

2017 Bill 12

Third Session, 29th Legislature, 66 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 12

NEW HOME BUYER PROTECTION AMENDMENT ACT, 2017

THE MINISTER OF MUNICIPAL AFFAIRS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 12

2017

NEW HOME BUYER PROTECTION AMENDMENT ACT, 2017

(Assented to _____, 2017)

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) by repealing clause (d) and substituting the following:

(d) “administrative penalty”, except where used in section 4.5(1)(g) in reference to a prescribed Act, means an administrative penalty imposed under section 15;

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

(o.1) “licence” means a licence issued under Part 1.1;

(iii) by repealing clause (u) and substituting the following:

(u) “owner builder” means an individual who builds or intends to build a new home for personal use or a

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,

(d) “administrative penalty” means an administrative penalty imposed under section 15;

(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;

(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).

person prescribed as an owner builder to which this Act applies;

(b) in subsection (3) by striking out “before the coming into force of this subsection” **and substituting** “before August 1, 2014”.

3 Section 1.1(6) is amended by striking out “after the coming into force of this section” **and substituting** “on or after August 1, 2014”.

4 Section 2 is amended by striking out “after this section comes into force” **and substituting** “on or after February 1, 2014”.

5 The following is added after section 2:

Requirement for licence or authorization

2.1(1) No residential builder shall build a new home except in accordance with a valid licence issued under Part 1.1.

(2) No owner builder shall build a new home except in accordance with a valid authorization issued under Part 2.

6 Section 3(1) is repealed and the following is substituted:

Home warranty requirements

3(1) No person shall build a new home unless

- (a) the new home
 - (i) is registered with the Registrar, and
 - (ii) is covered by a home warranty insurance contract that complies with subsection (6),

and

3 Section 1.1(6) presently reads:

(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 2 presently reads:

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

5 Requirement for licence or authorization.

6 Section 3 presently reads in part:

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.

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

- (b) the person has been offered the option to purchase the additional coverage referred to in subsection (7)(a) and (b).

(1.1) Despite subsection (1)(a)(ii) but subject to any regulations under section 28(1)(h.2), the Registrar may issue, on any terms and conditions the Registrar considers appropriate, an authorization that authorizes the owner builder to build the new home without having a home warranty insurance contract.

7 Section 3.1 is amended

- (a) **in subsection (2) by striking out** “section 3(1)(a) and (2)” **and substituting** “section 3(1)(a)(ii) and (b) and (2)”;
- (b) **in subsection (10) by striking out** “after the coming into force of this section” **and substituting** “on or after August 1, 2014”.

8 The following is added after section 4:

**Part 1.1
Licensing**

Licensing

4.1(1) The Registrar may, on application, issue a licence to a residential builder if

- (a) the Registrar is satisfied that the residential builder meets the prescribed qualifications and conditions for licensing,

- (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.*

7 Section 3.1 presently reads in part:

(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.

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

8 Adds Part 1.1, Licensing.

- (b) where the residential builder is a corporation, the Registrar is satisfied that no individual about whom disclosure is required under subsection (3) would be refused a licence if the individual were an applicant, and
- (c) the residential builder pays the required licence fee.

(2) The Registrar may

- (a) require an applicant to take, or where the applicant is a corporation, to require any of its directors, officers or employees to take, courses and examinations for the purposes of ensuring that the applicant or the applicant's directors, officers and employees meet the qualifications and conditions referred to in subsection (1)(a), and
- (b) set and administer courses and examinations for the purposes of clause (a).

(3) Where a residential builder applying for a licence or the renewal of a licence is a corporation, the residential builder must file a statement with the Registrar disclosing to the satisfaction of the Registrar the identity of all directors and officers of the corporation.

(4) If, after a statement is filed under subsection (3), there is any change in the information required to be disclosed, an updated statement must be filed with the Registrar forthwith.

(5) A licence is not transferable.

Renewal of licence

4.2(1) A residential builder who holds a licence under this Part may, within the time prescribed, apply to the Registrar to have the licence renewed.

(2) The Registrar may renew the licence, with or without conditions and restrictions, if

- (a) the Registrar is satisfied that the residential builder continues to meet the applicable requirements of section 4.1, and
- (b) the residential builder pays the required renewal fee.

Conditions

4.3 Subject to the regulations, the Registrar may at any time impose conditions and restrictions on a licence issued or renewed under this Part.

Expiry of licence

4.4 Subject to section 4.5, a licence expires one year after the day it was issued or last renewed or, if an earlier expiry date is specified on the licence by the Registrar, on the specified date.

