Act;
- (d) require a person to produce for inspection a record referred to in paragraph (c);
- (e) on giving a receipt for a record referred to in paragraph (c), remove the record to make copies or extracts;
- (e.1) issue a compliance order;
- (f) exercise and perform other prescribed powers and duties.

(1.1) The registrar may exercise the powers of a compliance officer set out in subsection (1).

(2) The registrar or a compliance officer may only enter a place occupied as a private residence with the consent of an occupant.

(3) A person must not obstruct the registrar or a compliance officer in the exercise of powers under this section, or withhold from him or her, or conceal or destroy, a record relevant to an investigation.

(3.1) The registrar or a compliance officer, on the request of a person on the premises the registrar or compliance officer enters, must produce his or her identification card.

(3.2) The chief executive officer must provide the registrar and compliance officers with identification cards for the purpose of subsection (3.1).

(4) On the request of the registrar and for the purposes of this Act and the regulations,

- (a) a warranty provider must provide reports respecting
  - (i) the risk profile of persons required to be licensed under this Act, and
  - (ii) other prescribed information, and
- (b) a municipality or regional district must provide reports respecting building regulation compliance by persons authorized or required to be licensed under this Act.



- (5) The registrar may specify the form and content of a report required by subsection (4).

### **Collection of fees**

- 10** (1) The registrar must collect the fees required to be paid under this Act.
- (2) Money collected by the registrar under subsection (1) must be paid to the credit of the office and applied to defray the expenses incurred in carrying out the functions of the office under this Act.
- (3) Despite the *Financial Administration Act*, money collected by the registrar under subsection (1) of this section is not paid into the consolidated revenue fund.

## **Part 4 — Research and Education Division**

### **Establishment of research and education division**

- 11** The chief executive officer must
- (a) establish in the office a research and education division, and
  - (b) designate a person as director of research and education to manage the division.

### **Purposes of the division**

- 12** The purposes of the division established under section 11 are as follows:
- (a) to establish and maintain expertise in building science, especially as it applies to British Columbia and the British Columbia Building Code;
  - (b) to advise on necessary and appropriate amendments to the British Columbia Building Code;
  - (c) to advise the City of Vancouver on necessary and appropriate amendments to the City of Vancouver building by-laws;
  - (d) to provide advice and assistance to those charged with the responsibility of preparing periodic revisions of the National Building Code of Canada;
  - (e) to conduct research into cost effective building techniques, processes and materials appropriate for use in British Columbia;
  - (f) to cooperate with other organizations to establish what constitutes the best practice for building and retrofitting housing in British Columbia;
  - (g) to support consumer education;
  - (h) to perform other functions consistent with this Part.

### **Advisory council**

- 13** (1) An advisory council is established to be known as the Provincial Advisory Council on Homeowner Protection consisting of members appointed by the chief executive officer.
- (2) The advisory council established under subsection (1) is to be composed of
- (a) participants from the residential construction industry, including architects and engineers,
  - (b) owners, and
  - (c) representatives of local government.
- (3) The chief executive officer may designate one of the members as chair of the advisory council and another member as vice chair.
- (4) The chief executive officer may, at any time, rescind an appointment made under subsection (1) or a designation made under subsection (3).

## **Part 5 — Licensing of Residential Builders**

### **Licensing of residential builders**

- 14** (1) A person must not carry on the business of a residential builder unless licensed under this Part.
- (2) On application to the registrar, a person may be issued with a licence as a residential builder if
- (a) the registrar is satisfied that the person
    - (i) meets the prescribed qualifications for licensing or has the experience, training or competence equivalent to the prescribed qualifications, and
    - (ii) meets the prescribed conditions for licensing,
  - (a.1) in the case of an application by a corporation, none of the individuals about whom disclosure is required under subsection (3) would be disqualified if the individual were an applicant, and
  - (b) the person pays any prescribed licence fee.
- (2.1) For the purposes of determining whether a person has the experience, training or competence referred to in subsection (2) (a) (i), the registrar may set and administer examinations.
- (2.2) On application to the registrar, a person who holds a licence issued under this Part may have the licence amended if
- (a) the registrar is satisfied that amending the licence is appropriate in the circumstances, and
  - (b) the person pays the prescribed fee.
- (3) A corporation applying for a licence or its renewal, in addition to any other disclosure required

under this Act, must file with the registrar a statement disclosing, to the satisfaction of the registrar, the identity of the individuals who control or who are able to control the corporation.

(4) A residential builder who is authorized by a licence issued under this Part may use the designation "Licensed Residential Builder".

(5) Unless a person is a licensed residential builder referred to in subsection (4), the person must not

(a) use or display the designation "Licensed Residential Builder", or

(b) imply, suggest or hold out in any manner that the person is a residential builder who is licensed under this Part.

