

---

Copyright (c) Queen's Printer,  
Victoria, British Columbia, Canada

**IMPORTANT INFORMATION**

---

B.C. Reg. 29/99  
O.C. 137/99

Deposited February 1, 1999  
effective July 1, 1999

*Homeowner Protection Act and Insurance Act***HOMEOWNER PROTECTION ACT REGULATION**

[includes amendments up to B.C. Reg. 315/2007, November 19, 2007]

*Contents*

1 Definitions

**Part 1 — Administration, Licences and Authorizations**

2 Exemptions

3 Homeowner Protection Office

4 Residential builder licence

4.1 Owner builder authorizations

**Part 2 — Home Warranty Insurance  
and Statutory Protection**

5 Acceptance of residential builder for home warranty insurance

6 Approval of a new home for home warranty insurance

7 Mandatory warranty conditions

8 Minimum standards of coverage

9 Permitted warranty terms

10 Permitted exclusions — general

11 Permitted exclusions — defects

12 Limits on home warranty insurance coverage

13 Home warranty insurance documentation

14 Consequences of not providing information

15 Mandatory notice of expiry of warranty

16 Notice of claim

17 Duty to mitigate

17.1 Statutory protection — exclusions

**Part 3 — General Provisions**

18 Disclosure requirement

18.1 Spent

19 Home built by owner builder

20 Repealed

20.1 Administrative penalties

21 Transitional

[Schedule 1](#)

[Schedule 2](#)

[Schedule 3](#)

[Schedule 4](#)

[Schedule 5](#)

## Definitions

1 (1) In the Act and this regulation:

"**Act**" means the *Homeowner Protection Act*;

"**building code**" means, as applicable,

(a) the British Columbia Building Code established under the *Municipal Act*, or

(b) the Vancouver Building Bylaw established under the *Vancouver Charter*;

in force at the time that the building permit was issued for the new home or, in jurisdictions where a building permit is not required, in force when construction commences;

"**building envelope**" means the assemblies, components and materials of a new home which are intended to separate and protect the interior space of the new home from the adverse affects of exterior climatic conditions;

"**common property**" has the same meaning as in the *Strata Property Act*, but does not include land;

"**cooperative**" means a building, or a portion of a building, provided for residential occupancy purposes to members of an association incorporated or continued under the *Cooperative Association Act*;

"**defect**" means any design or construction, that is contrary to the building code or that requires repair or replacement due to the negligence of a residential builder or person for whom the residential builder is responsible at law;

"**defects in the building envelope**" means defects that result in the failure of the building envelope to perform its intended function;

"**developer**" means a residential builder that sells the residential builder's ownership in a new home, and includes a vendor that contracts with a general contractor for the construction of a new home;

"**driveway**" means a surface intended and constructed primarily to be used for vehicular access to or from a new home;

"**dwelling unit**" means a class of new home which is a building, or a portion of a building, that

- (a) is newly constructed,
- (b) is intended for residential occupancy,
- (c) is a single, self-contained residence usually containing cooking, eating, living, sleeping and sanitary facilities, and
- (d) may contain a secondary suite if permitted by local bylaws;

**"factory built home"** means a home which is governed by or required to be certified under CSA standard CAN/CSA-A277;

**"general contractor"** means a residential builder that is engaged under contract by an owner, developer or vendor to perform or cause to be performed all or substantially all of the construction of a new home, and includes a construction manager and project manager;

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

**"load bearing"** means subjected to or designed to carry loads in addition to its own dead load, but does not include a wall element subjected only to wind or earthquake loads in addition to its own dead load;

**"manufactured home"** means a factory built home or a mobile home;

**"mobile home"** means a home which is governed by or required to be certified under CSA standard CSA-Z240;

**"multi-unit building"** means a building containing 2 or more dwelling units together with associated common property, if any;

**"personal use"**, in relation to an owner builder, means residential occupancy by the owner builder and does not include rental use;

**"rental purposes"** means an occupancy or intended occupancy which is or would be governed by a tenancy agreement as defined in section 1 of the *Residential Tenancy Act*;

**"secondary suite"** means a suite located in and forming part of a dwelling unit where the dwelling unit remains as a single legal title;

**"structural defect"** means

- (a) any defect in materials and labour that results in the failure of a load-bearing part of the new home, and
- (b) any defect that causes structural damage that materially and adversely affects the use of the new home for residential occupancy;

"**vendor of a new home**", for the purposes of section 23 (1) of the Act, does not include a person who purchased a new home from the residential builder or owner builder of that new home;

"**walkway**" means a surface intended and constructed primarily to be used as a pedestrian access to or from a new home, and may include stairs.

(2) For the purposes of the Act and this regulation, "**new home**" includes

(a) a non-residential building, or portion thereof, converted to use for residential occupancy and sale, and

(b) a cooperative.

(3) If a residential builder or owner is more than one person, the obligation of each person is deemed to be joint and several.

[am. B.C. Regs. 126/99, s. 1; 315/2007, s. 1.]

## **Part 1 — Administration, Licences and Authorizations**

### **Exemptions**

2 (1) The following classes of new homes, other than new homes that are strata titled, are exempt from the definition of "new home" in section 1 of the Act:

(a) hotels and motels;

(b) dormitories;

(c) care facilities;

(d) floating homes.

(2) A person who builds a multi-unit building for rental purposes, if the building is

(a) owned under a single legal title, or

(b) strata-titled with all the dwelling units held under one ownership,

is exempt from sections 14, 22 and 26 of the Act with respect to that building, provided that a restrictive covenant is registered on the title restricting the sale or other disposition of any dwelling unit for 10 years from the date of first occupancy.

