

2012 Bill 209

Fifth Session, 27th Legislature, 61 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 209

HOMEOWNER PROTECTION ACT

MR. HEHR

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 209

2012

HOMEOWNER PROTECTION ACT

(Assented to _____, 2012)

HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1 In this Act,

- (a) “Appeal Board” means the Safety Codes Council established under the *Safety Codes Act*;
- (b) “authorization” means an authorization issued by the Registrar under section 10;
- (c) “compliance officer” means a person designated under section 3(4)(a) as a compliance officer;
- (d) “compliance order” means a compliance order issued under section 18;
- (e) “contract of insurance” has the meaning given to it in the *Insurance Act*;
- (f) “home warranty insurance” means a contract of insurance covering defects in the construction of a new home or renovation and consequential losses or costs incurred by the owner;
- (g) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;

- (h) “municipality” includes, for the purposes of this Act, a Metis settlement;
- (i) “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
 - (i) a self-contained dwelling unit that is
 - (A) detached, or
 - (B) attached to one or more other self-contained dwelling units,
 - (ii) a building having 2 or more self-contained dwelling units under one ownership,
 - (iii) common property and other assets of a condominium corporation,
 - (iv) any building or portion of a building of a class prescribed by the regulations as a new home to which this Act applies, and
 - (v) a home that is or is being substantially reconstructed,but does not include a manufactured home unless otherwise prescribed;
- (j) “owner” means a person who
 - (i) purchases a new home, or
 - (ii) contracts with a residential builder to construct a new home,and includes
 - (iii) a person who purchases a life interest in a new home,
 - (iv) a condominium corporation in respect of the common property and other assets,
 - (v) a corporation having an ownership interest in a new home, and
 - (vi) a subsequent purchaser of a new home;
- (k) “owner builder” means an individual with a valid authorization issued by the Registrar under section 10;

- (l) “permit issuer” means a safety codes officer or other person designated to issue permits under the *Safety Codes Act*;
- (m) “public registry” means the registry established under section 27;
- (n) “Registrar” means the person appointed as Registrar under section 3(2);
- (o) “renovation” means a change, addition or alteration to a home, or a repair to a home, as prescribed by the regulations;
- (p) “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;
- (q) “vendor” means a person who sells their ownership interest in a new home;
- (r) “warranty provider” means warranty provider as defined in the regulations.

Purposes of the Act

2 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 Alberta.

Homeowner Protection Office

3(1) The Homeowner Protection Office is established as part of the Minister’s Department consisting of the Registrar and any other employees appointed pursuant to the *Public Service Act*.

(2) The Registrar shall be appointed by the Lieutenant Governor in Council.

(3) The Lieutenant Governor in Council may authorize and provide for the payment of the remuneration and expenses of the Registrar.

(4) The Registrar

- (a) must designate one or more employees as compliance officers, and
- (b) may designate a person who, in the absence of the Registrar, may perform the duties of the Registrar.

(5) The functions of the Homeowner Protection Office are as follows:

- (a) to receive and review applications for licensing from residential builders and other persons required to be licensed under this Act;
- (b) to receive and review applications for authorizations from persons who apply to be authorized as owner builders under this Act;
- (c) to issue licences to, and renew the licenses of, residential builders and other persons required to be licensed under this Act who meet the requirements of this Act and the regulations;
- (d) to issue authorizations to persons referred to in clause (b) who meet the requirements of this Act and the regulations;
- (e) subject to sections 7 and 12, to suspend or cancel licences and authorizations;
- (f) to maintain a register of
 - (i) owner builders, licensed residential builders and other persons licensed under this Act, and
 - (ii) new homes;
- (g) to make entries in the registers in accordance with this Act and the regulations;
- (h) to keep records, including records of decisions made by the Registrar;
- (i) to undertake research and education initiatives respecting residential construction;
- (j) subject to the regulations, to provide information to the public about persons licensed or authorized under this Act;
- (k) to perform any other functions that are set out in this Act or the regulations.

Enforcement

4(1) For the purposes of this Act and the regulations, a compliance officer or the Registrar 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 clause (c);
- (e) on giving a receipt for a record referred to in clause (c), remove the record to make copies or extracts;
- (f) issue a compliance order;
- (g) exercise and perform any other powers and duties set out in the regulations.

(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.

(4) When entering any premises under the authority of this section, the Registrar or compliance officer must carry identification and produce it to any person on the premises on request.

Licensing of residential builders

5(1) A person shall not carry on the business of a residential builder unless licensed under this Act.

(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 qualifications prescribed by the regulations for licensing or has the experience, training or competence equivalent to the qualifications, and
 - (ii) meets the conditions for licensing prescribed by the regulations,
- (b) in the case of an application by a corporation, none of the individuals about whom disclosure is required under subsection (5) would be disqualified if the individual were an applicant, and
- (c) the person pays any prescribed licence fee.

(3) 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.

(4) On application to the Registrar, a person who holds a licence issued under this Act 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.

(5) 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.

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

(7) Unless a person is a licensed residential builder referred to in subsection (6), 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 Act.