(6) A licence issued under this Part

(a) is valid for one year from the date of issue, or for a shorter period as determined by the registrar,

(b) may be renewed under section 14.1, and

(c) is not transferable.

(7) Subject to the regulations, the registrar may impose conditions on licences issued under this section.

### **Licence renewal**

**14.1** (1) On application to the registrar within 30 days of its expiry, a person who holds a licence issued under section 14 may have the licence renewed if

(a) the registrar is satisfied that the person would meet the requirements of section 14 (2) (a) or (a.1) if the person were an applicant under that section, and

(b) the person pays the prescribed fee.

(2) Subject to the regulations, the registrar may impose conditions on a licence renewed under this section.

### **Suspension or cancellation of licence**

**15** The registrar may suspend or cancel the licence of a residential builder

(a) for any reason that would disqualify a residential builder from eligibility for a licence under section 14 if the residential builder were an applicant under that section,

(b) if the residential builder has made a false statement on a material matter in the application or refuses to provide information on a material matter when requested to do so by the registrar,

(c) if the residential builder is in breach of a condition of, or restriction on, the licence or is convicted of an offence under this Act , or

(d) if the licence was issued in error.

#### **Notice of decision and surrender of licence**

**16** (1) If the registrar refuses to issue a licence to or renew the licence of a residential builder, or suspends, cancels or imposes conditions on the licence of a residential builder, the registrar must serve notice of the decision on the residential builder, and the notice must

(a) include written reasons for the registrar's decision, and

(b) advise the person of the right under section 29.1 to request that the decision be reviewed by the registrar.

(2) If the registrar suspends, cancels or refuses to renew a residential builder's licence, the residential builder must as soon as practicable surrender the licence to the office.

#### **Repealed**

**17** [Repealed 2007-20-13.]

#### **Licensing of other persons**

**18** If a residential subcontractor or residential renovator is required by the regulations to be licensed, a reference to "residential builder" in this Part is deemed to be also a reference to "residential subcontractor" or "residential renovator", as the case may be.

### **Part 6**

#### **Repealed**

**19** [Repealed 2003-34-20.]

### **Part 7 — Owner Builders**

#### **Authorizations for owner builders**

**20** (1) On application to the registrar, a person who intends to build, for personal use, a new home of a prescribed type may be issued an authorization if the person

(a) meets the criteria prescribed for owner builders, and

(b) pays the prescribed fee.

(2) The registrar may issue an authorization under subsection (1) to a person who does not meet the criteria referred to in subsection (1) (a) if the registrar is satisfied that special circumstances justify doing so.

(3) An owner builder, with respect to the new home for which the owner builder's authorization is issued, is not required

(a) to obtain home warranty insurance, or

(b) to be licensed under this Act.

### **Prohibition on sales and offers to sell**

**20.1** (1) Subject to subsection (2), an owner builder must not sell or offer to sell a new home

(a) while the new home is being constructed, or

(b) within the prescribed period of time after the new home has been built,

unless the registrar permits the sale or offer under subsection (2).

(2) On application to the registrar, an owner builder may be permitted to sell or offer for sale a new home despite the requirements of subsection (1) if

(a) the registrar is satisfied that the person would suffer undue hardship if the permission is not granted, and

(b) the person pays the prescribed fee.

(3) The registrar may impose conditions on a permission granted under subsection (2).

### **Suspension or cancellation of authorization**

**20.2** The registrar may suspend or cancel an authorization

(a) for any reason that would disqualify the owner builder for an authorization under section 20 if the owner builder were an applicant under that section,

(b) if the owner builder has made a false statement on a material matter in the application or refuses to provide information on a material matter when requested to do so by the registrar, or

(c) if the owner builder fails to comply with a compliance order or to pay a monetary penalty as required under section 28.3 (10).

### **Notice of refusal to issue, or suspension or cancellation of, authorization**

**20.3** If the registrar refuses to issue an authorization under section 20, or suspends or cancels an authorization under section 20.2, the registrar must serve on the applicant or owner builder, as the case may be, notice of the decision, together with written reasons for the decision.

### **Disclosure and security**

**21** (1) In this section, "**purchase period**" means

(a) the period during which home warranty insurance for a new home is in effect, or

- (b) if home warranty insurance for a new home has not been obtained, the period during which home warranty insurance would have been in effect had it been obtained.
- (2) An owner builder, and any subsequent purchaser of a new home built by an owner builder, before selling his or her new home during the purchase period, must provide to a prospective purchaser of the new home
  - (a) a disclosure notice in a form satisfactory to the registrar stating whether or not the home is covered by home warranty insurance, and
  - (b) if required by the regulations, another form of security instead of home warranty insurance.

## **Part 8 — Consumer Protection for New Home Buyers**

### **Mandatory home warranty**

**22** (1) A person must not build a new home unless the new home is registered for coverage by home warranty insurance provided by a warranty provider.