(2.1) A person who builds 3 or more dwelling units for rental purposes is exempt from sections 14, 22 and 26 of the Act with respect to those dwelling units, provided that

(a) the dwelling units are owned under a single legal title, and

(b) a restrictive covenant is registered on the title restricting the sale or other disposition of any of the dwelling units for 10 years from the date of first occupancy.

(3) Repealed. [B.C. Reg. 360/2004, Sch. A, s. 1.]

(4) Repealed. [B.C. Reg. 315/2007, s. 4.]

[am. B.C. Regs. 126/99, s. 2; 360/2004, Sch. A, s. 1; 315/2007, ss. 3 and 4.]

### **Homeowner Protection Office**

**3** The Homeowner Protection Office must, on or before December 31 in each year, submit to the minister and to Treasury Board for review and approval an annual business plan that includes the following:

- (a) revenue, expenditure, borrowing and lending proposals;
- (b) a statement of assets and liabilities;
- (c) any other information that the minister may require.

### **Residential builder licence**

**4 (1)** A person may apply to the registrar for a residential builder licence, or renewal of a residential builder licence, by providing, in a form acceptable to the registrar, all of the following:

- (a) particulars respecting the applicant and the individuals about whom disclosure is required under section 14 (3) of the Act, if any, including name, address, telephone numbers, fax number, date of birth and driver's licence number;
- (b) if the applicant is a corporation, the name of a contact person for the corporation;
- (c) if the applicant is a partnership, the name of each partner;
- (d) evidence of acceptance for home warranty insurance from all warranty providers that may have accepted the applicant under section 5;
- (e) a list of, and the locations of, all new homes completed by the residential builder over the 36 month period immediately preceding the application, including the building type and the number of dwelling units;
- (f) a list of all new home construction-related organization memberships that are held by the applicant and each partner of the applicant and each individual about whom disclosure is required under section 14 (3) of the Act;
- (g) a list of professional courses related to new home construction taken by the applicant and, if applicable, by each partner of the applicant or by each individual about whom disclosure is required under section 14 (3) of the Act;
- (h) and (i) Repealed. [B.C. Reg. 315/2007, s. 5 (f).]
- (j) an undertaking by the applicant to comply with the legislation, regulations and standards in force that are applicable to any new home to be constructed by the applicant;

- (k) particulars of any convictions or judgements against the applicant and, if applicable, any partner of the applicant or any individual about whom disclosure is required under section 14 (3) of the Act for fraud or for offences committed under the *Trade Practice Act*, the *Consumer Protection Act* or the *Business Practices and Consumer Protection Act*;
- (l) the signature of the applicant or, in the case of a corporation, the an individual authorized by the corporation to sign on its behalf named under paragraph (b).
- (2) An application or renewal under subsection (1) must be accompanied by the fee set out in section 1 or 2 of Schedule 1.
- (2.1) An application to amend a licence under section 14 (2.2) of the Act must be accompanied by the fee set out in section 2.1 of Schedule 1.
- (3) On receipt, evaluation and approval of a completed application as required by subsection (1), the registrar may issue to the applicant a residential builder licence.
- (4) In addition to the fee payable under subsection (2), a residential builder must pay the fee set out in section 3 of Schedule 1 at the time that home warranty insurance is approved for a new home.
- (5) For the purposes of Part 9 of the Act, a residential builder must pay the fee set out in section 4 of Schedule 1 at the time that home warranty insurance is approved for a new home.
- (6) The licensing requirements of section 14 of the Act do not apply to an individual who, as an employee of a residential builder licensed under this section, works as a project manager or construction manager.
- (7) For the purposes of section 14 (2) (a) (ii) of the Act, it is a condition for licensing a corporation that none of the individuals disclosed to the registrar under section 14 (3) of the Act
- (a) has had a residential builder licence cancelled under section 15 (c) of the Act within the past 5 years, or
- (b) has been or is in control of a corporation that has had a residential builder's licence cancelled under section 15 (c) of the Act within the past 5 years.

[am. B.C. Regs. 274/2004, Sch. 3, s. 3; 315/2007, s. 5.]

### **Owner builder authorizations**

#### **4.1 (1) In this section:**

**"registered interest in land"** means any of the following interests in land, registered under the *Land Title Act*:

- (a) an interest in fee simple;
- (b) a life interest;
- (c) an interest under a lease with a term of at least 15 years;

**"first occupancy"** means

- (a) the date an occupancy permit with respect to the new home was first issued, or
  - (b) if no occupancy permit has been issued with respect to the new home, the date the new home was first occupied.
- (2) The following criteria are prescribed for the purposes of section 20 (1) (a) of the Act:
- (a) the person must be an individual;
  - (b) the person must intend to use the new home for personal use for at least one year from the date of first occupancy of the new home;
  - (c) if the person has previously been issued an authorization, the person must not have been issued an authorization for at least the following period of time, determined from the date of first occupancy of the new home built under the most recent previous authorization:
    - (i) 18 months, if the person has been issued only one previous authorization;
    - (ii) 3 years, if the person has been issued two previous authorizations;
    - (iii) 5 years, if the person has been issued three or more previous authorizations;
  - (d) the person must not ordinarily be resident with a person who does not meet the criteria set out in paragraph (c);
  - (e) the person must
    - (i) have a registered interest in the land on which the new home is to be built and intend to maintain that interest for at least one year from the date of first occupancy, or
    - (ii) be a director of a family farm corporation, within the meaning of the *Property Transfer Tax Act*, that
      - (A) has a registered interest in the land on which the new home is to be built, and
      - (B) has passed a resolution affirming that it will not dispose of the interest referred to in clause (A) for at least one year from the date of first occupancy;
  - (f) the person must intend to engage in, arrange for or manage all or substantially all of the construction of the new home;
  - (g) the person must not have made a false statement in a previous application for an authorization;
  - (h) the person must not have failed to comply with sections 20.1 (1), 21 (2) and 22 of the Act or section 19 (1) of this regulation.
- (3) A person may apply to the registrar for an authorization by providing, in a form acceptable to the registrar, all of the following:

- (a) particulars respecting the applicant, including
    - (i) name and address,
    - (ii) telephone numbers and fax numbers,
    - (iii) date of birth, and
    - (iv) driver's licence number;
  - (b) a list of the persons ordinarily resident with the applicant and the particulars of each, including the particulars set out in paragraph (a) (i) to (iv);
  - (c) the civic address, legal description and parcel identification number of the location of the proposed owner-built home;
  - (d) a statement
    - (i) identifying who will build the new home and who will manage the building of the new home;
    - (ii) identifying the type of new home to be built;
    - (iii) describing the applicant's intended use of the new home and the intended duration of that use;
    - (iv) describing the applicant's interests in the land on which the new home is to be built;
    - (v) affirming that the person has read the statutory protection provision of the Act and understands his or her obligations to future purchasers of the new home;
    - (vi) setting out how many previous authorizations, if any, have been issued to the applicant or a person ordinarily resident with the applicant;
  - (e) an undertaking by the applicant to notify the registrar of the following when first occupancy occurs:
    - (i) the date on which first occupancy occurred;
    - (ii) the names of the tradespersons who contributed to the building of the new home;
  - (f) the signature of the applicant.
- (4) The period of time prescribed for the purposes of section 20.1 (1) (b) is 12 months.
- (5) An application under subsection (3) must be accompanied by the fee set out in section 4.1 of Schedule 1.
- (6) In addition to the fee payable under subsection (4), an applicant must pay the fee set out in section 4.2 of Schedule I at the time the authorization is issued to the applicant.
- (7) An application under section 20.1 (1) of the Act must be accompanied by the fee set out in section 4.3 of Schedule 1.



[en. B.C. Reg. 315/2007, s. 6.]

## **Part 2 — Home Warranty Insurance and Statutory Protection**

### **Acceptance of residential builder for home warranty insurance**

**5** (1) Before accepting a residential builder for home warranty insurance, a warranty provider may make inquiries about the applicant as follows:

- (a) does the applicant have the financial resources to undertake the construction of the number of new homes being proposed by the applicant's business plan for the following 12 months;
- (b) does the applicant and its directors, officers, employees and consultants possess the necessary technical expertise to adequately perform their individual functions with respect to their proposed role in the construction and sale of new homes;
- (c) does the applicant and its directors and officers have sufficient experience in business management to properly manage the new home construction process;
- (d) does the applicant and its directors, officers and employees have sufficient practical experience to undertake the proposed new home construction;
- (e) does the past conduct of the applicant and its directors, officers, employees and consultants provide a reasonable indication of good business practices, and reasonable grounds for belief that its undertakings will be carried on in accordance with all legal requirements;
- (f) is the applicant reasonably able to provide, or to cause to be provided, after-sale customer service for the new homes to be constructed.

(2) A warranty provider may charge a fee to make the inquiries permitted by subsection (1).

### **Approval of a new home for home warranty insurance**

**6** Before approving home warranty insurance for a new home, a warranty provider may make inquiries and impose conditions as follows:

- (a) to determine if the applicant has the necessary capitalization or financing in place, including any reasonable contingency reserves, to undertake construction of the proposed new home;
- (b) to determine if the applicant or, in the case of a corporation, its directors, officers, employees and consultants possess reasonable technical expertise to construct the proposed new home, including specific technical knowledge or expertise in any building systems, construction methods, products, treatments, technologies and testing and inspection methods proposed to be employed;
- (c) to determine if the applicant or, in the case of a corporation, its directors, officers, employees

- and consultants have sufficient practical experience in the specific types of construction to undertake construction of the proposed new home;
- (d) to determine if the applicant has sufficient personnel and other resources to adequately undertake the construction of the proposed new home in addition to other new homes which the applicant may have under construction or is currently marketing;
- (e) to determine if
- (i) the applicant is proposing to engage a general contractor to undertake all or a significant portion of the construction of the proposed new home,
  - (ii) the general contractor is a licensed residential builder registered with the Homeowner Protection Office, and
  - (iii) the general contractor meets the criteria set out in this section;
- (f) requiring that a residential builder provide security in a form suitable to the warranty provider;
- (g) establishing or requiring compliance with specific construction standards for the new home;
- (h) restricting the applicant from constructing some types of new homes or using some types of construction or systems;
- (i) requiring the use of specific types of systems, consultants or personnel for the construction;
- (j) requiring an independent review of the new home building plans or consultants' reports or any part thereof;
- (k) requiring third-party verification or certification of the construction of the new home or any part thereof;
- (l) providing for inspection of the new home or any part thereof during construction;
- (m) requiring ongoing monitoring of the new home, or one or more of its components, following completion of construction;
- (n) requiring that the residential builder or any of the design professionals, engineering professionals, consultants, general contractors or subcontractors maintain minimum levels of insurance, bonding or other security naming the potential owners and warranty provider as loss payees or beneficiaries of the insurance, bonding or security to the extent possible;
- (o) requiring that the residential builder provide a list of all design professionals and other consultants who are involved in the design or construction inspection, or both, of the new home;
- (p) requiring that the residential builder provide a list of trades employed in the construction of the new home, and requiring evidence of their current trades certification if applicable;
- (q) imposing on the residential builder other restrictions or conditions as the warranty provider

sees fit.

