

2012 Bill 5

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First Session, 28th Legislature, 61 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# BILL 5

## NEW HOME BUYER PROTECTION ACT

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THE MINISTER OF MUNICIPAL AFFAIRS

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 5

2012

### NEW HOME BUYER PROTECTION ACT

(Assented to , 2012)

#### *Table of Contents*

- 1 Interpretation
- 2 Application

#### **Part 1 Home Warranty Protection**

- 3 Mandatory home warranty
- 4 Statutory protection

#### **Part 2 Owner Builder Authorizations**

- 5 Authorizations for owner builders
- 6 Refusal, suspension or cancellation of authorization
- 7 Notice of refusal, suspension or  
cancellation of authorization

#### **Part 3 Registrar and Compliance Officers**

- 8 Registrar
- 9 Registry
- 10 Appointment of compliance officers
- 11 Powers of compliance officers

#### **Part 4 Enforcement and Reviews**

- 12 Compliance orders

- 13 Review
- 14 Registrar's decision
- 15 Administrative penalties
- 16 Enforcement of administrative penalties

## **Part 5 Appeals**

- 17 Appeals
- 18 New Home Buyer Protection Act Appeal Board
- 19 Effect of appeal
- 20 Powers of Board
- 21 Appeal to Court

## **Part 6 General Provisions**

- 22 Protection from liability
- 23 Act prevails
- 24 Permits
- 25 Fees
- 26 Offence and penalty
- 27 Restitution
- 28 Regulations

## **Part 7 Consequential Amendments and Coming into Force**

- 29 Consequential amendments
- 30 Coming into force

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

### **Interpretation**

**1(1)** In this Act,

- (a) “accredited agency” means an accredited agency as  
defined in the *Safety Codes Act*;

- (b) “accredited municipality” means an accredited municipality as defined in the *Safety Codes Act*;
- (c) “accredited regional services commission” means an accredited regional services commission as defined in the *Safety Codes Act*;
- (d) “administrative penalty” means an administrative penalty imposed under section 15;
- (e) “authorization” means an authorization issued by the Registrar under section 5;
- (f) “Board” means the New Home Buyer Protection Act Appeal Board established under section 18;
- (g) “building envelope” means the collection of components that separate conditioned space from unconditioned space, the exterior air or the ground, or that separate conditioned spaces intended to be conditioned to temperatures differing by more than 10°C at design conditions;
- (h) “common property” has the same meaning as in section 1(1)(f) of the *Condominium Property Act*;
- (i) “compliance officer” means a person appointed under section 10 as a compliance officer;
- (j) “compliance order” means a compliance order issued under section 12;
- (k) “Court” means the Court of Queen’s Bench;
- (l) “defects in the building envelope” means defects that result in the failure of the building envelope to perform its intended function;
- (m) “delivery and distribution systems” include electrical, gas, plumbing, heating, ventilation and air-conditioning systems to which the *Safety Codes Act* applies and any other systems prescribed as delivery and distribution systems;
- (n) “home warranty insurance contract” means a contract of insurance issued by a warranty provider covering defects in the construction of a new home and consequential losses or costs incurred by the owner;

- (o) “insurance” means insurance as defined in the *Insurance Act*;
- (p) “manufactured home” means a home that is constructed
  - (i) as an individual pre-assembled unit intended for delivery to a residential site, or
  - (ii) from a number of pre-assembled units that are intended for delivery to and assembly at a residential site;
- (q) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this statute;
- (r) “multiple family dwelling” means a building containing 2 or more dwelling units;
- (s) “new home” means a building, or a portion of a building, that is newly constructed or that is being constructed and is intended for residential occupancy and in respect of which the purchase period has not expired, and includes
  - (i) a self-contained dwelling unit that
    - (A) is detached,
    - (B) is attached to one or more other self-contained dwelling units, or
    - (C) includes a secondary suite,
  - (ii) common property, common facilities and other assets of a condominium corporation,
  - (iii) any building or portion of a building that is of a class prescribed as a class of new home to which this Act applies,
  - (iv) a building that is intended for residential occupancy and that is a reconstruction, and
  - (v) a manufactured home,

but does not include a hotel, motel, dormitory, care facility, relocatable work camp or any building exempted by the regulations from the definition of new home;