(1.1) Subject to subsection (1.2), a person must not sell or offer to sell a new home

- (a) while the new home is being constructed, or
- (b) within 10 years from
  - (i) the date an occupancy permit was first issued with respect to the new home, or
  - (ii) if no occupancy permit has been issued with respect to the new home, the date on which the registrar is satisfied the new home was first ready for occupancy,

unless

- (c) the new home is covered by home warranty insurance provided by a warranty provider, or
- (d) the new home or the person is exempt by regulation from the requirement of this subsection.

(1.2) On application to the registrar, a person may be permitted to sell or offer for sale a new home despite the requirements of subsection (1.1) if the registrar is satisfied that the person would suffer undue hardship if the permission is not granted.

(1.3) The registrar may impose conditions on a permission granted under subsection (1.2).

(2) Home warranty insurance for a new home must provide coverage for

- (a) defects in materials and labour for a period of at least 2 years after the date on which the warranty begins,
- (b) defects in the building envelope, including defects resulting in water penetration, for a period of at least 5 years after the date on which the warranty begins, and

(c) structural defects for a period of at least 10 years after the date on which the warranty begins.

(3) If required by the regulations, a person must not undertake a renovation or offer for sale or sell a renovated home unless the renovation is covered by home warranty insurance provided by a warranty provider.

(4) Subsections (1), (1.1), (1.2) and (3) do not apply to an owner builder.

### **Statutory protection**

**23** (1) A residential builder or an owner builder and a vendor of a new home are both deemed to have agreed with the owner of the new home, to the extent of labour, materials and design supplied, used or arranged by the residential builder, owner builder or vendor, that the new home, except to the extent prescribed by regulation,

(a) is free from defects in materials and labour and will remain so for a period of at least 2 years after

(i) the date an occupancy permit with respect to the new home was first issued, or

(ii) if no occupancy permit has been issued with respect to the new home, the date the new home was first occupied,

(b) is free from defects in the building envelope, including defects resulting in water penetration, and will remain so for a period of at least 5 years after

(i) the date an occupancy permit with respect to the new home was first issued, or

(ii) if no occupancy permit has been issued with respect to the new home, the date the new home was first occupied, and

(c) is free from structural defects, and will remain so for a period of at least 10 years after

(i) the date an occupancy permit with respect to the new home was first issued, or

(ii) if no occupancy permit has been issued with respect to the new home, the date the new home was first occupied.

(2) Any term of an agreement that purports to waive, exclude, limit or qualify the protection under subsection (1) is of no effect.

(3) The protection under subsection (1) is for the benefit of whoever is the owner of the new home from time to time until the end of the period within which an action may be brought under subsection (5), and that owner is deemed

(a) to have given good consideration for the benefit of the protection, and

(b) to be the only person entitled to recover damages for a breach of the protection.

(4) Despite subsection (3), if the ownership of the new home changes during the course of an action for breach of the protection under subsection (1), the new owner is entitled to be substituted as plaintiff and to enforce all rights that the former owner could have enforced.

(5) An action in respect of the protection under subsection (1) must be commenced within 10 years after the date of first occupancy of the new home or, in respect of common property, common facilities and other assets of a strata corporation, the date the strata plan is deposited in a land title office in accordance with the *Strata Property Act*.

(6) Nothing in this section

(a) excludes, qualifies or limits any other term, express or implied,

(b) relieves any person of liability to which they would otherwise be subject, or

(c) subjects a municipality or regional district to any greater liability than if this section were not in force.

(7) This section does not apply to a new home covered by home warranty insurance.

## **Part 9 — Reconstruction Program**

### **Reconstruction Program established**

**24** A program is established to be known as the Reconstruction Program for the purpose of providing financial assistance to eligible homeowners for home reconstruction.

### **Payments to the program**

**25** (1) The office must pay the following money to the credit of the program:

(a) any donations, grants or loans to the program received from

(i) the government of Canada or British Columbia,

(ii) any public or private corporation, or

(iii) any other person;

(b) assessments levied under section 26;

(c) investment earnings on the money referred to in paragraphs (a) and (b).

(2) Money paid to the credit of the program

(a) is the property of the office,

(b) must be accounted for separately from other money of the office, and

(c) is not subject to any process of seizure or attachment by any creditor of the office.



(3) The office must place with the Minister of Finance, for investment, money paid to the credit of the program that is not immediately required for carrying out the purposes of section 27.

(4) Money placed with the Minister of Finance under this section is to be treated for all purposes as money placed with that minister under section 40 (5) of the *Financial Administration Act*.

### **Annual assessment**

**26** (1) For the purposes of the program, the Lieutenant Governor in Council may make regulations prescribing an annual assessment that must be paid by prescribed categories of residential builders as part of a licence fee payable under section 14 (2).