### **Mandatory warranty conditions**

**7** For the purposes of section 189.1 (2) of the *Insurance Act*, home warranty insurance must include the mandatory warranty conditions set out in Schedule 2.

### **Minimum standards of coverage**

**8** For the purposes of section 189.1 (3) of the *Insurance Act*, home warranty insurance must provide, as applicable, the minimum standards of coverage set out in Schedule 3.

### **Permitted warranty terms**

**9** A warranty provider may include any of the following provisions in home warranty insurance:

(a) if the warranty provider makes a payment or assumes liability for any payment or repair under home warranty insurance,

(i) the warranty provider is subrogated to all rights of recovery of an owner against any person or persons who may have caused or contributed to the requirement for the payment or repair under home warranty insurance,

(ii) the warranty provider may bring an action at its own expense, in the name of the owner or of the warranty provider, to enforce such rights, and

(iii) the owner must fully support and assist the warranty provider in the pursuit of those rights if the warranty provider pursues such subrogated rights;

(b) implied or expressed warranties or representations made by a residential builder to an owner are not binding on the warranty provider except as set out in the Act and this regulation or as set out in the applicable home warranty insurance;

(c) an owner must permit the warranty provider or residential builder, or both, to enter the new home at all reasonable times, on the giving of reasonable notice to the owner,

(i) to monitor the new home or its components,

(ii) to inspect for required maintenance,

(iii) to investigate complaints or claims, or

(iv) to undertake repairs under the home warranty insurance,

and, if any reports are produced as a result of any of the activities referred to in subparagraphs (i) to (iv), the reports must be provided to the owner on request;

(d) Repealed. [B.C. Reg. 126/99, s. 3.]

(e) an owner must provide to the warranty provider all information and documentation that the owner has available, as reasonably required by the warranty provider, in order to investigate a

claim or maintenance requirement, or to undertake repairs under the home warranty insurance;

(f) to the extent that damage to a new home is caused by the unreasonable refusal of an owner or occupant to permit the warranty provider or residential builder access to the new home for the reasons set out in paragraph (c) or to provide the information required by paragraph (e), such damage is excluded from the home warranty insurance.

[am. B.C. Reg. 126/99, s. 3.]

### **Permitted exclusions — general**

**10** (1) The following may be excluded by a warranty provider from home warranty insurance:

- (a) landscaping, both hard and soft, including plants, fencing, detached patios, planters, gazebos and similar structures;
- (b) non-residential detached structures including sheds, garages, carports or outbuildings, or any structure or construction not attached to or forming an integral part of a multi-unit building or other new home;
- (c) any commercial use area and any construction associated with a commercial use area;
- (d) roads, curbs and lanes;
- (e) subject to section 11 (m), site grading and surface drainage except as required by the building code;
- (f) the operation of municipal services, including sanitary and storm sewer;
- (g) septic tanks or septic fields;
- (h) the quality or quantity of water, either from a piped municipal water supply or from a well;
- (i) a water well but excluding equipment installed for the operation of a water well used exclusively for a new home, which equipment is considered to be part of the plumbing system for that new home for the purposes of the home warranty insurance.

(2) The exclusions permitted by subsection (1) do not include any of the following:

- (a) a driveway or walkway;
- (b) recreational and amenity facilities situated in, or included as the common property of, a new home;
- (c) a parking structure in a multi-unit building;
- (d) a retaining wall that
  - (i) an authority having jurisdiction requires to be designed by a professional engineer, or
  - (ii) is reasonably required for the direct support of, or retaining soil away from, a new

home, driveway or walkway.

### **Permitted exclusions — defects**

**11** (1) A warranty provider may exclude any or all of the following items from home warranty insurance:

- (a) weathering, normal wear and tear, deterioration or deflection consistent with normal industry standards;
- (b) normal shrinkage of materials caused by drying after construction;
- (c) any loss or damage which arises while a new home is being used primarily or substantially for non-residential purposes;
- (d) materials, labour or design supplied by an owner;
- (e) any damage to the extent that it is caused or made worse by an owner or third party, including
  - (i) negligent or improper maintenance or improper operation by anyone other than the residential builder or its employees, agents or subcontractors,
  - (ii) failure of anyone, other than the residential builder or its employees, agents or subcontractors, to comply with the warranty requirements of the manufacturers of appliances, equipment or fixtures,
  - (iii) alterations to the new home, including the conversion of non-living space into living space or the conversion of a dwelling unit into 2 or more units, by anyone other than the residential builder or its employees, agents or subcontractors while undertaking their obligations under the sales contract, and
  - (iv) changes to the grading of the ground by anyone other than the residential builder or its employees, agents or subcontractors;
- (f) failure of an owner to take timely action to prevent or minimize loss or damage, including the failure to give prompt notice to the warranty provider of a defect or discovered loss or a potential defect or loss;
- (g) any damage caused by insects or rodents and other animals, unless the damage results from non-compliance with the building code by the residential builder or its employees, agents or subcontractors;
- (h) accidental loss or damage from acts of nature including, but not limited to, fire, explosion, smoke, water escape, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide, and changes in the level of the underground water table which are not reasonably foreseeable by the residential builder;
- (i) bodily injury or damage to personal property or real property which is not part of a new home;
- (j) any defect in, or caused by, materials or work supplied by anyone other than the residential

builder or its employees, agents or subcontractors;

(k) changes, alterations or additions made to a new home by anyone after initial occupancy, except those performed by the residential builder or its employees, agents or subcontractors as required by the home warranty insurance or under the construction contract or sales agreement;

(l) contaminated soil;

(m) subsidence of the land around a new home or along utility lines, other than subsidence beneath footings of a new home or under driveways or walkways;

(n) diminution in the value of the new home.