- (t) “owner” means a person who purchases a new home or contracts with a residential builder to build a new home and includes
  - (i) a person who acquires a life interest in a new home,
  - (ii) a condominium corporation under the *Condominium Property Act* in respect of the common property, common facilities and other assets,
  - (iii) a cooperative incorporated under the *Cooperatives Act*, a corporation or a society having an ownership interest in a new home, and
  - (iv) a subsequent purchaser of a new home, including a person who acquires a new home from a previous owner through inheritance, gift, foreclosure or other legal means or operation of law;
- (u) “owner builder” means an individual who builds or intends to build a new home for personal use with a valid authorization issued by the Registrar and includes any builder prescribed as an owner builder to which this Act applies;
- (v) “permit issuer” means a permit issuer as defined under the *Safety Codes Act*;
- (w) “personal information” means personal information as defined in the *Freedom of Information and Protection of Privacy Act*;
- (x) “prescribed” means prescribed or otherwise provided for in the regulations;
- (y) “purchase period” means
  - (i) in the case of a new home other than the common property of a condominium corporation, 10 years beginning on the earlier of
    - (A) the date an accredited agency, accredited municipality or accredited regional services

commission grants permission to occupy the new home, and

- (B) the date that the transfer of title to the new home is registered;
  - (ii) in the case of the common property of a condominium corporation, 10 years beginning on the date a building assessment report is completed as prescribed;
  - (z) “reconstruction” means a change, addition, alteration or repair to a building that is intended for residential occupancy and that is prescribed to be a reconstruction;
  - (aa) “Registrar” means the person appointed under section 8 as the Registrar;
  - (bb) “registry” means the registry established under section 9;
  - (cc) “required home warranty coverage” means coverage under a home warranty insurance contract that meets the requirements of section 3(6);
  - (dd) “residential builder” means a person who engages in, arranges for or manages all or substantially all of the construction or reconstruction of a new home, or agrees to do any of those things, and includes a general contractor, but does not include an owner builder;
  - (ee) “warranty provider” means a warranty provider as defined in section 548.1(1) of the *Insurance Act*.
- (2) In this Act,
- (a) a reference to “this Act” includes the regulations made under this statute;
  - (b) a reference to “this statute” does not include the regulations made under this statute.

#### **Application**

**2** This Act applies only to new homes constructed under a building permit applied for after this section comes into force.



## **Part 1**

### **Home Warranty Protection**

#### **Mandatory home warranty**

**3(1)** A person other than an owner builder shall not build a new home unless the new home

- (a) is covered by a home warranty insurance contract that complies with subsections (6) and (7), and
- (b) is registered with the Registrar.

**(2)** Subject to subsection (5), a person shall not sell or offer to sell a new home while the new home is being constructed or during the purchase period unless

- (a) the new home has the required home warranty coverage for the purchase period or the balance of the purchase period, as the case may be, and
- (b) the person provides the prospective owner of the new home with a disclosure notice in respect of the home warranty coverage described in clause (a) in a form satisfactory to the Registrar.

**(3)** Other than for the common property of a condominium corporation, coverage begins on the earlier of

- (a) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the new home, and
- (b) the date that the transfer of title to the new home is registered.

**(4)** With respect to the common property of a condominium corporation, coverage begins on the date a building assessment report is completed as prescribed.

**(5)** The Registrar may

- (a) exempt a person from the requirements of subsection (2) if the Registrar is satisfied, on application by the person, that the person would suffer undue hardship if the exemption were not granted, and may impose terms and conditions on the exemption, and

- (b) require a person who receives an exemption under this subsection to provide a prospective owner of the new home with a disclosure notice in respect of the exemption described in clause (a) in a form satisfactory to the Registrar.

**(6)** A home warranty insurance contract must provide coverage in accordance with the *Insurance Act* for

- (a) defects in materials and labour for a period of at least one year starting on the date on which the coverage begins,
- (b) defects in materials and labour related to delivery and distribution systems for a period of at least 2 years starting on the date on which the coverage begins,
- (c) defects in the building envelope for a period of at least 5 years starting on the date on which the coverage begins, and
- (d) structural defects for a period of at least 10 years starting on the date on which the coverage begins.

**(7)** A warranty provider must offer the option to purchase, at an additional premium, additional coverage covering

- (a) defects in the building envelope for a prescribed period, and
- (b) defects in other prescribed components of the new home for a prescribed period.

