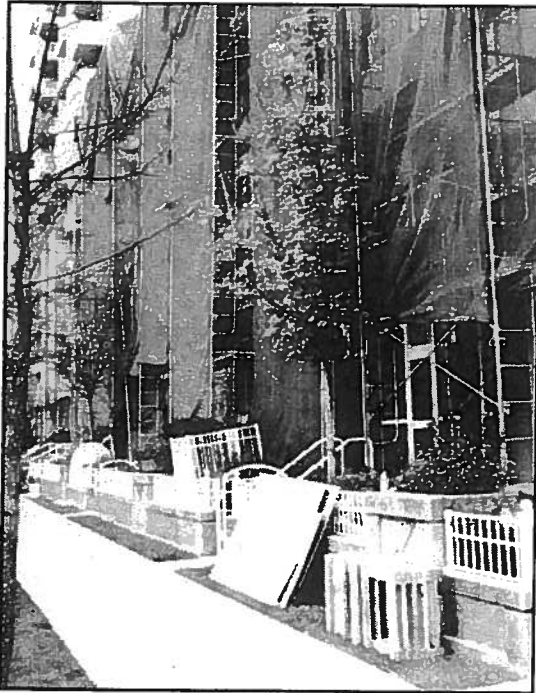


THE PROBLEM—A HISTORY OF LEAKY CONDOS AND THE FORMATION OF THE HOMEOWNER PROTECTION OFFICE

To understand why there were immense problems in BC's building industry related to exterior leaking, licensees can refer to The Barrett Commission's (Commission's) findings and publications. Understanding the problems can prepare a licensee to better handle the buyer's questions such as: "Why is a new warranty-covered home a better investment" and "What is different about these new properties?"

The following is an excerpt from the Homeowner Protection Office (HPO) website:

THE BARRETT COMMISSION



In April 1998 a commission of inquiry into the quality of residential construction, led by former Premier Dave Barrett, was established. The Barrett Report brought forward specific recommendations for action by all three levels of government, the building industry and various professions to strengthen consumer protection and restore confidence in the residential construction industry.

The Commission was re-appointed in August 1999 to inquire into the quality of condominium construction in British Columbia; the financial failure of New Home Warranty of British Columbia Inc.; and the impacts on homeowners, the industry and the economy because of this situation.¹

For further information on The Barrett Commission, the complete report is located on the Homeowner Protection Office's website:
www.hpo.bc.ca/about/history.php.

What Has Gone Wrong?

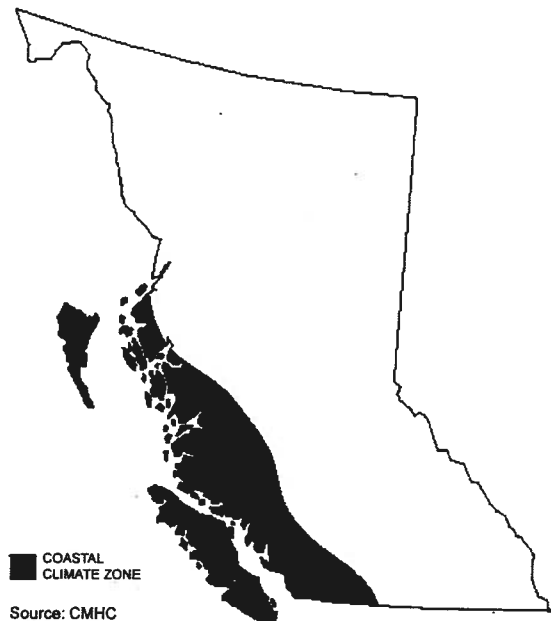
It turns out that our world-class city is, in fact, a world class disaster when it comes to the design and construction of condominium strata corporations. With shame, we must all admit it is a world-class disgrace.

Vancouver Condominium Services, Gerry Fanaken

Recently, there has been a growing awareness of the sub-standard quality of residential housing construction in British Columbia, particularly in the major urban centres. The pace of economic expansion in urban centres has led to an excessive demand for qualified workers and developers. It has also forced an increase in land prices and squeezed profit margins and affordability.