(2) Subsection (1) (i) includes bodily injury, or damage to personal property, caused by mold.

[am. B.C. Reg. 360/2004, Sch. A, s. 2.]

### **Limits on home warranty insurance coverage**

**12** (1) If a warranty provider establishes a limit on claims under home warranty insurance, the limits must not be less than the following:

(a) for a dwelling unit in fee simple ownership, the lesser of

(i) the original purchase price paid by the owner, and

(ii) \$200 000;

(b) for a dwelling unit in a strata titled or multi-unit building, the lesser of

(i) the original purchase price paid by the owner, and

(ii) \$100 000;

(c) for the common property in a strata titled building or in a multi-unit building that is not strata-titled, the least of

(i) the total original purchase price for all components of the multi-unit building,

(ii) \$100 000 times the number of dwelling units, and

(iii) \$2 500 000.

(2) If a strata plan consists of a number of buildings, the limit under subsection (1) (c) applies to each building.

(3) When calculating the cost of warranty claims in respect of the standard limits under home warranty insurance, a warranty provider may include

(a) the cost of repairs,

(b) the cost of any investigation, engineering and design required for the repairs, and

(c) the cost of supervision of repairs, including professional review but excluding legal costs.

[am. B.C. Reg. 126/99, s. 4.]

### **Home warranty insurance documentation**

**13** (1) A warranty provider must not include in home warranty insurance any provision that requires an owner

(a) to sign a release before repairs are performed under the home warranty insurance, or

(b) to pay a deductible for the repair of any defect covered by the home warranty insurance.

(2) All exclusions, as permitted by this regulation, must be stated in the home warranty insurance.

(3) Not less than 60 days before putting into public use a new or amended document or contract form intended for use by owners and containing the terms and conditions of home warranty insurance, a warranty provider must submit the document or contract form to the Homeowner Protection Office.

### **Consequences of not providing information**

**14** (1) If coverage under home warranty insurance is conditional on an owner undertaking proper maintenance, or if coverage is excluded to the extent that damage is caused by negligence on the part of the owner with respect to maintenance or repair by the owner, such conditions or exclusions apply only to maintenance requirements or procedures which have been provided to the original owner by the residential builder or warranty provider.

(2) To the extent that an original owner has not been provided with manufacturer's documentation or warranty information, or both, or with recommended maintenance and repair procedures for any component of a new home, the relevant exclusion is deemed to not apply.

[am. B.C. Reg. 126/99, s. 5.]

### **Mandatory notice of expiry of warranty**

**15** (1) A warranty provider must, as soon as reasonably possible after the commencement date for the home warranty insurance, provide an owner with a schedule of the expiry dates for coverages under the home warranty insurance as applicable to the dwelling unit and, in the case of a dwelling unit which is part of a strata plan, the schedule must include the expiry dates of the coverages applicable to the common property.

(2) The schedule referred to in subsection (1) must set out all the required expiry dates on an adhesive label that is a minimum size of 150 mm by 150 mm and is suitable for affixing by the owner in a conspicuous location in the dwelling unit.

### **Notice of claim**

**16** (1) Within a reasonable time after the discovery of a defect and before the expiry of the applicable home warranty insurance coverage, an owner must give to the warranty provider and the residential builder written notice in reasonable detail that provides particulars of any specific defects covered by the home warranty insurance.

- (2) The warranty provider may require the notice under subsection (1) to include
  - (a) the home warranty insurance number, and
  - (b) copies of any relevant documentation and correspondence between the owner and the residential builder.

### **Duty to mitigate**

**17** (1) The warranty provider may require an owner to mitigate any damage to a new home, including damage caused by defects or water penetration, as set out in the home warranty insurance.

- (2) Subject to subsection (3), for defects covered by the home warranty insurance, the duty to mitigate is met through timely notice in writing to the warranty provider.
- (3) The owner must take all reasonable steps to restrict damage to the new home if the defect requires immediate attention.
- (4) The owner's duty to mitigate survives even if
  - (a) the new home is unoccupied,
  - (b) the new home is occupied by other than the owner,
  - (c) water penetration does not appear to be causing damage, or
  - (d) the owner advises the strata corporation about the defect.
- (5) To the extent that damage to a new home is caused or made worse by the failure of an owner to take reasonable steps to mitigate as set out in this section, such damage may, at the option of the warranty provider, be excluded from home warranty insurance coverage.

### **Statutory protection — exclusions**

**17.1** The agreement referred to in section 23 (1) of the Act does not extend to anything that may be excluded by a warranty provided under section 10 or 11.

[en. B.C. Reg. 315/2007, s. 8.]

## **Part 3 — General Provisions**

### **Disclosure requirement**

- 18** (1) If a residential builder offers a dwelling unit for sale after the commencement of any associated home warranty insurance on the common property, the residential builder must disclose to prospective purchasers that the home warranty insurance on the common property is already in effect, and identify the expiry dates of the home warranty insurance.
- (2) If a residential builder fails to disclose to a person purchasing a dwelling unit from the residential



builder that the associated common property home warranty insurance is already in effect, the residential builder must, at the request of that person,

- (a) release the prospective purchaser from the sale if the title has not transferred, or
- (b) indemnify the owner against any special assessment for common property repairs such that the full benefit of the common property home warranty insurance is, in effect, applied in favour of that owner.