**(8)** Subsection (1) does not apply to a multiple family dwelling built for rental purposes if the multiple family dwelling is owned under a single legal title and a restrictive covenant is registered and maintained on the title restricting the sale or other disposition of any dwelling unit within the multiple family dwelling for 10 years from the earlier of

- (a) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the multiple family dwelling, and
- (b) the date that the transfer of title to the multiple family dwelling is registered.

**Statutory protection**

**4(1)** This section applies only to a new home that does not have home warranty coverage as required by this Act.

**(2)** A residential builder or an owner builder of a new home is deemed to have agreed with the prospective owner of the new home and subsequent owners of that home, to the extent of labour, materials and design supplied, used or arranged by the residential builder or owner builder, that, except to the extent prescribed, the new home, as it exists at the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the new home, or if permission is not granted, at the date the new home is first occupied,

- (a) is free from defects in materials and labour and will remain so for a period of at least one year after
  - (i) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the new home, or
  - (ii) if permission described in subclause (i) is not granted, the date the new home is first occupied,
- (b) is free from defects in materials and labour related to delivery and distribution systems and will remain so for a period of at least 2 years after
  - (i) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the new home, or
  - (ii) if permission described in subclause (i) is not granted, the date the new home is first occupied,
- (c) is free from defects in the building envelope and will remain so for a period of at least 5 years after
  - (i) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the new home, or

- (ii) if permission described in subclause (i) is not granted, the date the new home is first occupied,

and

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

- (i) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the new home, or

- (ii) if permission described in subclause (i) is not granted, the date the new home is first occupied.

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

**(4)** The protection under subsection (2) applies for the benefit of the person who owns the new home at any time during the periods specified in subsection (2).

**(5)** The person who owns the new home when there is a breach of the protection under subsection (2) 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.

**(6)** Despite subsection (5), if the ownership of the new home changes during the course of an action for a breach of the protection under subsection (2), the new owner is entitled to be substituted as plaintiff and to enforce all rights that the former owner could have enforced.

**(7)** Nothing in this section

- (a) excludes, qualifies or limits any other term, express or implied, or
- (b) relieves any person of liability to which the person would otherwise be subject.

## **Part 2 Owner Builder Authorizations**

### **Authorizations for owner builders**

**5(1)** Subject to section 6, the Registrar shall issue an authorization, subject to any terms and conditions the Registrar considers appropriate, to an individual who intends to build a new home for personal use if the individual

- (a) registers the new home with the Registrar,
- (b) meets the prescribed criteria, and
- (c) pays the required fees, if any.

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

**(3)** Subject to section 3(2) and (5), an owner builder is not required to obtain a home warranty insurance contract with respect to the new home for which the owner builder's authorization is issued.

### **Refusal, suspension or cancellation of authorization**

**6** The Registrar may refuse to issue an authorization or may suspend or cancel an authorization

- (a) if the owner builder does not meet the prescribed criteria referred to in section 5(1)(b) for owner builders or does not pay the required fees, if any,
- (b) if the owner builder makes a false statement about a material matter in the application for an authorization or refuses to provide information about 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 an administrative penalty.

**Notice of refusal, suspension or cancellation of authorization**

**7(1)** If the Registrar refuses to issue an authorization, or suspends or cancels an authorization, the Registrar shall serve the owner builder with notice of the decision.

**(2)** If the Registrar suspends or cancels an owner builder's authorization, the Registrar shall notify the permit issuer that issued the building permit to the owner builder.

**Part 3  
Registrar and Compliance  
Officers**

**Registrar**

**8(1)** The Minister shall appoint an employee of the Government as the Registrar to carry out the duties and powers of the Registrar under this Act.

**(2)** The Registrar is authorized to collect, directly or indirectly, the personal information needed to carry out the Registrar's duties and powers.

**(3)** The Registrar may, for the purpose of assisting the public, publicly disclose information, including personal information, obtained under this Act and no liability results from the disclosure if it was made in good faith.

**(4)** The Registrar shall

- (a) provide information to the Superintendent of Insurance appointed under the *Insurance Act* respecting
  - (i) any matter that is subject to the *Insurance Act*, and
  - (ii) any compliance orders issued to a warranty provider,and
- (b) provide information to the Director of Fair Trading appointed under the *Fair Trading Act* respecting any matter that is subject to the *Fair Trading Act*.

