

2014 Bill 6

Second Session, 28th Legislature, 63 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 6

NEW HOME BUYER PROTECTION AMENDMENT ACT, 2014

THE MINISTER OF MUNICIPAL AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 6

2014

NEW HOME BUYER PROTECTION AMENDMENT ACT, 2014

(Assented to _____, 2014)

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

Amends SA 2012 cN-3.2

1 The *New Home Buyer Protection Act* is amended by this Act.

2 Section 1 is amended

(a) in subsection (1)

(i) in clause (f) by striking out “Act Appeal”;

(ii) by adding the following after clause (g):

(g.1) “common facilities” means

(i) property managed by a condominium corporation pursuant to its bylaws, and

(ii) a unit in a building described in a condominium plan, or any portion of such a unit, that includes all or part of one or more of

(A) the building envelope,

(B) a delivery and distribution system that serves 2 or more units,

Explanatory Notes

1 Amends chapter N-3.2 of the Statutes of Alberta, 2012.

2 Section 1 presently reads in part:

1(1) In this Act,

(f) “Board” means the New Home Buyer Protection Act Appeal Board established under section 18;

(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;

- (C) a load-bearing part,
- (D) any common property as defined in section 14(1)(a) of the *Condominium Property Act*, and
- (E) any area subject to an easement in favour of another unit,

whether or not that unit or portion of a unit is intended for residential occupancy;

(iii) in clause (s) by striking out “purchase period” and substituting “protection period”;

(iv) by repealing clause (y) and substituting the following:

- (y) “protection period” means the protection period determined under section 1.1;

(b) by adding the following after subsection (2):

(3) A reference to “purchase period” in a home warranty insurance contract entered into before the coming into force of this subsection is deemed to be a reference to “protection period” as defined in subsection (1)(y).

3 The following is added after section 1:

Determination of protection period

1.1(1) Subject to subsections (3) and (4), the protection period in the case of a new home other than common property or common facilities is,

- (a) for a new home constructed by a residential builder on land owned by the residential builder, where there is a transfer of title to the land by the residential builder to the owner, the 10-year period beginning on the earliest of
 - (i) the date the new home is first occupied,

(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;

3 Determination of protection period.

- (ii) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the new home, and
 - (iii) the date the transfer of title to the new home is registered,
- (b) for a new home constructed by a residential builder or an owner builder on land owned by the owner or the owner builder prior to permit issuance, the 10-year period beginning on the earlier of
- (i) the date the new home is first occupied, and
 - (ii) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the new home,
- and
- (c) for a new home constructed by a residential builder on land not owned by the owner, where there is no transfer of title to the land by the residential builder to the owner, the 10-year period beginning on the earlier of
- (i) the date the new home is first occupied, and
 - (ii) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the new home.
- (2)** Subject to subsection (5), the protection period in the case of common property or common facilities in a building is the 10-year period beginning when
- (a) the title to an inhabitable unit in the building or in a building in a phase of development of a condominium is transferred from a residential builder to a purchaser of a unit in an arm's length transaction, and
 - (b) the residential builder has entered into an agreement with a qualified person to have the qualified person

prepare a building assessment report for the building or for the phase of development within 180 days of the transfer of title described in clause (a).

(3) The protection period for a dwelling unit included in a condominium plan registered in respect of a multiple family dwelling originally built for rental purposes is deemed to be the 10-year period beginning on the earlier of

- (a) the date the unit was first occupied as a rental unit, and
- (b) the date an accredited agency, accredited municipality or accredited regional services commission granted permission to occupy the unit as a rental unit.

(4) The protection period for a dwelling unit on land subdivided by a plan of subdivision, other than a condominium plan, registered in respect of a multiple family dwelling originally built for rental purposes is deemed to be the 10-year period beginning on the earlier of

- (a) the date the unit was first occupied as a rental unit, and
- (b) the date an accredited agency, accredited municipality or accredited regional services commission granted permission to occupy the unit as a rental unit.

(5) The protection period for common property and common facilities included in a condominium plan registered in respect of a multiple family dwelling originally built for rental purposes is as determined under the regulations.

(6) Subsections (1) and (2) apply only to new homes constructed under a building permit applied for after the coming into force of this section.

4 Section 3 is amended

- (a) in subsection (2) by striking out “purchase period” wherever it occurs and substituting “protection period”.**
- (b) by repealing subsections (3) and (4) and substituting the following:**

4 Section 3 presently reads in part:

(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

(3) Other than for the common property and common facilities in a building,

- (a) for a new home constructed by a residential builder on land owned by the residential builder, where there is a transfer of title to the land by the residential builder to the owner, coverage begins on the date the protection period begins under section 1.1(1)(a),
- (b) for a new home constructed by a residential builder or an owner builder on land owned by the owner or the owner builder prior to permit issuance, coverage begins on the date the protection period begins under section 1.1(1)(b), and
- (c) for a new home constructed by a residential builder on land not owned by the owner, where there is no transfer of title to the land by the residential builder to the owner, coverage begins on the date the protection period begins under section 1.1(1)(c).

(4) With respect to the common property and common facilities in a building, coverage begins on the date the protection period begins under section 1.1(2).