(2) For the purpose of subsection (1), the Lieutenant Governor in Council may prescribe formulas for calculating the assessment and the time for payment of that assessment.

(3) If a residential builder defaults in the payment of an assessment that is due and payable under this Act, the chief executive officer may

(a) issue a certificate stating the amount due, the amount remaining unpaid, including prescribed interest, and the name of the person by whom it is payable, and

(b) file the certificate with a district registrar of the Supreme Court,

and when filed the certificate has the same force and effect, and all proceedings may be taken on it, as if it were a judgment of the court for the recovery of a debt for the amount stated in the certificate against the person named in it.

(4) In addition to any other remedy available to the office, failure to pay the assessment in the amounts and at the times specified in the regulations may be cause for the registrar to refuse to issue or renew, or to suspend, cancel or impose restrictions on, the licence of a residential builder.

### **Payments from the program**

**27** (1) Subject to the regulations, the chief executive officer may authorize payments out of the program to provide financial assistance to eligible homeowners.

(2) In addition to the payments authorized by subsection (1), the chief executive officer may authorize payments out of the program as follows:

(a) for the repayment of any advance made to the program;

(b) for the repayment of any loans made to the program;

(c) for costs of administering the program;

(d) for any matter relating to the protection and maintenance of the program;

(e) as required by an agreement entered into under section 28.

### **Agreements**

**28** The chief executive officer, on behalf of the office, may enter into agreements with prescribed persons for any purposes consistent with this Part.

## **Part 9.1 — Enforcement**

### **Compliance orders**

**28.1** (1) A compliance officer, in writing, may issue to a person a compliance order under this section if the person fails to comply with this Act or the regulations.

(2) A compliance order under subsection (1) must

- (a) name the person to whom the compliance order is addressed,
- (b) specify the action the person must take, stop or modify,
- (c) state the date by which the person must comply with the compliance order,
- (d) state the reasons for the compliance order,
- (e) advise the person of the right under section 29.1 to request that the compliance order be reviewed by the registrar,
- (f) be dated the day the compliance order is made, and
- (g) be served on the person to whom it is addressed.

(3) Without limiting subsection (2) (b), a compliance order may specify any of the following requirements:

- (a) that a person must apply to obtain or renew a licence, obtain an authorization or be granted an exemption in accordance with this Act;
- (b) that a person must obtain home warranty insurance;
- (c) that a person must provide to a prospective purchaser a copy of the disclosure notice under section 21 (2);
- (d) that a person must provide documentation to a compliance officer to assist the officer in the execution of the officer's duties;
- (e) that a person who is not licensed under this Act must cease holding himself or herself out as being licensed.

(4) A compliance officer may amend a compliance order, and subsection (2) applies to the amendment.

(5) If satisfied that the circumstances that gave rise to a compliance order are no longer present or

have been affected by other circumstances, a compliance officer may terminate the compliance order by providing written notice of the termination to the person to whom the order was addressed.

### **Court ordered compliance**

**28.2** (1) If a person refuses or fails to comply with a compliance order and the appeal board has not stayed or rescinded the compliance order, the registrar may apply to the Supreme Court for an order to direct compliance with the compliance order.

(2) The court may order compliance with the compliance order on any conditions the court considers necessary.

### **Monetary penalty**

**28.3** (1) The registrar, in accordance with the regulations, may impose a monetary penalty on a person who fails to comply with any of the following:

(a) a provision of this Act or the regulations, the contravention of which is set out in the regulations as making the person liable to a monetary penalty;

(b) a compliance order;

(c) a condition of a licence or of an authorization.

(2) A monetary penalty may be

(a) a single amount, or

(b) an amount for each day that the contravention continues.

(3) If, in the opinion of the registrar, a person who is the subject of a monetary penalty under subsection (1) (b) is taking reasonable measures to remedy the non-compliance, the registrar, in writing, may suspend the application of a daily penalty under any terms and conditions the registrar considers appropriate.

(4) The total monetary penalty imposed on a person under this section for a contravention must not be greater than \$25 000.

(5) If a monetary penalty is imposed on a person under this section, the registrar must serve on the person notice imposing the monetary penalty.