**Registry**

**9(1)** The Registrar shall establish and maintain a registry that must include information on

- (a) authorizations and exemptions issued or applied for under this Act,
- (b) new homes built or under construction by residential builders, including details of the home warranty insurance contracts covering the new homes,
- (c) new homes built or under construction by owner builders, including details of the home warranty insurance contracts covering the new homes, if applicable,
- (d) persons in respect of whom administrative penalties have been imposed or compliance orders have been issued under this Act,
- (e) persons convicted of an offence under this Act, and
- (f) any other prescribed information.

**(2)** The Registrar shall establish and maintain an online registry accessible to the public that consists of any portion of the information in the registry as prescribed, and may publicly disclose that information.

**Appointment of compliance officers**

**10(1)** The Minister shall appoint one or more employees of the Government as compliance officers.

**(2)** The Minister shall provide compliance officers with identification cards for the purposes of this Act.

**Powers of compliance officers**

**11(1)** For the purposes of this Act, a compliance officer may

- (a) require an owner builder to produce
  - (i) the owner builder's authorization, including any declaration in support of the application for that authorization, or

- (ii) any records relating to the owner builder's exemption from a requirement under this Act,
- (b) require a residential builder
  - (i) to confirm that a new home built or under construction by the residential builder has the required home warranty coverage, or
  - (ii) to confirm that the residential builder or the new home is exempt from having the required home warranty coverage,

and to produce any records relating to such confirmation,
- (c) enter and examine any premises, other than a private dwelling place, in which the compliance officer has reason to believe there is something to which this Act applies,
- (d) interview any person to determine if there has been compliance with this Act,
- (e) demand the production, within a reasonable time, of any record or document pertaining in any manner to compliance with this Act and on giving a receipt for it remove it for not more than 48 hours for the purpose of making copies of it, and
- (f) exercise and perform any other prescribed powers and duties.

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

**(3)** A compliance officer, on the request of a person on the premises the compliance officer enters, shall produce the identification card provided under section 10.



## **Part 4**

### **Enforcement and Reviews**

#### **Compliance orders**

**12(1)** A compliance officer may issue a compliance order to any person if the officer believes on reasonable and probable grounds that the person has failed to comply with this Act.

**(2)** A compliance order must be in the prescribed form, and must

- (a) contain the following:
  - (i) the name of the person to whom the compliance order is issued;
  - (ii) direction as to the action the person must take, stop or modify;
  - (iii) the date by which the person must comply with the compliance order;
  - (iv) the reasons for the compliance order;
  - (v) a statement of the person's right under section 13 to request that the compliance order be reviewed by the Registrar;
  - (vi) any other information required by the regulations,
- and
- (b) be served on the person to whom it is issued.

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

- (a) that a person must apply to obtain an authorization or to be granted an exemption in accordance with this Act;
- (b) that a person must obtain the required home warranty coverage;
- (c) that a person must provide to a prospective owner a copy of the disclosure notice referred to in section 3(2) or (5);

- (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 must register a new home or the person's intention to build a new home in accordance with this Act;
  - (f) any other prescribed requirement.
- (4)** A compliance officer may amend a compliance order, in which case subsection (2) applies to the amendment.
- (5)** If a compliance officer is satisfied that the circumstances that gave rise to a compliance order are no longer present or have been affected by other circumstances, the compliance officer may cancel the compliance order by serving written notice of the cancellation to the person to whom the compliance order was issued.

#### **Review**

- 13(1)** A person to whom a compliance order is issued may request that the Registrar review the compliance order.
- (2)** A request under subsection (1) must be made
- (a) within 30 days after the person is served with the compliance order, or
  - (b) within the period specified by the Registrar, if the Registrar is satisfied that
    - (i) special circumstances existed that 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 compliance order to request a review of that compliance order under subsection (1) and may refuse such a request.
- (4)** A decision of the Registrar under subsection (3) refusing a request for a review is not appealable to the 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 with the required fee, if any.

**(6)** The Registrar may refer a request for a review of a compliance order directly to the Board.

**(7)** Within 30 days after the service of a compliance order, the Registrar, on the Registrar's own initiative, may initiate a review of that order by serving notice of the intention to do so on the person to whom it was issued.

#### **Registrar's decision**

**14(1)** Unless the Registrar refers a request for a review under section 13(1) to the Board under section 13(6), the Registrar, as soon as practicable after receiving a request under section 13(1) or initiating a review under section 13(7), shall review the compliance order and

- (a) confirm, vary or cancel the compliance order or refer the matter back to the compliance officer with or without directions,
- (b) notify the person who requested the review in writing of
  - (i) the Registrar's decision,
  - (ii) the reasons for the decision, and
  - (iii) the person's right to appeal the decision to the Board,and
- (c) provide a copy of the notice referred to in clause (b) to the compliance officer who issued the compliance order.