(c) by repealing subsection (8).

5 The following is added after section 3:

Rental use designation

3.1(1) In this section, “rental use designation” means a designation of land by a residential builder or a sole owner provided to the Registrar under subsection (4)(a)(ii)(B).

- (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.*
- (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.*

5 Rental use designation.

(2) A residential builder of a multiple family dwelling built for rental purposes is exempt from the application of section 3(1)(a) and (2) in respect of the multiple family dwelling.

(3) A sole owner of a multiple family dwelling built for rental purposes is exempt from the application of section 3(2) in respect of the multiple family dwelling.

(4) The exemptions in subsections (2) and (3) apply only if

(a) the residential builder or sole owner

(i) registers the multiple family dwelling with the Registrar,

(ii) provides the Registrar with

(A) an acknowledgment in a form satisfactory to the Registrar of the obligations of the residential builder or the sole owner under this Act if the exemption ceases to apply, and

(B) a designation in a form and manner satisfactory to the Registrar respecting the land on which the multiple family dwelling is or is proposed to be located,

(iii) pays the required fees, if any, and

(iv) complies with subsection (8),

(b) the Registrar registers a caveat in respect of the rental use designation under subsection (5) against the certificate of title to the land that is the subject of the rental use designation, and

(c) the caveat remains on the certificate of title during the protection period applicable to the multiple family dwelling under section 1.1(1).

(5) Despite the *Land Titles Act* or any other enactment, the Registrar, or a registered owner of a parcel of land as the Registrar's agent, may register a caveat in respect of the rental use designation against the title to the land that is the subject of the rental use designation.

- (6) A caveat registered pursuant to subsection (5)
- (a) must be in a form satisfactory to the Registrar of Land Titles,
 - (b) shall be registered against the certificate of title to the land that is the subject of the rental use designation,
 - (c) runs with the land,
 - (d) may be discharged only by the Registrar or an order of a court,
 - (e) does not lapse and shall not be cancelled except on the receipt by the Registrar of Land Titles of a notice in writing from the Registrar requesting the cancellation, and
 - (f) shall, subject to clauses (d) and (e) and subsection (9), remain registered against the certificate of title to the land, notwithstanding that subsequent to the caveat being registered another person gains title to any portion of the land through
 - (i) a foreclosure action,
 - (ii) civil enforcement proceedings,
 - (iii) an action for specific performance, or
 - (iv) tax recovery proceedings under the *Municipal Government Act*.
- (7) Sections 136, 137 and 138 of the *Land Titles Act* do not apply to a caveat registered under subsection (5).
- (8) Where a caveat in respect of a rental use designation is registered under subsection (5), the land may not be
- (a) sold, made subject to an agreement for sale or otherwise disposed of, unless it is sold to a person referred to in subsection (3),
 - (b) included in a condominium plan or a proposed condominium plan, or

(c) subdivided in any other manner,

by the residential builder or the sole owner during the protection period applicable to the multiple family dwelling under section 1.1 without the written permission of the Registrar.

(9) Subject to the regulations, the Registrar may discharge a caveat on application by the owner of a parcel of land that is the subject of the rental use designation.

(10) This section applies only to multiple family dwellings constructed under a building permit applied for after the coming into force of this section.

6 Section 4(2) is repealed and the following is substituted:

(2) Subject to subsection (2.1), 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 the protection period begins,

- (a) is free from defects in materials and labour and will remain so for a period of at least one year from the date the protection period begins,
- (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 from the date the protection period begins,
- (c) is free from defects in the building envelope and will remain so for a period of at least 5 years from the date the protection period begins, and
- (d) is free from structural defects and will remain so for a period of at least 10 years from the date the protection period begins.

(2.1) In subsection (2), with respect to the common property or common facilities in a building or a phase of development, “the

6 Section 4(2) presently reads:

(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**

date the protection period begins” means the date that is 180 days after the transfer of title described in section 1.1(2)(a).

7 Section 8 is amended by adding the following after subsection (4):

(5) The Registrar

- (a) may, on application by a permit issuer or an applicant for a permit, determine whether a building or a portion of a building or a proposed building or a portion of a proposed building is a new home to which this Act applies or is exempt from the application of this Act, and
- (b) may, on application by a residential builder or owner of a building or a proposed building that is subject to an exemption under this Act, provide notice that the building or proposed building is exempt from the application of this Act.

(6) The Registrar shall give notice of a decision to the applicant under subsection (5) and mail a copy to the registered owner of the land on which the building is or is proposed to be located.

- (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.*

7 New subsections re Registrar's powers.

8 The following is added after section 8:

Delegation by Registrar

8.1 Subject to the regulations, the Registrar may delegate any power or duty conferred or imposed on the Registrar by this Act to one or more employees of the Government of Alberta.

9 Section 15 is amended

- (a) in subsection (2) by adding** “in respect of a new home, including a dwelling unit within a multiple family dwelling that is a new home,” **before** “must not exceed \$100 000.”;
- (b) by repealing subsection (7)(b) and substituting the following:**
 - (b)** if an appeal is commenced regarding the administrative penalty, by depositing an irrevocable letter of credit in the amount of the administrative penalty with the President of Treasury Board and Minister of Finance within 30 days after the date on which the notice of administrative penalty referred to in subsection (4) is served on the person.