(8) A licence issued under this section

- (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 6, and
- (c) is not transferable.

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

Licence renewal

6(1) On application to the Registrar within 30 days of its expiry, a person who holds a licence issued under section 5 may have the licence renewed if

- (a) the Registrar is satisfied that the person would meet the requirements of section 5(2)(a) or (b) 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

7 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 5 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

8(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 23 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 Registrar.

Licensing of other persons

9 If a residential subcontractor or residential renovator is required by the regulations to be licensed, a reference to “residential builder” in section 5, 7 or 8 is deemed to be also a reference to “residential subcontractor” or “residential renovator”, as the case may be.

Authorizations for owner builders

10(1) On application to the Registrar, a person who intends to build, for personal use, a new home of a type prescribed in the regulations may be issued an authorization if the person

- (a) meets the criteria for owner builders prescribed in the regulations, 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

11(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

12 The Registrar may suspend or cancel an authorization

- (a) for any reason that would disqualify the owner builder for an authorization under section 10 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 20(8).

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

13 If the Registrar refuses to issue an authorization under section 10, or suspends or cancels an authorization under section 12, 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

14(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.

Mandatory home warranty

15(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.

(2) Subject to subsection (3), 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.

- (3) On application to the Registrar, a person may be permitted to sell or offer for sale a new home despite the requirements of subsection (2) if the Registrar is satisfied that the person would suffer undue hardship if the permission is not granted.
- (4) The Registrar may impose conditions on a permission granted under subsection (3).
- (5) Home warranty insurance for a new home must provide coverage for
- (a) defects in materials and labour for a period of at least 3 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.
- (6) If repairs are required under home warranty insurance and damage to the new home or the extent of the repairs renders the home uninhabitable for a period greater than 30 days, the home warranty insurance must provide, in accordance with the regulations, coverage for the cost of property taxes and utilities payable with respect to a new home.
- (7) 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.
- (8) Subsections (1), (2), (3) and (7) do not apply to an owner builder.

Home warranty insurance – mandatory conditions

- 16(1)** In this section, “policy” means an instrument evidencing home warranty insurance.
- (2) If mandatory conditions for home warranty insurance are required by the regulations
- (a) the mandatory conditions are deemed to be part of the home warranty insurance and must be printed in every policy under the heading “Mandatory Conditions”, and

(b) no variation or omission of or addition to a mandatory condition is binding on the insured.

(4) The home warranty insurance must provide coverage at least equal to the minimum standards set out in this Act and the regulations, and if the home warranty insurance does not, in any of its provisions, provide coverage at least equal to the prescribed minimum coverage, the coverage provided in the relevant provisions of the contract is deemed to be replaced by the appropriate prescribed minimum coverage.

(5) The home warranty insurance must not contain

- (a) any term which purports to waive, exclude, limit or qualify the home warranty insurance except as may be permitted by regulation, or
- (b) any exclusions from coverage except as permitted by regulation,

and any such term or exclusion has no effect.

(6) A person must not waive or invalidate home warranty insurance except as may be permitted by the regulations, and any such waiver or invalidation has no effect.

(7) The home warranty insurance is enforceable even if there is no privity of contract between the owner and the warranty provider.

(8) Unless otherwise provided in the regulations, the *Insurance Act* applies to home warranty insurance.

(9) The Lieutenant Governor in Council may make regulations

- (a) prescribing mandatory conditions that must be contained in home warranty insurance;
- (b) prescribing minimum standards for the coverage to be provided by home warranty insurance, including periods of coverage, the time at which coverage begins and coverage limits;
- (c) prescribing permitted exclusions of coverage, waiver, limitations or qualifications under home warranty insurance;
- (d) prescribing terms that must not be included in home warranty insurance;

- (e) prescribing terms and conditions that apply to warranty providers with respect to home warranty insurance;
- (f) prescribing classes of new homes, renovations and home warranty insurance and categories of residential builders and residential renovators;
- (g) modifying or making inapplicable any provisions of the *Insurance Act* with respect to home warranty insurance.

Statutory protection

17(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 the regulations,

- (a) is free from defects in materials and labour and will remain so for a period of at least 3 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 and other assets of a condominium corporation, the date the condominium plan is registered in a land titles office in accordance with the *Condominium 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 other entity authorized to grant permits under the *Safety Codes Act* 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.

Compliance orders

18(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 23 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 14(2)(a);
 - (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

19(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 Court of Queen's Bench 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

20(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 23 that the imposition of the penalty or the amount of the penalty, or both, be reviewed.
- (7)** 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.
- (8)** 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

21(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 Court of Queen’s Bench 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).

Dispute resolution processes

22(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 judicial centres and may be different for residential construction actions brought out of different judicial centres.

Review

23(1) A person may request that the Registrar review a decision made under any of the following:

- (a) section 5(2) or (9);
 - (b) section 6;
 - (c) section 7;
 - (d) section 10(1);
 - (e) section 11(2) or (3);
 - (f) section 12;
 - (g) section 15(3);
 - (h) section 18(1) or (4);
 - (i) section 20(1).
- (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 clause (a), and
 - (ii) an injustice would otherwise result.
- (3) The Registrar may allow any other person affected by a decision made under section 18 to request a review of that decision under subsection (1).
- (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 18, 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 24 applies.