(6) A notice under subsection (5) must state the following:

(a) the name of the person liable to pay the monetary penalty;

(b) the reasons for imposing the monetary penalty;

(c) the date on which the monetary penalty is to take effect;

(d) the amount of the monetary penalty and whether it is imposed as a single amount or as an amount for each day that the contravention continues;

- (e) the date by which the monetary penalty is to be paid;
  - (f) that the person liable to pay the monetary penalty may request under section 29.1 that the imposition of the penalty or the amount of the penalty, or both, be reviewed.
- (7) A person subject to a monetary penalty under this section must pay the amount of the penalty to the office.
- (8) If a monetary penalty is reduced or cancelled on review or appeal, the amount to be returned by the office to the person must include interest at the rate set under the *Financial Administration Act*.
- (9) If a corporation is liable to pay a monetary penalty imposed under this section, every director, officer or other person who authorized, permitted or acquiesced in the contravention is personally liable for the monetary penalty.
- (10) A monetary penalty imposed under this section must be paid
- (a) within 30 days after the date on which the notice referred to in subsection (5) is served on the person, or
  - (b) if an appeal is commenced respecting the monetary penalty, within 30 days after the amount of the monetary penalty is determined by the appeal board, or within a longer time specified by the appeal board.

### **Enforcement of monetary penalties**

- 28.4** (1) When the appeal period has expired or the appeal board has dismissed the appeal in whole or in part,
- (a) the monetary penalty constitutes a debt payable by the person on whom the monetary penalty is imposed, and
  - (b) the registrar may enforce the monetary penalty by filing in the Supreme Court or Provincial Court a certified copy of the notice imposing the monetary penalty and, on being filed, all proceedings may be taken on the notice as if it were a judgment of that court.
- (2) If the appeal board varies a monetary penalty, subsection (1) applies to the monetary penalty as if the order of the appeal board were the notice referred to in subsection (1) (b).

## **Part 10 — Alternate Dispute Resolution**

### **Dispute resolution processes**

- 29** (1) For the purpose of resolving residential construction disputes before or after an action is commenced arising out of or in connection with the construction of homes, including, without limitation, disputes about home warranty insurance, the Lieutenant Governor in Council may make regulations respecting the mediation or arbitration of residential construction disputes.

(2) For the purposes of the mediation of residential construction disputes referred to in subsection (1), the Lieutenant Governor in Council may make regulations including, without limitation, regulations

(a) providing to a party to a residential construction dispute the ability to require the parties to engage in mediation and setting out when and how that ability may be exercised and prescribing any other results that flow from the exercise of that ability, and

(b) respecting

(i) the forms or procedures that must or may be used or followed before, during and after the mediation process,

(ii) requiring and maintaining confidentiality of information disclosed for the purposes of mediation,

(iii) the circumstances and manner in which a party to a residential construction dispute may opt out of or be exempted from mediation,

(iv) the costs and other sanctions that may be imposed in relation to mediation, including, without limitation, in relation to any failure to participate in mediation when and as required or otherwise to comply with the regulations,

(v) the mediators' fees and disbursements, and

(vi) the qualifications required for, and the selection and identification of, individuals who may act as mediators in the mediation process contemplated by the regulations.

(3) For the purposes of the arbitration of residential construction disputes referred to in subsection (1), the Lieutenant Governor in Council may make regulations including, without limitation, regulations

(a) providing when and how an arbitration will occur, and who will participate in the arbitration,

(b) respecting the forms, procedures and rules that must or may be used or followed for an arbitration, and

(c) respecting the costs, fees and disbursements for an arbitration.

(4) If and to the extent that there is any conflict between regulations made under subsections (1) to (3) and any other enactment, including, without limitation, the rules of any court, the regulations made under subsections (1) to (3) prevail.

(5) Regulations made under subsection (2) may provide for a mediation process to be applicable to residential construction actions brought out of one or more court registries and may be different for residential construction actions brought out of different court registries.

(6) Section 9 of the *Insurance Act* does not apply to home warranty insurance disputes.

## Part 10.1 — Reviews and Appeals

### Review

**29.1** (1) A person may request that the registrar review a decision made under any of the following:

- (a) section 14 (2) or (7) [*licensing of residential builders*];
- (b) section 14.1 [*licence renewal*];
- (c) section 15 [*suspension or cancellation of licence*];
- (d) section 20 (1) [*authorizations for owner builders*];
- (e) section 20.1 (2) or (3) [*prohibition on sales and offers to sell*];
- (f) section 20.2 [*suspension or cancellation of authorization*];
- (g) section 22 (1.2) [*mandatory home warranty insurance*];
- (h) section 28.1 (1) or (4) [*compliance orders*];
- (i) section 28.3 (1) [*monetary penalty*].

(2) A request under subsection (1) must be made

- (a) within 30 days after receiving notice of or reasons for the decision, or
- (b) within the period specified by the registrar, if the registrar is satisfied that
  - (i) special circumstances existed which precluded the filing of a request for review within the period required by paragraph (a) of this subsection, and
  - (ii) an injustice would otherwise result.

(3) The registrar may allow any other person affected by a decision made under section 28.1 to request a review of that decision under subsection (1) of this section.

(4) A decision of the registrar under subsection (3) refusing a request for a review is not appealable to the appeal board.