10 Section 17 is amended

- (a) in subsection (1) by striking out** “one month” **and substituting** “30 days”;
- (b) in subsections (1) and (2) by striking out** “Minister” **and substituting** “Board”;
- (c) by adding the following after subsection (2):**
 - (3)** A notice of appeal filed under subsection (1) must be accompanied with payment of the applicable fee imposed under section 25.

8 Delegation by Registrar.

9 Section 15 presently reads in part:

(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.

(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.*

10 Section 17 presently reads:

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,*

11 Section 18 is amended

- (a) In subsection (1) by striking out “Act Appeal”;**
- (b) by repealing subsection (2);**
- (c) in subsection (4) by adding “in accordance with any applicable regulations under the *Alberta Public Agencies Governance Act*” after “Board”;**
- (d) in subsection (8) by adding the following after clause (a):**
 - (a.1) respecting delegation by the chair under section 20.2;
- (e) by adding the following after subsection (8):**
 - (9)** Subject to this section and the regulations, the Board may make rules governing its own procedure and business.
 - (10)** The *Regulations Act* does not apply to rules made under subsection (9).

- (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).

11 Section 18 presently reads in part:

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.

(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.

(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;*

12 Section 19 is amended

(a) in subsection (1)

- (i) by adding** “of a decision or order” **after** “section 18”;
- (ii) by striking out** “decision, order or administrative penalty” **and substituting** “decision or order”;

(b) by adding the following after subsection (1):

(1.1) An appeal under section 18 of an administrative penalty does not affect the status or enforceability of the administrative penalty being appealed.

(c) in subsection (2)

- (i) by striking out** “the chair of”;
- (ii) by striking out** “decision, order or administrative penalty” **and substituting** “decision or order”;

(d) in subsection (3)

- (i) by striking out** “the chair of”;
- (ii) by striking out** “the chair considers” **and substituting** “the Board considers”;

- (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.*

12 Section 19 presently reads:

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.

- (iii) **by striking out** “decision, order or administrative penalty” **and substituting** “decision or order”.

13 Section 20 is amended

- (a) **by renumbering it as section 20(1);**
- (b) **in subsection (1) by adding the following after clause (a):**
 - (a.1) the Board may decide questions of the sufficiency, validity or timeliness of service of documents under this Act,

(c) by adding the following after subsection (1):

(2) If any person fails to attend, to answer questions or to produce a record, object or thing as required under subsection (1)(a), or conducts himself or herself in a manner that might be in contempt of the Board or its proceedings, the Board may apply to the Court for an order committing that person for contempt in the same manner as if that person were in breach of an order or judgment of that Court, or restraining any conduct found by the Court to be in contempt of the Board or its proceedings.

(3) On an application under subsection (2), the Court may grant any order that, in the opinion of the Court, is necessary to enable the Board to carry out its duties.

14 The following is added after section 20:

Costs

20.1(1) The Board may order costs against a person in any circumstances as the Board determines to be appropriate.

(2) An order of the Board under subsection (1) may be registered in the Personal Property Registry and at a land titles office and, on registration, has the same effect as if it were a registered writ of enforcement issued after judgment has been entered in an action by the Court.

13 Section 20 presently reads in part:

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,*

14 Costs, delegation by chair.

Delegation by chair

20.2 Subject to the regulations, the chair may delegate any power given to the chair under this Act.

15 Section 21(1) is amended by striking out “one month” and substituting “30 days”.

16 The following is added after section 21:

Decision admissible in appeal

21.1 A copy of a decision of the Board that is certified by the person who presided at the appeal before the Board or by the chair of the Board as being a true copy of the original decision is proof, in the absence of evidence to the contrary, of the decision and is admissible in evidence without proof of the appointment or signature of the person who signed the certificate.

17 Section 28 is amended

(a) in subsection (1)

(i) in clause (e) by striking out “sections 1(1)(y)(ii) and 3(4),” and substituting “section 1.1(2),”;

(ii) by adding the following after clause (f):

(f.1) respecting the determination of the protection period for the common property and common facilities in a building included in a condominium plan registered in respect of a multiple family dwelling originally built for rental purposes;

(iii) by adding the following after clause (i):

15 Section 21(1) presently reads:

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).

16 Decision admissible in appeal.

17 Section 28 presently reads in part:

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

- (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;*

(i.1) respecting delegation by the Registrar under section 8.1;

(b) in subsection (2) by adding the following after clause (d):

(e) respecting the discharge by the Registrar of a caveat under section 3.1(9).

18 This Act comes into force on Proclamation.

- (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);*
- (i) *respecting additional powers and duties of the Registrar;*
- (2) *The Minister may make regulations*
 - (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.*

18 Coming into force.

RECORD OF DEBATE

Stage	Date	Member	From	To
		Questions and Comments	From	To
		Questions and Comments	From	To
		Questions and Comments	From	To
		Questions and Comments	From	To