**(2)** The Registrar

- (a) shall consider the submissions of the person who requested a review of a compliance order, 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.

### **Administrative penalties**

**15(1)** The Registrar, in accordance with this section and the regulations, may impose an administrative penalty on a person who

- (a) contravenes a provision of this Act the contravention of which is prescribed as a contravention in respect of which an administrative penalty may be imposed,
- (b) fails to comply with a compliance order, or
- (c) fails to comply with a term or condition of an authorization.

**(2)** An administrative penalty may be

- (a) a single amount, or
- (b) an amount for each day that the contravention or failure to comply continues,

but the total amount of an administrative penalty must not exceed \$100 000.

**(3)** If, in the opinion of the Registrar, a person who is subject to an administrative penalty under subsection (2)(b) is taking reasonable measures to remedy the contravention or failure to comply, the Registrar, in writing, may suspend the application of a daily penalty on any terms and conditions the Registrar considers appropriate.

**(4)** If an administrative penalty is imposed on a person under this section, the Registrar shall serve a notice of the administrative penalty on the person.

**(5)** A notice under subsection (4) must state the following:

- (a) the name of the person liable to pay the administrative penalty;
- (b) the reasons for imposing the administrative penalty;
- (c) the amount of the administrative penalty and whether it is imposed as a single amount or as an amount for each day that the contravention or failure to comply continues;
- (d) the date by which the administrative penalty is to be paid;

(e) that the person liable to pay the administrative penalty may, under section 17, appeal the imposition of the penalty or the amount of the penalty, or both;

(f) any other prescribed information.

**(6)** An administrative penalty may be imposed on a director, officer or other person who authorized, permitted or acquiesced in a contravention or failure to comply by a corporation for which an administrative penalty may be imposed under subsection (1), whether or not an administrative penalty has been imposed on the corporation under subsection (1).

**(7)** An administrative penalty imposed under this section must be paid

(a) within 30 days after the date on which the notice of administrative penalty referred to in subsection (4) is served on the person, or

(b) if an appeal is commenced respecting the administrative penalty, within 30 days after the amount of the administrative penalty is determined by the Board, or within a longer time specified by the Board.

**(8)** A person who pays an administrative penalty in respect of a contravention or failure to comply shall not be charged under this Act with an offence in respect of the contravention or failure to comply that is described in the notice of administrative penalty.

#### **Enforcement of administrative penalties**

**16(1)** When the appeal period has expired or the Board has dismissed the appeal in whole or in part, the Registrar may enforce the administrative penalty by filing in the Court a certified copy of the notice of the administrative penalty, and on the notice being filed, the administrative penalty constitutes a debt payable to the Crown in right of Alberta, who may take proceedings on the notice as if it were a judgment of the Court.

**(2)** If the Board varies an administrative penalty, a copy of the order varying the administrative penalty shall be filed in the Court and subsection (1) applies to the administrative penalty as if the order of the Board were the notice referred to in subsection (1).

## **Part 5 Appeals**

### **Appeals**

#### **17(1)** A person

- (a) who has been refused an authorization,
- (b) whose authorization is made subject to terms and conditions,
- (c) whose authorization has been cancelled or suspended,
- (d) whose application under section 3(5) for an exemption from section 3(2) on grounds of undue hardship has been refused,
- (e) to whom a compliance order has been issued that has been reviewed by the Registrar under section 14,
- (f) who has been served with a notice of administrative penalty under section 15, or
- (g) who is affected by a decision for which grounds for appeal are prescribed,

may appeal the decision, order or administrative penalty by filing with the Minister a notice of appeal within one month after being notified in writing of the decision, order or administrative penalty.

**(2)** The Minister may allow any other person affected by a compliance order to appeal that order under subsection (1).

### **New Home Buyer Protection Act Appeal Board**

**18(1)** The Minister may in accordance with the regulations establish a New Home Buyer Protection Act Appeal Board to hear appeals under this Act.

**(2)** The Minister shall, within one month after the filing of a notice of appeal under section 17(1) and receiving payment of any required fee for the appeal, refer the appeal to the Board.

**(3)** The members of the Board are to be appointed by the Minister in accordance with the regulations.

(4) The Minister may set the rates of remuneration for and provide for the payment of reasonable living and travelling expenses to the members of the Board.