(5) A request under subsection (1) must be in writing, must identify the error the person believes was made or the other grounds on which the review is requested and must be accompanied by the prescribed fee.

(6) The registrar may refer a request for a review directly to the appeal board.

(7) Within 30 days after the service of a compliance officer's decision under section 28.1, the registrar, on his or her own initiative, may initiate a review of that decision by serving notice of the intention to do so on the person on whom the decision was served, and section 29.2 applies.

**Registrar's decision**

**29.2** (1) Unless the registrar refers a request for a review under section 29.1 to the appeal board under section 29.1 (6), the registrar, as soon as practicable after receiving a request under section 29.1 (1) or initiating a review under section 29.1 (7), must review the decision and

(a) confirm, vary or cancel the decision or, in the case of a decision made by a compliance officer under section 28.1, refer the matter back to the compliance officer with or without directions,

(b) notify the person in writing of the following:

(i) the registrar's decision;

(ii) the reasons for the decision;

(iii) the person's right to appeal the decision to the appeal board, and

(c) in the case of a decision made by a compliance officer under section 28.1, provide a copy of the notice referred to in paragraph (b) of this subsection to the compliance officer who made the decision.

(2) The registrar

(a) must consider the submissions of the person who requests a review of a decision, and

(b) may review the matter on the basis of documents only, or may make any investigation of the matter that the registrar considers necessary.

**Right to appeal**

**29.3** A person who has received notice of a decision made by the registrar under section 29.2 may, within 30 days after receiving the notice, appeal the decision to the appeal board.

**Appeal board**

**29.4** (1) When hearing appeals, the appeal board must consider the purposes of this Act as set out in section 2.

(2) The appeal board must

(a) decide who is a party to the appeal, and

(b) serve notice of the date, time and place of the hearing to the parties to the appeal, any intervenors and any other person it considers to be sufficiently interested in the appeal.

(3) The commencement of an appeal does not operate as a stay or suspend the operation of the decision being appealed unless the appeal board orders otherwise.

(4) The appeal board or a panel or member of the appeal board may order that the decision being

appealed is stayed for a period of time or subject to conditions, or both.

(5) Subsection (4) does not apply if an application under section 28.2 to the Supreme Court to enforce an order for compliance has been made in respect of the decision under appeal.

(6) A certified copy of an order of the appeal board may be filed in the Supreme Court by the registrar and on being filed all proceedings may be taken on it as if it were an order of the Supreme Court.

(7) Sections 45, 52 (2), 53, 59 and 60 of the *Safety Standards Act* apply with respect to appeals under this Act.

(8) Sections 1, 11 to 22, 24, 28, 29, 31 (1) (a) to (e), (2) and (3), 32, 33, 34 (3) and (4), 35 to 42, 44, 46.3, 47 to 58, 60 and 61 of the *Administrative Tribunals Act* apply to the appeal board.

## **Part 11 — General Provisions**

### **Public registry**

**29.5** (1) The registrar must establish and maintain a public registry consisting of the following information:

- (a) the name, business address and phone number of each person to whom a licence has been issued under section 14 (2);
- (b) the licence number and expiry date of a licence issued under section 14 (2);
- (c) the information accepted by the registrar under section 14 (3);
- (d) the current status of the licence of a person referred to in paragraph (a) of this subsection;
- (e) the name of each person to whom an authorization has been issued;
- (f) a record of suspensions or cancellations of a person's authorization or of a person's licence issued under section 14 (2);
- (g) the facts relating to a monetary penalty or compliance order, including the amount of the monetary penalty and the terms of the compliance order, if the period referred to in section 29.1 (2) (a) or (b) or 29.3, as the case may be, has elapsed or an appeal has been heard with respect to that monetary penalty or compliance order and the monetary penalty or compliance order has not been cancelled or rescinded;
- (h) the name of each person convicted of an offence under this Act or the regulations and a reference to the provision of the Act or regulations that was contravened;
- (i) the address of a new home built by an owner builder, the name of the owner builder who built the new home and a statement as to whether or not the new home is covered by home warranty insurance.



(2) The public registry is a public record and must be made available for inspection at the office by any person during the regular business hours of the office.

(3) The registrar may establish and maintain an online registry consisting of all or any portion of the information in the public registry.

### **Building permits**

**30** (1) A municipality or regional district must not issue a building permit for a proposed new home unless the applicant provides evidence, in the prescribed form,

(a) that the proposed new home

(i) is covered by home warranty insurance, or

(ii) will be built by an owner builder or is otherwise exempted by regulation from the requirement to be covered by home warranty insurance, and

(b) that the proposed new home will be built

(i) by a licensed residential builder, or

(ii) by an owner builder or a person who is otherwise exempted by regulation from the requirement to be licensed as a residential builder.