## **Spent**

**18.1** Spent. [per subsection (4)]

## **Home built by owner builder**

**19** (1) An owner builder must not build a new home other than

- (a) a detached dwelling unit under one legal title, or
  - (b) a single dwelling unit in or attached to
    - (i) a pre-existing building, or
    - (ii) a new non-residential building that does not have another single dwelling unit in or attached to it.
- (2) Subject to local bylaws, the new home referred to in subsection (1) may include a secondary suite.
- (3) to (6) Repealed. [B.C. Reg. 315/2007, s. 9 (b).]
- (4) An owner builder must complete and file with the appropriate authority at the time of the building permit application or, if a building permit is not required, with the registrar before commencing construction, an Owner Builder Declaration and Disclosure Notice in the form set out in Schedule 4.
- (5) An owner builder must not sell a home to which subsection (1) applies unless
- (a) the home is covered by home warranty insurance, or
  - (b) the owner builder has provided to the person offering to purchase the home a copy of the Owner Builder Declaration and Disclosure Notice referred to in subsection (4).
- (6) Subsection (5) applies to the owner builder of a new home and any subsequent owner during the 10 year period commencing on the earlier of
- (a) the date that the new home is first occupied, and
  - (b) the granting of an occupancy permit or similar right to occupy by an authority having jurisdiction.

[am. B.C. Reg. 315/2007, s. 9.]

## **Repealed**

**20** Repealed. [B.C. Reg. 315/2007, s. 10.]

### **Administrative penalties**

**20.1** (1) Before the registrar imposes a monetary penalty on a person, the registrar must consider the following:

- (a) previous enforcement actions under the Act for contraventions of a similar nature by the person;
- (b) the extent of the harm, or of the degree of risk of harm, to others as a result of the contravention;
- (c) whether the contravention was deliberate;
- (d) whether the contravention was repeated or continuous;
- (e) the length of time during which the contravention continued;
- (f) any economic benefit derived by the person from the contravention;
- (g) any attempt by the person to remedy the harm done to others as a result of the contravention.

(2) For the purpose of section 28.3 (1) (a) of the Act, the following provisions of the Act are prescribed:

- (a) section 9 (3) [*obstruction of registrar or compliance officer*];
- (b) section 14 (1) [*carrying on business of residential builder without licence*];
- (c) section 14 (5) [*misrepresentation as licensed residential builder*];
- (d) section 20.1 (1) [*sale of or offer to sell owner-built home*];
- (e) section 21 (2) [*disclosure and security*];
- (f) section 22 (1) [*building new home without insurance*];
- (g) section 22 (1.1) [*sale of new home*].

(3) For the purposes of section 28.3 (1) (a) of the Act, the following provisions of this regulation are prescribed:

- (a) section 18 (1) [*disclosure*];
- (b) section 19 (1) [*unauthorized new home*].

[en. B.C. Reg. 315/2007, s. 11.]

### **Transitional**

**21** (1) The Act and this regulation, except to the extent necessary for section 18.1 of this regulation to

apply, do not apply to a home that is under construction or constructed

(a) under a building permit applied for on or before June 30, 1999, or

(b) if the construction of the home did not require a building permit, beginning on or before June 30, 1999.

(2) An owner builder, as defined before the coming into force of the *Homeowner Protection Amendment Act, 2007*, S.B.C. 2007, c. 20, may not apply for an authorization under section 20 (1) of the Act unless at least 18 months have expired since the date the owner builder, or anyone ordinarily resident with the owner builder, first took occupancy of the most recently built new home built by that owner builder, and if the owner builder is issued an authorization under that section, the authorization is to be considered the person's second authorization for the purposes of section 4.1 (2) (c) of this regulation.

(3) Despite any regulation made under section 33 (b) of the Act, until 90 days after the date this section comes into force, a municipality or regional district may accept as evidence for the purpose of section 30 (1) (a) (ii) of the Act an Owner Builder Declaration and Disclosure Notice in the form set out in Schedule 4 of this regulation as it was before its repeal.

[en. B.C. Reg. 203/2000, s. 3; am. B.C. Reg. 315/2007, s. 12.]

### **Schedule 1**

[am. B.C. Regs. 126/99, s. 6; 315/2007, s. 13.]

*(section 4 (2) and (4))*

#### **Fees**

**1** The application fee for a residential builder licence is \$600.

**2** The renewal fee for a residential builder licence is \$500.

**2.1** The application fee for an amendment of a licence under section 14 (2.2) is \$100.

**3** In addition to the fee payable under section 1, 2 or 2.1, a residential builder must pay a licence fee of \$40 for each dwelling unit for which home warranty insurance is provided.

**4** In addition to the fee payable under sections 1 to 3, a residential builder must pay a fee of \$750 for each new dwelling unit

(a) that is in a multi-unit building containing 2 or more dwelling units under separate title,

(b) that is located in a geographic area of British Columbia referred to in section 5 of this Schedule, and

(c) for which home warranty insurance is provided.