(5) The Minister may set the time within which the Board is to hear an appeal and render a decision and may extend that time.

(6) The Board may confirm, vary or quash the decision, order or administrative penalty that is being appealed.

(7) An appeal under this section is a new trial of the issues that resulted in the decision, order or administrative penalty being appealed.

(8) The Minister may make regulations

- (a) respecting the establishment of the Board, including the terms and manner of appointment of members and the chair;
- (b) establishing grounds for appeals to the Board;
- (c) establishing rules of procedure, including rules respecting the following matters:
  - (i) adjournments of matters before the Board;
  - (ii) the attendance of witnesses before the Board;
  - (iii) the applicability of the rules of evidence in judicial proceedings to hearings before the Board;
  - (iv) the receiving and recording of evidence;
  - (v) empowering the Board to proceed when a party to the appeal fails to appear at or attend a hearing;
  - (vi) the applicability of the *Alberta Rules of Court* to hearings before the Board;
  - (vii) empowering the Board to require the production of any record, object or thing;
  - (viii) the reconsideration of decisions made by the Board;
  - (ix) costs.

### **Effect of appeal**

**19(1)** Subject to subsection (2), an appeal under section 18 does not affect the status or enforceability of the decision, order or administrative penalty being appealed.

**(2)** A person who files a notice of appeal under section 17 may apply to the chair of the Board to stay the decision, order or administrative penalty being appealed until the Board renders its decision on the appeal.

**(3)** On receiving an application under subsection (2) and after allowing the Registrar to make representations, the chair of the Board may, if the chair considers it appropriate, order a stay of the decision, order or administrative penalty being appealed until the Board renders its decision on the appeal.

### **Powers of Board**

**20** For the purposes of conducting appeals before the Board,

- (a) the chair and the other members of the Board have the same power as is vested in the Court for the trial of civil actions
  - (i) to summon and enforce the attendance of witnesses,
  - (ii) to compel witnesses to give evidence on oath or otherwise,
  - (iii) to compel witnesses to give evidence in person or otherwise, and
  - (iv) to compel witnesses to produce any record, object or thing that relates to the matter being heard,
- (b) the Board may take evidence under oath,
- (c) any member of the Board may administer oaths for the purpose of taking evidence, and
- (d) the Board may reconsider a previous decision made by the Board.



### **Appeal to Court**

**21(1)** The Registrar or a person whose appeal is heard by the Board may appeal the decision of the Board by filing an application with the Court and serving the application on any other parties to the appeal heard by the Board within one month after being notified in writing of the decision, and the Court may make any order that the Board may make under section 18(6).

**(2)** An appeal lies from a decision of the Board to the Court only on a question of law or jurisdiction.

**(3)** The decision of the Court is final and cannot be further appealed.

## **Part 6 General Provisions**

### **Protection from liability**

**22** No action lies against the Crown or its employees or officers, a permit issuer, an accredited agency or its employees or officers, an accredited municipality or its employees or officers, an accredited regional services commission or its employees or officers, the Board or its members or employees or a person appointed or engaged to perform a duty or exercise a power for the Board, for anything done or omitted to be done by any of them in good faith while exercising their powers and performing their duties under this Act.

### **Act prevails**

**23(1)** Any waiver or release by a person of the person's rights, benefits or protections under this Act is void.

**(2)** Subsection (1) does not apply to a release made by a person in the settlement of a dispute.

### **Permits**

**24(1)** A permit issuer shall not issue a permit for a proposed new home unless the applicant provides evidence, in a form acceptable to the Registrar, that the proposed new home has been registered with the Registrar, and

- (a) has the required home warranty coverage,

- (b) will be built by an owner builder who has a valid authorization, or
- (c) is otherwise exempted from having the required home warranty coverage.

**(2)** On request of the Registrar, a permit issuer shall forward to the Registrar information provided by applicants for permits under subsection (1).

#### **Fees**

**25** The Minister may by order impose fees for any one or more of the following:

- (a) for registering a new home or other information with the Registrar;
- (b) for searching the registry;
- (c) for authorizations;
- (d) for filing notices of appeal under section 17;
- (e) for any other matter under this Act in respect of which payment of a fee may be required;
- (f) for requesting a review under section 13.