(2) If a municipality or regional district issues a building permit for a proposed new home, relying in good faith on the evidence provided under subsection (1), the municipality or regional district is not liable, either directly or vicariously, for any damages or other loss, including economic loss, sustained by any person because

(a) the new home is not covered by home warranty insurance, or

(b) the new home was not built by a licensed residential builder.

(3) On request of the registrar, a municipality or regional district must forward to the registrar information provided by applicants for building permits under subsection (1).

(4) If a residential renovator is required by the regulations to be licensed and renovations are required by the regulations to be covered by home warranty insurance, a reference in this section to "new home" or "residential builder" is deemed to be also a reference to "renovation" or "residential renovator", as the case may be.

### **Injunction**

**31** (1) On application of the chief executive officer or the registrar, and on being satisfied that there is reason to believe that this Act or the regulations are or will be contravened, the Supreme Court may grant an injunction restraining a person from the contravention or requiring a person to comply.

(2) At any time before the court disposes of the injunction proceeding, it may grant an interim injunction.

(3) An interim injunction may be granted under subsection (2) whether or not it has been established that irreparable harm will be done to a purchaser of a new home or to any class of purchasers of new homes if the interim injunction is not granted.

### **Service of documents and notices**

**31.1** (1) If this Act or the regulations require or authorize an order, notice, decision or other document to be given or served, it may be served in the following manner:

- (a) on a person whose address is recorded in the registry, by ordinary mail or by delivery to that address;
- (b) on a person whose address is not recorded in the registry, by ordinary mail or by delivery to the address at which that person resides;
- (c) personally, by leaving it with the individual to whom it is addressed;
- (d) if the person to be served is a corporation, by leaving the document at, or mailing it by registered mail to, the registered office of the corporation, or by personally serving it on a director or officer of the corporation;
- (e) by any other method specified by the court under subsection (3).

(2) If an order, notice, decision or other document is served

- (a) under subsection (1) (a) or (b) by leaving it at the address for service, the document is deemed to have been received 3 days after it was delivered to that address,
- (b) under subsection (1) (d) by leaving it at the registered office of the corporation, the corporation is deemed to have received the document 3 days after it was left at the registered office, and
- (c) by ordinary mail, the person to whom it is addressed is deemed to have received the document 14 days after the mail was deposited with Canada Post at any place in Canada.

(3) On application by any person, the Supreme Court, for the purposes of this Act, may

- (a) give directions on how to give notice to or serve a document on a person, or
- (b) by order, dispense with service of a document if the court is satisfied that the person already has actual notice of the contents of the document and is avoiding service.

(4) If the court makes an order under subsection (3) (b) dispensing with service of a document, the document takes effect without being served.

(5) This section does not apply to the appeal board.

### **Regulations**

**32** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the

*Interpretation Act.*

(2) Without limiting subsection (1), the Lieutenant Governor in Council may make the following regulations:

- (a) defining, for the purpose of paragraph (d) of the definition of "new home" in section 1, a class of buildings or portion of a building, including a manufactured home, as a new home to which this Act applies;
- (b) [Repealed 2007-20-23.]
- (c) prescribing renovations, and requiring that renovations be covered by home warranty insurance;
- (d) prescribing additional powers and duties of the chief executive officer and the registrar;
- (e) requiring categories of residential subcontractors and residential renovators to be licensed under this Act, and may provide differently for different categories of residential subcontractors and residential renovators;
- (f) exempting
  - (i) categories of persons from all or any portion of this Act and the regulations, and may provide differently for different categories of persons,
  - (ii) a building, a class of buildings, a portion of a building or the common property, common facilities and other assets of a strata corporation from the definition of "new home" in section 1,
  - (iii) a category of persons from the definition of "owner builder" in section 1,
  - (iv) a category of persons from the definition of "residential builder" in section 1, and
  - (v) areas of British Columbia from the application of all or any portion of this Act and the regulations;
- (g) and (h) [Repealed 2007-20-23.]
- (h.1) prescribing periods of time for the purposes of section 20.1 (1), including prescribing different periods of time for different persons or classes of persons;
- (h.2) prescribing exceptions for the purposes of section 23 (1);
- (h.3) respecting the imposition of monetary penalties, the criteria for determining appropriate monetary penalties, setting different limits on different monetary penalties and setting out those provisions of this Act or the regulations which, if contravened, make a person liable to a monetary penalty;
- (h.4) providing for increased monetary penalties for repeated contraventions and specifying the

time within which a contravention is to be considered a repeat contravention of an earlier contravention;

(i) prescribing interest payable on an assessment made under section 26;

(j) requiring municipalities and regional districts to collect assessments under section 26 from applicants for building permits, and to forward to the office the amounts collected;

(k) providing that a person who commits an offence under the regulations is liable to the penalties provided for in section 34 (1) to (3);

(l) defining, for the purpose of this Act or the regulations, any word or expression not defined in this Act;

(m) respecting any matters that, in the opinion of the Lieutenant Governor in Council, will assist in the operation of the program.