The frequency with which the coastal climate of British's Columbia relatively new construction requires extensive building envelope and roofing renovations, has increased at an alarming rate. This cannot be explained simply by expansion. BC's urban centres, notably Vancouver and Victoria, are located in a geographic and climatic region most affected by mild weather and significant rainfall. These conditions increase the likelihood of water ingress, intensifying the process of rot. This helps to explain the frequency of building failures compared with other regions of Canada.

Coastal Climate of British Columbia



However, climate and economic pressures do not account for the magnitude of the problem. When in Kelowna, the Commission was provided with examples of poor quality construction. This was also apparent through correspondence from other areas. While this is a province-wide issue, it is more severe in temperate, wet regions, with boom-and-bust growth cycles.

In addition to economic and climatic conditions, process and building science issues have led to a disintegration in the quality of construction. The building process has been undertaken in a largely unregulated, residential construction industry, driven to the lowest common denominator by ruthless and unstructured competition.

With respect to building science, public and private sector professionals; including developers, general contractors, builders, architects, engineers, and municipal inspectors; were either unaware of how to employ the appropriate technology, or deliberately failed to create appropriate building designs that insured the construction was of adequate quality.

Only when the entire outer cladding was removed, were the owners aware of the extent of water damage and the deficiencies that caused the damage. Deficiencies included poor quality materials, shoddy construction, incomplete details, improperly sloped balconies, poor joints, lack of proper flashings, etc. This was not just a stucco problem. Along one wall of the building, the reconstruction foreman noted that three different crews had built that wall with three different construction methods and materials.

Mizue Mori, Condo Owner

The financial institutions, mortgage guarantors and warranty programs exacerbated the problem by underwriting mortgages and providing coverage to builders without fully appreciating the magnitude of the risk.

The Building Process

The residential building process operates within a set of complex business relationships, statutes and regulations. The Commission was presented with case after case of ineffective regulation of responsibility and accountability at each stage of the construction process. These included:

- (i) an inability on the part of municipalities to effectively monitor building quality, to make certain inspectors play a meaningful role in ensuring building standards or to enforce building codes;
- (ii) a lack of provincial monitoring to ensure accurate interpretation of the building code, as well as its performance requirements;
- (iii) a lack of responsibility by the developer, builder and general contractor—often facilitated through protective corporate structures;
- (iv) architects who had been unable to maintain professional responsibility in translating designs into quality physical structures;
- (v) engineers who were unable to ensure their involvement in the process would lead to quality construction of the building envelope;
- (vi) a lack of training, skills and qualifications that led to a deterioration in the quality of worker performance;
- (vii) an inadequate home warranty program that, in the majority of cases, was faced with a conflict of interest between its service to the homeowner and its obligation to the developer;
- (viii) a mortgage guarantee system that tended to serve the interests of the residential construction industry and financial institutions, without due regard to the consumer who bought its services;
- (ix) a lack of information from the builder to the strata council; and
- (x) a lack of understanding regarding roles and responsibilities of strata councils and management companies, leaving the homeowner confused and alone.

Who is at fault? In the case of a development, the designer/ developer, architect, engineer, building contractor, municipality ... and shoddy construction. Basically, all parties involved in the construction of the complex. Examples of damages include:

- piping installed still in its plastic wrap so water could not run through it,*
- walkways, balconies and cement eavestroughs sloped toward the walls,*
- lack of or poorly positioned drainage pipes,*
- building material not designed for a rainy climate,*
- improper overhangs,*
- dryer vents not vented to the exterior,*
- numerous building code violations.*
- etc.*

Strata Council, Plan NW3235

Building Science

In addition to economic pressures, climatic conditions and a systemic failure of the building process; building science also played a role in bringing about this crisis of confidence. The factors related to technology, or building science, include:

- (i) a poorly interpreted building code;
- (ii) municipal by-laws that can lead to inappropriate design, exacerbated by architects who do not understand the implications of their designs;
- (iii) the use of new materials without an understanding of how they will be affected by climate;
- (iv) a loss of collective memory and lack of conventional wisdom among inspectors, architects, engineers, developers and contractors regarding the requirements for effective building; and
- (v) ineffective communication and transfer of knowledge among the professionals and business people (who understand the issues), to others involved in the building process

THE SOLUTION—THE HOMEOWNER PROTECTION OFFICE AND LEGISLATION

The Homeowner Protection Office (HPO) has many publications and education programs to assist consumers, builders, REALTORS® and associated professionals.