#### **Offence and penalty**

**26(1)** Every person who

- (a) interferes with or in any manner hinders the Registrar or a compliance officer in the exercise of the Registrar's or compliance officer's powers or performance of the Registrar's or compliance officer's duties under this Act,
- (b) knowingly furnishes false or misleading information in any application under this Act or in any statement, form, report or return required to be furnished under this Act,
- (c) fails to prepare, submit or retain any information that the person is required by this Act to prepare, submit or retain, or
- (d) contravenes

- (i) this statute,
- (ii) a regulation made under this statute where the regulation specifies that it is an offence to contravene or fail to comply with the regulation,
- (iii) a term or condition in an authorization or exemption, or
- (iv) a compliance order,

is guilty of an offence and is liable

- (e) for a first offence, to a fine of not more than \$100 000, and
- (f) for a 2nd or subsequent offence, to a fine of not more than \$500 000.

**(2)** If a corporation commits an offence under subsection (1), every director, officer or other person who authorized, permitted or acquiesced in or participated in the commission of the offence is guilty of the offence and is liable to the fine provided for the offence, whether or not the corporation has been prosecuted for or convicted of the offence.

**(3)** A prosecution for an offence under this Act must be commenced by the later of

- (a) 3 years after the date on which the act or omission that is alleged to constitute the offence occurred, and
- (b) one year after the date on which the Registrar learned of the act or omission referred to in clause (a).

### **Restitution**

**27(1)** A justice who convicts a defendant of an offence under this Act may, on the application of the Minister of Justice and Solicitor General or of a person aggrieved or that person's representative, at the time sentence is imposed, order the defendant to pay to an aggrieved person an amount as restitution for loss of or damage to property suffered by the aggrieved person as a result of the commission of the offence if the amount is readily ascertainable.

**(2)** If an amount that is ordered to be paid under subsection (1) is not paid within the time ordered by the justice, the applicant may,

by filing the order, enter as a judgment in the Court of Queen's Bench the amount ordered to be paid, and that judgment is enforceable against the defendant in the same manner as if it were a judgment rendered against the defendant in the Court of Queen's Bench in civil proceedings.

(3) Every person who is ordered to pay an amount under this section must make the payments in accordance with the order.

### **Regulations**

**28(1)** The Lieutenant Governor in Council may make regulations

- (a) providing, for the purpose of section 1(1)(m), that a system or part of a system is a delivery and distribution system to which this Act applies;
- (b) providing, for the purpose of section 1(1)(s)(iii), that a class of buildings or portions of buildings is a class of new home to which this Act applies;
- (c) prescribing, for the purpose of section 1(1)(u), that a builder is an owner builder to which this Act applies;
- (d) prescribing, for the purpose of section 1(1)(z), that changes, additions, alterations or repairs to a building are reconstructions to which this Act applies;
- (e) respecting building assessment reports required by sections 1(1)(y)(ii) and 3(4), including but not limited to regulations respecting
  - (i) assigning responsibility for building assessment reports;
  - (ii) any assessments or inspections that must be completed for inclusion in building assessment reports;
  - (iii) any information that must be included in the building assessment reports;
  - (iv) the form of building assessment reports;
  - (v) the qualifications persons who complete building assessment reports must hold;

- (vi) timelines for completion and submission of building assessment reports;
- (vii) persons to whom building assessment reports must be submitted;
- (viii) powers of persons preparing building assessment reports;
- (f) prescribing the period of additional coverage referred to in section 3(7)(a);
- (g) respecting defects in components of a new home for which a warranty provider must offer the option to purchase additional coverage, and prescribing the period of that additional coverage;
- (h) prescribing the extent of any liability under section 4(2);
- (i) respecting additional powers and duties of the Registrar;
- (j) respecting information to be included in the registry and identifying information in the registry that may be made available to the public, including prescribing the portion of the information that is to be included in the online registry;
- (k) respecting the collection, use and disclosure of personal information;
- (l) prescribing additional powers and duties of compliance officers;
- (m) respecting
  - (i) the imposition of administrative penalties,
  - (ii) the criteria for determining appropriate administrative penalties,
  - (iii) the prescribing of different limits on different administrative penalties,
  - (iv) the prescribing of those provisions of this Act the contravention of which makes a person liable to an administrative penalty, and