Suspension or cancellation of licence

4.5(1) The Registrar may refuse to issue or renew or may at any time suspend or cancel, as the Registrar considers appropriate, the licence of a residential builder

- (a) for any reason that would render the residential builder ineligible for a licence under section 4.1 if the residential builder were applying for a licence under that section,
- (b) if the residential builder has made a false statement about a material matter in the application for the licence or renewal or refuses to provide information about a material matter when requested to do so by the Registrar,
- (c) if the residential builder is convicted of an offence under this Act or a prescribed offence under another Act,
- (d) if the residential builder has breached a condition of the licence or a restriction on the licence,
- (e) if the Registrar considers that the application for the licence or renewal is not or was not made in good faith,
- (f) if the residential builder has failed to comply with a compliance order or a prescribed order or direction under another Act,
- (g) if the residential builder has failed to pay an administrative penalty under this Act or a prescribed Act,
- (h) if the licence was issued in error, or

- (i) in any other circumstances in which the Registrar considers the refusal, suspension or cancellation appropriate to avoid or reduce a risk to the public or any person.

(2) Subject to the regulations, the Registrar may reinstate a licence that has been suspended or cancelled if the Registrar is satisfied that it is appropriate to do so and that the issues that resulted in the suspension or cancellation have been addressed.

Notice of decision and surrender of licence

4.6(1) If the Registrar refuses to issue or renew a licence or suspends, cancels or imposes conditions or restrictions on a licence, the Registrar shall serve the residential builder with notice of the decision.

(2) The notice must

- (a) include written reasons for the Registrar’s decision, and
- (b) advise the residential builder of the right under section 17 to appeal the Registrar’s decision to the Board.

(3) Where the Registrar suspends, cancels or refuses to renew the licence of a residential builder, the residential builder must forthwith surrender the licence to the Registrar.

Holding out

4.7 A person who does not hold a valid licence under this Part shall not represent or hold out, expressly or by implication, that the person is licensed under this Part.

9 Section 5 is amended

(a) in subsection (1)

- (i) **by striking out** “shall issue” **and substituting** “may, on application, issue”;
- (ii) **by striking out** “an individual who intends to build a new home for personal use if the individual” **and substituting** “an owner builder if the owner builder”;

(b) **by repealing subsection (3).**

9 Section 5(1) and (3) presently read:

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

10 Section 6 is repealed and the following is substituted:

Refusal, suspension or cancellation of authorization

6 The Registrar may refuse to issue an authorization to an owner builder or may at any time suspend or cancel, as the Registrar considers appropriate, an owner builder's authorization

- (a) if the owner builder does not meet the prescribed criteria referred to in section 5(1)(b) or does not pay the required fees, if any, under section 5(1)(c),
- (b) if the owner builder has made 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,
- (c) if the owner builder is convicted of an offence under this Act,
- (d) if the owner builder has breached a condition of the authorization or a restriction on the authorization,
- (e) if the Registrar considers that the application for the authorization is not or was not made in good faith,
- (f) if the owner builder has failed to comply with a compliance order,
- (g) if the owner builder has failed to pay an administrative penalty, or
- (h) if the authorization was issued in error.

(c) pays the required fees, if any.

(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.

10 Section 6 presently reads:

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.*

11 Section 7(2) is repealed and the following is substituted:

(2) If the Registrar suspends or cancels an authorization held by an owner builder to whom a building permit has been issued under the *Safety Codes Act*, the Registrar shall notify the permit issuer.

12 Section 9(1)(a) is repealed and the following is substituted:

- (a) licences applied for, issued, renewed, suspended, cancelled or reinstated under this Act,
- (a.1) authorizations applied for, issued, suspended or cancelled under this Act,
- (a.2) exemptions applied for or issued under this Act,

13 Section 11(1)(a) and (b) are repealed and the following is substituted:

- (a) require an owner builder to produce any or all of the following:
 - (i) proof of the owner builder's authorization;
 - (ii) any records relating to the application for the authorization;
 - (iii) any records relating to an exemption from a requirement under this Act,
- (b) require a residential builder to produce any or all of the following:
 - (i) proof of the residential builder's licence;
 - (ii) any records relating to the application for the licence;
 - (iii) proof that a new home built or under construction by the residential builder has the required home warranty coverage;
 - (iv) any records relating to an exemption from a requirement under this Act,

11 Section 7(2) presently reads:

(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.

12 Section 9(1) presently reads in part:

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,

13 Section 11(1) presently reads in part:

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,

- (b.1) require any person who the compliance officer reasonably believes is building a new home to produce proof that the person holds a licence or authorization or is exempt from a requirement under this Act and any records relating to the licence, authorization or exemption,

14 Section 12(3)(a) is amended by striking out “an authorization” and substituting “a licence or an authorization”.

15 Section 15 is amended

- (a) **in subsection (2) by striking out** “in respect of a new home, including a dwelling unit within a multiple family dwelling that is a new home,”;

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

(2.1) Where a contravention or failure to comply referred to in subsection (1) is in respect of a multiple family dwelling, a separate administrative penalty may be imposed for each dwelling unit that is a new home within the multiple family dwelling.