REALTORS® may want to refer buyers interested in new homes to *Buying A New Home: A Consumer Protection Guide*, published by the HPO. This publication is available online or in print and can be found at: [http:// www.hpo.bc.ca/PublicationsForms/Buying/index.htm](http://www.hpo.bc.ca/PublicationsForms/Buying/index.htm); or ordered through the HPO at: 1-800-407-7757 or 604-646-7055. This book, the brochures and standard information should be made available to consumers in real estate offices.

The HPO is a provincial Crown Corporation formed in 1998 in response to the need to introduce basic consumer protection legislation and regulatory improvements within the residential construction sector.

The HPO was established under the *Homeowner Protection Act (Act)*, which was passed on July 28, 1998 for the main purposes of:

- strengthening consumer protection for new homebuyers, and
- bringing about an improvement in the quality of residential construction in the province.

The HPO is responsible for four program areas:

1. Licensing residential builders and building envelope renovators;
2. Monitoring the mandatory, third-party home warranty insurance system;
3. Researching and educating in the areas of building science and consumer information; and
4. Delivering a no-interest repair loan program and PST relief grant program for owners of leaky homes.²

² Homeowner Protection Office, *Overview of the Homeowner Protection Office*

What Your Buyer Needs to Know:

- Since the leaky condo problem was recognized, millions of dollars and countless hours have been invested to address this issue. A great deal of effort from industry stakeholders has been expended to put into place a program that ensures quality for buyers purchasing new homes built with permits after July 1, 1999.
- An owner-built home may not be built to the same standards as a warranted home. The licensee and buyer should make sure to thoroughly investigate both the property and the builder prior to an unconditional commitment.

All buyers are concerned with the long-term value and security of their investment. It is important for buyers' agents to be confident and skilled in the explanation of the problems that homes that used older construction techniques can experience. Explaining this issue and contrasting it with the benefits of buying a home built using current construction techniques, combined with the compulsory *Homeowner Protection Act* 2-5-10 year warranty coverage, is vital to helping buyers make informed decisions.



BUILDER LICENSING—WHAT IS REQUIRED AND WHAT YOUR BUYER SHOULD KNOW

The Homeowner Protection Office's licensing program is the key to improving both the quality of construction and future confidence in new homes and strata properties. Today, all builders who build homes for consumers must be registered and licensed. This brings competence and control to a previously unchecked system.

Your buyer should be aware of what a licensed builder is and what a licensed builder has done to qualify for licensing. The following are key points:

- As of July 1, 1999, all residential builders applying for building permits are required to be licensed by the Homeowner Protection Office. Owner-builders are exempt from licensing.
- In order to obtain a building permit, builders must prove that they are licensed and that the proposed new home is covered by a third-party home warranty insurance provider authorized by the Financial Institutions Commission (FICOM). FICOM data can be obtained through the website <http://www.fic.gov.bc.ca>.

EXCERPT FROM THE FICOM WEBSITE

Mandate

The Financial Institutions Commission

FICOM is a regulatory agency of the provincial Ministry of Finance. FICOM is responsible for administering ten statutes that regulate the pension, financial services and real estate sectors in British Columbia. The primary focus of this regulation is to ensure that:

- *Institutions and pension plans in these sectors remain solvent;*
- *Market conduct requirements for these sectors are respected;*
- *Unsuitable individuals do not participate in financial service markets;*
and

- *Through the Credit Union Deposit Insurance Corporation (CUDIC), insure credit union deposits and non-equity shares up to the maximum defined by regulation (\$100,000 per separate deposit) per credit union.³*

RESPONSIBILITIES | INSURANCE

Overview

The Insurance Department is responsible for the day-to-day regulation of private sector insurers operating in British Columbia.

Things We Do:

- *ensure that insurers are properly authorized;*
- *supervise insurers and address solvency concerns with their operations;*
- *address statutory market conduct issues;*
- *maintain a timely and efficient registration system for insurers and captive insurance companies;*
- *work with other jurisdictions to effectively deal with cross jurisdictional regulatory problems.⁴*

Residential builder licenses cost \$600 for the first year. Annual renewal fees are \$500. An additional \$25 per housing unit is charged as part of the licensing fee.