**4.1** The application fee for an authorization under section 20 (1) of the Act is \$50.

**4.2** The issuance fee for an authorization under section 20 (1) of the Act is \$375.

**4.3** The application fee for a permission under section 20.1 of the Act is \$100.

**5** The following geographic areas of British Columbia are prescribed for the purposes of section 26 of the Act:

- (a) Capital Regional District;
- (b) Fraser Valley Regional District;
- (c) Greater Vancouver Regional District;
- (d) Regional District of Alberni-Clayoquot;
- (e) Regional District of Comox-Strathcona, excluding Electoral Areas G, I and J and the villages of Gold River, Tahsis and Zeballos;
- (f) Regional District of Cowichan Valley;
- (g) Regional District of Nanaimo;
- (h) Regional District of Powell River;
- (i) Squamish-Lillooet Regional District, excluding Electoral Areas A and B and the District of Lillooet;
- (j) Sunshine Coast Regional District.

**6** If a fee referred to in this Schedule is overdue by 30 days, interest may be charged on the outstanding amount payable at an annual rate of 18%.

## **Schedule 2**

*(section 7)*

### **Mandatory Warranty Conditions**

#### **Mediation**

**1** (1) In this section:

**"mediation"** means a collaborative process in which 2 or more parties meet and attempt, with the

assistance of a mediator, to resolve issues in dispute between them;

**"mediation session"** means a meeting between 2 or more parties to a dispute during which they are engaged in mediation;

**"mediator"** means a neutral and impartial facilitator with no decision making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them;

**"roster organization"** means any body designated by the Attorney General to select mediators for the purpose of this regulation.

(2) If a dispute between a warranty provider and an owner arising under home warranty insurance cannot be resolved by informal negotiation within a reasonable time, the owner may, at the owner's sole election, require that the dispute be referred to mediation by delivering to the warranty provider a written request to mediate.

(3) If the owner delivers a request to mediate under subsection (2), the warranty provider and the owner must attend a mediation session in relation to the dispute.

(4) In addition to the requirements of subsection (3), a warranty provider or an owner may invite to participate in the mediation any other party to the dispute who may be liable.

(5) Within 21 days after the owner has delivered a request to mediate under subsection (2), the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.

(6) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subsection (5), the owner may apply to a roster organization which must appoint a mediator taking into account

(a) the need for the mediator to be neutral and independent,

(b) the qualifications of the mediator,

(c) the mediator's fees,

(d) the mediator's availability, and

(e) any other consideration likely to result in the selection of an impartial, competent and effective mediator.

(7) Promptly after a roster organization selects the mediator under subsection (6), the roster organization must notify the parties in writing of that selection.

(8) The mediator selected by a roster organization is deemed to be appointed by the parties effective the date of the notice sent under subsection (7).

(9) The date, time and place of the first mediation session must be scheduled by the mediator, and the first mediation session must occur within 21 days of the appointment of the mediator.

(10) Despite subsection (3), a party may attend a mediation session by representative if

- (a) the party is under legal disability and the representative is that party's guardian ad litem,
  - (b) the party is not an individual, or
  - (c) the party is a resident of a jurisdiction other than British Columbia and will not be in British Columbia at the time of the mediation session.
- (11) A representative who attends a mediation session in the place of a party referred to in subsection (10)
- (a) must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely, and
  - (b) must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.
- (12) A party or a representative who attends the mediation session may be accompanied by counsel.
- (13) Any other person may attend a mediation session if that attendance is with the consent of all parties or their representatives.
- (14) At least 7 days before the first mediation session is to be held, each party must deliver to the mediator a statement briefly setting out
- (a) the facts on which the party intends to rely, and
  - (b) the matters in dispute.
- (15) Promptly after receipt of all of the statements required to be delivered under subsection (14), the mediator must send each party's statement to each of the other parties.
- (16) Before the first mediation session, the parties must enter into a retainer with the mediator which must
- (a) disclose the cost of the mediation services, and
  - (b) provide that the cost of the mediation will be paid
    - (i) equally by the parties, or
    - (ii) on any other specified basis agreed by the parties.
- (17) The mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a resolution that is timely, fair and cost-effective.
- (18) A person must not disclose, or be compelled to disclose, in any proceeding oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a mediation session.
- (19) Nothing in subsection (18) precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

(20) A mediation session is concluded when

- (a) all issues are resolved,
- (b) the mediator determines that the process will not be productive and so advises the parties or their representatives, or
- (c) the mediation session is completed and there is no agreement to continue.

(21) If the mediation resolves some but not all issues, then at the request of all parties the mediator may complete a report setting out any agreements that the parties to the mediation have made as a result of the mediation, including, without limitation, any agreements made by the parties on any of the following:

- (a) facts;
- (b) issues;
- (c) future procedural steps.

### **Transfer of warranty to subsequent purchasers**

**2** (1) Home warranty insurance pertains solely to the new home for which it provides coverage and no notice to the warranty provider is required on a change of ownership.

(2) All of the applicable unused benefits under home warranty insurance are automatically transferred to any subsequent owner on a change of ownership.

### **Handling of claims**

**3** (1) A warranty provider must, on receipt of a notice of a claim under home warranty insurance, promptly make reasonable attempts to contact the owner to arrange an evaluation of the claim.

(2) The warranty provider must make all reasonable efforts to avoid delays in responding to a claim under home warranty insurance, evaluating the claim and scheduling any required repairs.

(3) If, following evaluation of a claim under home warranty insurance, the warranty provider determines that the claim is not valid or not covered under the home warranty insurance, the warranty provider must notify the owner of the decision in writing, setting out the reasons for the decision.

(4) The notice under subsection (3) must also set out the rights of the parties under the third party dispute resolution process referred to in section 1 of this Schedule.

(5) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labour.

(6) On completion of any repairs, the warranty provider must deliver a copy of the repair specifications to the owner along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in section 8 of Schedule 3.