- (c) **in subsection (4) by striking out** “under this section”;

- (d) **by repealing subsection (6) and substituting the following:**

(6) An administrative penalty may be imposed on one or more directors, officers or other persons who authorized, permitted or acquiesced in a contravention or failure to comply by a corporation for which an administrative penalty may be imposed, whether or not an administrative penalty has been imposed on the corporation for the same contravention or failure to comply.

- (e) **by adding the following after subsection (6):**

14 Section 12(3) presently reads in part:

(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;*

15 Section 15 presently reads:

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 in respect of a new home, including a dwelling unit within a multiple family dwelling that is a new home, 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

(6.1) An administrative penalty may be imposed jointly and severally on a corporation and one or more directors, officers or other persons referred to in subsection (6).

(f) in subsection (7) by striking out “imposed under this section”.

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 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.*

16 Section 17(1) is amended by renumbering clause (a) as clause (a.3) and adding the following before clause (a.3):

- (a) who has been refused a licence or renewal of a licence,
- (a.1) whose licence is made subject to conditions or restrictions,
- (a.2) whose licence has been cancelled or suspended,

17 Section 24(1) is repealed and the following is substituted:

Permits

24(1) A permit issuer shall not issue a building permit for a proposed new home unless the applicant for the permit provides evidence, in a form acceptable to the Registrar, that the proposed new home complies with the requirements of this Act.

(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.

16 Section 17(1) 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,*
- (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 Board a notice of appeal within 30 days after being notified in writing of the decision, order or administrative penalty.

17 Section 24(1) presently reads:

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*

18 Section 25 is amended by adding the following after clause (b):

(b.1) for licences;

19 Section 26(1)(d)(iii) is amended by striking out “an authorization or exemption” and substituting “a licence, authorization or exemption”.

(c) *is otherwise exempted from having the required home warranty coverage.*

18 Section 25 presently reads:

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.*

19 Section 26(1) presently reads in part:

26(1) Every person who

- (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.*

20 Section 28 is amended

(a) in subsection (1)

(i) in clause (c) by striking out “a builder” and substituting “a person”;

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

- (h.1) respecting licences, including, without limitation, regulations
 - (i) respecting qualifications and conditions for the purposes of section 4.1(1)(a);
 - (ii) respecting applications for licences and licence renewals;
 - (iii) prescribing or otherwise providing for the time within which a residential builder may apply for renewal of a licence;
 - (iv) respecting the issuance, refusal, renewal, suspension, cancellation and reinstatement of licences by the Registrar;
 - (v) respecting conditions and restrictions referred to in section 4.3;
 - (vi) respecting requirements for residential builders to produce and display proof of having a licence or an exemption;
 - (vii) respecting publication of the issuance, refusal, renewal, suspension, cancellation and reinstatement of licences and of any conditions or restrictions on licences;
 - (viii) establishing categories of residential builders for the purposes of regulations made under any or all of subclauses (i) to (vii), including, without limitation, regulations providing differently for different categories of residential builders;

20 Adds regulation-making powers respecting licensing and authorizations.

- (ix) establishing classes of licences for the purposes of regulations made under any or all of subclauses (i) to (vii), including, without limitation, regulations prescribing or otherwise describing requirements that apply or that do not apply to different classes of licences and activities that licences of different classes authorize or do not authorize;
 - (x) prescribing offences under other Acts for the purposes of section 4.5(1)(c);
 - (xi) prescribing orders and directions under other Acts for the purposes of section 4.5(1)(f);
 - (xii) prescribing Acts for the purposes of section 4.5(1)(g);
- (h.2) respecting authorizations, including, without limitation, regulations
- (i) respecting applications for authorizations;
 - (ii) prescribing criteria for the purposes of section 5(1)(b);
 - (iii) respecting the issuance, refusal, suspension and cancellation of authorizations by the Registrar;
 - (iv) for the purposes of section 3(1.1), respecting circumstances in which the Registrar must not issue an authorization to build a new home unless the new home is covered by a home warranty insurance contract;
 - (v) establishing categories of owner builders for the purposes of regulations made under any or all of subclauses (i) to (iv), including, without limitation, regulations providing differently for different categories of owner builders;
 - (vi) establishing classes of authorizations for the purposes of regulations made under any or all of subclauses (i) to (iv), including, without limitation, regulations prescribing or otherwise

describing requirements that apply or that do not apply to different classes of authorizations, and activities that authorizations of different classes authorize or do not authorize;

- (h.3) respecting requirements for accredited municipalities, accredited regional service commissions, accredited agencies or the Alberta Safety Codes Authority established under the *Safety Codes Act* to disclose information, including personal information, to the Registrar on request;

(b) by repealing subsection (2)(b).

Transitional — regulations

21 The Lieutenant Governor in Council may make regulations providing for the transitional application of the amendments to the *New Home Buyer Protection Act* made by this Act.

Coming into force

22 This Act comes into force on Proclamation.

21 Transitional — regulations.

22 Coming into force.