The *Act* also provides for building envelope renovator licensing and mandatory third-party home warranty insurance on building envelope renovations which came into effect September 30, 2000.

When your buyer considers purchasing a new home or condominium from a licensed builder, they not only receive a 2-5-10 year warranty, but they also have the assurance that the warranty provider has already done some background checks.

³www.fic.gov.bc.ca/aboutus/mandate.htm

NEW HOME WARRANTY

All warranties offered in BC adhere to the strict requirements of the *Homeowner Protection Act* and therefore all offer the same terms.

The 2-5-10 year home warranty insurance is a program that offers substantial comfort and long-term value to the homeowner. A buyer looking at new homes and condominiums should be provided with the details of these warranties at the beginning of the process. This is an important aspect of the new home transaction and should be reviewed by the REALTOR® with all buyers.

In most cases, the builder and associated sales team will have information packages on the warranty coverage for the buyer to review. Some highlights are:

New Home Warranties

- *As of July 1, 1999, residential builders applying for building permits to construct new homes are required to provide third-party warranty insurance. Owner-built homes, purpose-built rental housing (multi-unit, single legal title, built for rental purposes), factory built homes, hotels, motels, dormitories, care facilities and float homes are all exempt from warranty requirements.*
- *In geographic areas where building permits are not required for new home construction, warranty insurance must be in place prior to the commencement of construction.*
- *Minimum coverage and standards for home warranty contracts are now set by regulation rather than by warranty providers. Minimum coverage includes 2 years on labour and materials, 5 years on the building envelope, and 10 years on the structure of the home. The 2-year labour and materials coverage is broken down as follows.*

Any defect in material and labour:

- *12 months on detached homes and on non-common property in strata units (includes fee simple homes)*
- *15 months on common property of strata buildings*

Defects in materials and labour related to the delivery and distribution systems (electrical, plumbing, heating, ventilation, air conditioning, etc.):

- *24 months for all buildings*
- *At the request of the owner, a dispute with the warranty provider can be handled through mandatory third-party mediation.⁵*

Commencement dates on home warranty insurance are:

- Custom Homes: date of first occupancy or date of first occupancy permit; whichever transpires first.
- Spec. Homes: date of first occupancy or date of transfer of legal title to first owner; whichever transpires first.
- Strata Units: earliest of date of first occupancy or date of transfer of legal title to first owner.
- Common Property: earliest of date of first-unit occupancy in strata building or date of transfer of legal title to first owner in building.

There are limits on the coverage of claims. This is an important point in the sales process and often overlooked. As a result of some astonishingly high sales values on many new products in BC, the buyer must know these limits on coverage.

Fee Simple (primarily detached dwelling units):

- The lesser of the first owner's purchase price or \$200,000.

Strata Homes:

- Strata Unit: lesser of the first owner's purchase price or \$100,000.
- Common Property: the lesser of \$100,000 times the number of dwelling units in the building or \$2.5 million per building.

⁵ Homeowner Protection Office, "Highlights Homeowner Protection Act and Regulations for Licensing and Mandatory Third-Party Warranty Insurance for New Residential Construction," 11/00

The *Homeowner Protection Act* regulations specify what the home warranty insurance companies can exclude from their policies.

General exclusions can include:

- landscaping;
- non-residential detached structures (however, parking structures, andrecreational and amenity facilities in multi-unit buildings are covered);
- commercial use areas (today we see many buildings mixing commercial on the main floor(s) of buildings and residential units above. In addition, live-work units with various zone and uses need to be reviewed and understood on an individual basis);
- roads, curbs and lanes (however, driveways are covered);
- site grading and surface drainage;
- the operation of municipal services;
- septic tanks and fields; and
- water quality and quantity.

Defect related exclusions include:

- normal wear and tear;
- normal shrinkage of materials from construction;
- use of new home for non-residential purposes;
- materials, labour and design supplied by the owner;
- damage caused by anyone other than the residential builder;
- damage caused by insects or rodents;
- failure of an owner to minimize damage; and
- acts of nature.