**Disclosure of claims history**

4 (1) On receipt of an inquiry from an owner of a new home covered by home warranty insurance regarding the claims experience of that new home, a warranty provider must provide the owner with a history of claims.

(2) The history of claims referred to in subsection (1) must include, for each claim, not less than the following information for both the dwelling unit and, if applicable, the associated common property:

- (a) the type of claim that was made;
- (b) the resolution of the claim;
- (c) the type of repair performed;
- (d) the date of the repair;
- (e) the cost of the repair.

(3) A warranty provider may charge an owner a fee of up to \$25 to provide the history of claims.

**Schedule 3**

[am. B.C. Reg. 315/2007, c. 14.]

*(section 8)*

**Minimum Standards of Coverage****2 year materials and labour warranty**

1 (1) The minimum coverage for the 2 year materials and labour warranty is as follows:

(a) in the first 12 months, for other than the common property, common facilities and other assets of a strata corporation,

- (i) coverage for any defect in materials and labour, and
- (ii) subject to subsection (2), coverage for a violation of the building code;

(b) in the first 15 months, for the common property, common facilities and other assets of a strata corporation,

- (i) coverage for any defect in materials and labour, and
- (ii) subject to subsection (2), coverage for a violation of the building code;

(c) in the first 24 months,

- (i) coverage for any defect in materials and labour supplied for the electrical, plumbing,



heating, ventilation and air conditioning delivery and distribution systems,

(ii) coverage for any defect in materials and labour supplied for the exterior cladding, caulking, windows and doors that may lead to detachment or material damage to the new home,

(iii) coverage for any defect in materials and labour which renders the new home unfit to live in, and

(iv) subject to subsection (2), coverage for a violation of the building code.

(2) Non-compliance with the building code is considered a defect covered by home warranty insurance if the non-compliance

(a) constitutes an unreasonable health or safety risk, or

(b) has resulted in, or is likely to result in, material damage to the new home.

### **5 year building envelope warranty**

**2** The minimum coverage for the building envelope warranty is 5 years for defects in the building envelope of a new home including a defect which permits unintended water penetration such that it causes, or is likely to cause, material damage to the new home.

### **10 year structural defects warranty**

**3** The minimum coverage for the structural defects warranty is 10 years.

### **Commencement dates for fee simple new homes**

**4 (1)** The commencement date for home warranty insurance coverage of a new home held in fee simple is as follows:

(a) for a new home constructed by a residential builder on land owned by the owner, the commencement date is the earliest of

(i) the date of actual occupancy of the new home,

(ii) the granting of an occupancy permit or similar right to occupy by the authority having jurisdiction, and

(iii) the date that the new home is completed and ready for occupancy;

(b) for a new home constructed by a residential builder on land not owned by the owner, the commencement date is the earlier of

(i) the date of actual occupancy of the new home, and

(ii) the transfer of the legal title of the new home to the owner.

(2) For the purposes of subsection (1) (a), in a jurisdiction where occupancy permits are not issued, a new home is deemed to have reached the stage of occupancy when it

- (a) is "completed" as that term is defined by the *Builders' Lien Act*, and
- (b) is capable of being occupied.

### **Commencement dates for strata new homes**

**5** (1) If a new home is included in a strata plan, the home warranty insurance must provide coverage for the following:

- (a) the dwelling unit comprising the strata lot;
  - (b) the common property.
- (2) For the dwelling unit comprising the strata lot, the commencement date of the home warranty insurance coverage is the earlier of
- (a) actual occupancy of the dwelling unit, and
  - (b) the transfer of legal title to the strata lot.
- (3) For the common property, the commencement date of the home warranty insurance coverage is concurrent with the first commencement date for a dwelling unit in each separate multi-unit building comprising the strata plan.

### **Commencement dates for special cases**

**6** (1) If an unsold new home owned by a residential builder is occupied as a rental unit, the home warranty insurance commencement date is the date the new home is first occupied.

- (2) If the residential builder subsequently offers to sell a new home which is rented, the residential builder must disclose, in writing, to each prospective purchaser, the date on which the home warranty insurance expires.
- (3) For multi-unit buildings not in a strata plan, the commencement date of the home warranty insurance is concurrent with the date of first occupancy of a dwelling unit in the multi-unit building.

### **Living-out allowance**

**7** (1) If repairs are required under home warranty insurance and damage to the new home or the extent of the repairs renders the dwelling unit uninhabitable, the home warranty insurance must cover reasonable living-out expenses incurred by the owner.

- (2) If a warranty provider establishes a maximum amount per day for claims for living-out expenses, the limit must be not less than \$100 per day for the complete reimbursement of the actual accommodation expenses incurred by the owner at a hotel, motel or other rental accommodation up to the day the dwelling unit is ready for occupancy, subject to the owner receiving 24 hours advance notice.

### **Warranty on repairs and replacements**

**8** (1) All repairs and replacements made under home warranty insurance must be warranted against defects in materials and labour until the later of

(a) the first anniversary of the date of completion of the repair or replacement, and

(b) the expiry of the applicable new home warranty insurance coverage.

(2) All repairs and replacements made under home warranty insurance must be completed in a reasonable manner using materials and labour conforming to the building code and industry standards.

#### **Schedule 4**

Repealed. [B.C. Reg. 315/2007, s. 4.]

#### **Schedule 5**

Spent. [per s. 18.1 (4).]

[Provisions relevant to the enactment of this regulation: *Homeowner Protection Act*, S.B.C. 1998, c. 31, sections 21 and 32; and *Insurance Act*, R.S.B.C. 1996, c. 226, s. 192]