- (v) information to be included in a notice of administrative penalty;
- (n) subject to section 15(2), providing for increased administrative penalties for repeated or subsequent contraventions or failures to comply, and specifying the time within which a contravention or a failure to comply is to be considered a repeated or subsequent contravention or a failure to comply of an earlier contravention or failure to comply;
- (o) specifying provisions of the regulations the contravention of which is an offence in respect of which the penalties provided for in section 26(1) and (2) apply;
- (p) defining, for the purposes of this Act, any word or expression used but not defined in this Act;
- (q) prescribing information to be provided to the public about residential builders and warranty providers;
- (r) prescribing information that must be provided by warranty providers to the Registrar;
- (s) requiring residential builders and warranty providers to disclose information relevant to a new home or to a home warranty insurance contract;
- (t) providing for one or more dispute resolution systems or processes by means of which disputes relating to the matters covered by this Act may be resolved or otherwise dealt with, including regulations
  - (i) prescribing any matter for which a dispute resolution system or process may be used;
  - (ii) governing the procedure to be followed or otherwise used in resolving or attempting to resolve a dispute;
  - (iii) governing the mechanisms to be used under the dispute resolution system or process, including
    - (A) the appointment and use of committees or other bodies to deal with disputes,
    - (B) the use of mediation and the appointment of mediators, and

- (C) the use of arbitration and the appointment of arbitrators;
  - (iv) governing the duties, functions and powers of the Registrar, if any, in respect of a dispute resolution system or process;
  - (v) governing the remedies available under a dispute resolution system or process;
  - (vi) respecting the costs, fees and disbursements for a dispute resolution process;
  - (vii) providing for any matter that the Lieutenant Governor in Council considers advisable for carrying out the purpose and intent of this clause;
  - (u) respecting any difficulty or impossibility resulting from the coming into force of this Act;
  - (v) generally for giving effect to this Act or any of the purposes or provisions of this Act.
- (2)** The Minister may make regulations
- (a) exempting
    - (i) persons or categories of persons from all or any portion of this Act, including providing differently for different categories of persons,
    - (ii) a building, a class of buildings, a portion of a building or the common property, common facilities and other assets of a condominium corporation from the definition of new home in section 1(1)(s), or
    - (iii) a category of persons from the definition of residential builder in section 1(1)(dd);
  - (b) respecting authorizations issued under this Act, including regulations
    - (i) prescribing criteria for the purposes of section 5(1)(b);
    - (ii) respecting the issuance, refusal, suspension and cancellation of authorizations;

- (c) respecting compliance orders, including regulations prescribing the form and contents of compliance orders;
- (d) respecting the manner of service of compliance orders, notices of administrative penalty and other notices and documents required by this Act to be served, and the time within which service must be effected.

## Part 7 Consequential Amendments and Coming into Force

**Amends RSA 2000 cl-3**

**29(1) The *Insurance Act* is amended by this section.**

**(2) The following is added after section 548:**

### **Home warranty insurance contracts**

**548.1(1)** In this section,

- (a) “home warranty insurance contract” means a contract of insurance issued by a warranty provider covering defects in the construction of a new home and consequential losses or costs incurred by the owner;
- (b) “new home” means a new home as defined in the *New Home Buyer Protection Act*;
- (c) “warranty provider” means a person who
  - (i) has a licence under this Act authorizing the person to issue home warranty insurance contracts, or
  - (ii) is a person or is of a class of person that is prescribed as authorized to issue home warranty insurance contracts.

**(2) The Lieutenant Governor in Council may make regulations**

- (a) prescribing mandatory conditions that must be contained in a home warranty insurance contract;
- (b) prescribing minimum standards for the coverage to be provided by a home warranty insurance contract,



## **Explanatory Notes**

**29** Home warranty insurance contracts.

including periods of coverage, the time at which coverage begins and coverage limits;

- (c) prescribing permitted exclusions of coverage, waivers, limitations or qualifications under a home warranty insurance contract;
- (d) prescribing terms and conditions that must not be included in a home warranty insurance contract;
- (e) prescribing terms and conditions that apply to warranty providers with respect to a home warranty insurance contract;
- (f) prescribing persons or classes of persons authorized to issue home warranty insurance contracts for the purpose of subsection (1)(c)(ii).

**Coming into force**

**30** This statute comes into force on Proclamation.

**30** Coming into force.

# RECORD OF DEBATE

Stage	Date	Member	From	To

	Questions and Comments	From	To

Stage	Date	Member	From	To

	Questions and Comments	From	To

Stage	Date	Member	From	To

	Questions and Comments	From	To

Stage	Date	Member	From	To

	Questions and Comments	From	To