Registrar's decision

24(1) Unless the Registrar refers a request for a review under section 23 to the Appeal Board under section 23(6), the Registrar, as soon as practicable after receiving a request under section 23(1) or initiating a review under section 23(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 18, 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 18, provide a copy of the notice referred to in clause (b) 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

25 A person who has received notice of a decision made by the Registrar under section 24 may, within 30 days after receiving the notice, appeal the decision to the Appeal Board.

Appeal Board

26(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 19 to the Court of Queen's Bench 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 Court of Queen's Bench by the Registrar, and on being filed all proceedings may be taken on it as if it were an order of the Court of Queen's Bench.

Public registry

27(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 5(2);
- (b) the licence number and expiry date of a licence issued under section 5(2);
- (c) the information accepted by the Registrar under section 5(5);
- (d) the current status of the licence of a person referred to in clause (a);
- (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 5(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 23(2)(a) or (b) or 25, 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 to the public for inspection during regular business hours.

(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

28(1) A permit issuer 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 permit issuer issues a building permit for a proposed new home, relying in good faith on the evidence provided under subsection (1), no action lies against the permit issuer or the municipality or other entity on behalf of which the permit was issued 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 permit issuer 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

29(1) On application of the Registrar, and on being satisfied that there is reason to believe that this Act or the regulations are or will be contravened, the Court of Queen’s Bench 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.

Committee review – home reconstruction loans

30(1) Within one year of the coming into force of this Act, a special committee established by the Legislative Assembly must begin a review of the feasibility of a program to provide no-interest loans to homeowners who face significant repair costs or special assessments due to improper residential construction.

(2) Within one year after beginning its review, the committee must submit to the Legislative Assembly a report that includes any recommendations of the committee.

Offences and penalties

31(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 4(3), 5(1) or (7), 11(1), 14(2) or 15(1), (2) or (7),

is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) is liable

- (a) in the case of an individual, to a fine of not more than \$25 000 or to a term of imprisonment not exceeding one year or to both a fine and imprisonment, and
- (b) in the case of a corporation, to a fine of not more than \$100 000.

(3) If a corporation commits an offence under subsection (1), any officer or director of the corporation who directed, authorized,

assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable to the penalties mentioned in this section whether or not the corporation has been prosecuted or convicted.

(4) A prosecution under subsection (1) may be commenced

- (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 clause (a), one year after the certified date.

(5) A certificate purporting to have been issued by the Registrar or a compliance officer certifying the date referred to in subsection (4)(b) is proof of that date.

Compensation to consumer

32(1) In addition to a penalty imposed under section 31, 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 \$50 000.

(2) An application for an order under subsection (1) may be made by an owner or by the Crown 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 clerk of the Court of Queen's Bench, enter judgment in that court.

(4) A judgment entered in the Court of Queen's Bench 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.

Lieutenant Governor in Council regulations

33(1) The Lieutenant Governor in Council may make regulations

- (a) defining, for the purpose of section 1(i), a class of buildings or portion of a building, including a manufactured home, as a new home to which this Act applies;
- (b) defining warranty provider for the purposes of this Act;
- (c) prescribing renovations and requiring that renovations be covered by home warranty insurance;
- (d) prescribing any additional powers and duties of the Registrar;
- (e) requiring categories of residential subcontractors and residential renovators to be licensed under this Act;
- (f) exempting
 - (i) categories of persons from all or any portion of this Act and the regulations,
 - (ii) a building, a class of buildings, a portion of a building or the common property and other assets of a condominium corporation from the definition of new home in section 1(i),
 - (iii) a category of persons from the definition of owner builder in section 1(k),
 - (iv) a category of persons from the definition of residential builder in section 1(p), and
 - (v) areas of Alberta from the application of all or any portion of this Act and the regulations;
- (g) prescribing periods of time for the purposes of section 11(1);
- (h) prescribing exceptions for the purposes of section 17(1);
- (i) 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;
- (j) 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;

- (k) providing that a person who commits an offence under the regulations is liable to the penalties provided for in section 31;
- (l) defining, for the purpose of this Act or the regulations, any word or expression not defined in this Act;
- (m) prescribing the qualifications and conditions for licensing of residential builders, residential subcontractors and residential renovators;
- (n) 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;
- (o) respecting the issuance, duration, expiration, renewal, suspension and cancellation of licences;
- (p) prescribing types of new homes for the purposes of section 10(1) and criteria for the purposes of section 10(1)(a);
- (q) respecting the issue, suspension and cancellation of authorizations;
- (r) prescribing the fees payable under this Act;
- (s) respecting the service of orders, notices, decisions or other documents required or authorized to be given or served under this Act;
- (t) establishing rules respecting appeals before the Appeal Board;
- (u) dealing with any difficulty or impossibility resulting from the coming into force of this Act;
- (v) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

Ministerial regulations

34 The Minister may make regulations

- (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 permit issuer 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 14.

Coming into force

35 This Act comes into force on Proclamation.