(3) The Lieutenant Governor in Council may make regulations respecting licensing under this Act as follows:

(a) prescribing the qualifications and conditions for licensing of residential builders, residential subcontractors and residential renovators, and may provide different qualifications and conditions for different categories of residential builders, residential subcontractors and residential renovators;

(b) prescribing licensing fees, and may set different fees for different categories of residential builders, residential subcontractors and residential renovators;

(c) prescribing conditions that may be imposed on the licence or the renewal of the licence of a residential builder, residential subcontractor or residential renovator for the purposes of this Act, and may provide different conditions for different categories of residential builders, residential subcontractors and residential renovators;

(d) respecting the issuance, duration, expiration, renewal, suspension and cancellation of licences.

(e) [Repealed 2007-20-23.]

(4) The Lieutenant Governor in Council may make regulations respecting authorizations issued under this Act as follows:

(a) prescribing types of new homes for the purposes of section 20 (1) and criteria for the purposes of section 20 (1) (a);

(b) prescribing fees for authorizations;

(c) respecting the issue, suspension and cancellation of authorizations.

### **Minister's regulations**

**33** The minister may make regulations as follows:

- (a) prescribing the form and content of reports required from residential builders, residential subcontractors and residential renovators;
- (b) respecting the form of evidence that must be provided to a municipality or regional district by an applicant for a building permit;
- (c) prescribing information to be provided to the public about residential builders, residential subcontractors and residential renovators;
- (d) prescribing information that must be provided by warranty providers to the registrar;
- (e) prescribing the terms, conditions, kind and amount of security for the purposes of section 21.

**Offence and penalty**

**34** (1) Every person who

- (a) knowingly furnishes false information in any application under this Act or in any statement, form, report or return required to be furnished under this Act, or
- (b) contravenes section 9 (3), 14 (1) or (5), 20.1 (1), 21 (2) or 22 (1) or (1.1) or (3),

commits an offence and is liable on conviction to a fine of not more than \$25 000 or to imprisonment for a term of not more than one year, or to both.

(2) If a corporation commits an offence under subsection (1), every director, officer or other person who authorized, permitted or acquiesced in the offence commits the offence personally and is liable on conviction to a fine of not more than \$25 000 or to imprisonment for a term of not more than one year, or to both.

(3) Despite subsection (1), if a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed on the corporation is \$100 000.

(4) [Repealed 2003-34-21.]

(5) Section 5 of the *Offence Act* does not apply to this Act.

(6) The time limit for laying an information to commence a prosecution for an offence under this Act is

- (a) one year after the date on which the act or omission that is alleged to constitute the offence occurred, or
- (b) if the registrar or compliance officer issues a certificate that certifies the date on which the registrar or compliance officer learned of the act or omission referred to in paragraph (a), one year after the certified date.

(7) A certificate purporting to have been issued by the registrar or a compliance officer certifying the

date referred to in subsection (6) (b) is proof of that date.

### Compensation to consumer

**35** (1) In addition to a penalty imposed under section 34, a court that convicts a defendant of an offence under this Act may at the time the penalty is imposed order the defendant to pay to the owner as compensation for pecuniary loss suffered by the owner as a result of the commission of the offence an amount not greater than the monetary jurisdiction specified in the *Small Claims Act*.

(2) An application for an order under subsection (1) may be made by an owner or by the Crown prosecutor on the request and on behalf of the owner unless the owner has commenced a civil action against the defendant in respect of the same matter.

(3) If the defendant does not comply with an order made under subsection (1) within 30 days or within the time ordered by the court, whichever is later, the owner may, by filing the order with the registrar of the Provincial Court hearing matters under the *Small Claims Act* in or near the place where the conviction was entered, enter judgment in that court.

(4) A judgment entered in the Provincial Court under subsection (3) is enforceable against the defendant in the same manner as if it were a judgment rendered in that court in civil proceedings.

### Transitional

**36** The Lieutenant Governor in Council may make regulations the Lieutenant Governor in Council considers necessary or advisable for meeting or removing any difficulty arising out of the coming into force of this Act or any provision of it, and for preserving and giving effect to the rights of persons arising prior to the coming into force of this Act or any provision of it, and the regulations may be made to apply generally or to a particular case or class of cases.

### Consequential Amendments

*[Note: See Table of Legislative Changes for the status of these provisions.]*

Section(s)	Affected Act
37	<i>Financial Institutions Act</i>
38	<i>Freedom of Information and Protection of Privacy Act</i>
39–40	<i>Insurance Act</i>
41–42	<i>Real Estate Act</i>

### Commencement

**43** This Act comes into force by regulation of the Lieutenant Governor in Council.