

OWNER-BUILT HOMES AND THEIR SALE TO THE PUBLIC

Owner-Built Homes

In this section, it must be pointed out that an owner-built home may exceed in many ways the craftsmanship and quality of a “spec built” home. Care needs to be taken to ensure the buyer understands what they are buying and the associated realities of collecting in the case of deficiencies.

- An owner-builder is a person who builds a single, detached home for their own personal use, not more than once in any 18-month period. An owner builder does not have to be licensed or provide third-party warranty insurance on their home. An Owner Builder Declaration and Disclosure Notice must be filled out when applying for a building permit. To obtain this notice should the original copy be misplaced, it can be found at the local governing office where building permits are issued.
- Should owner-builders want to sell their homes within the first ten years after first occupancy, the owner could face legal action and is personally liable to subsequent purchasers for defects in the home. Owner-builders must also provide the purchaser with a copy of the disclosure notice.
- Purchasers of owner-built homes are protected by the statutory protection provisions of the *Act*, which requires all new owner-built homes to be reasonably fit for habitation, built from materials of good quality and designed and constructed with ordinary competence, skill and care.⁶
- The owner-builder must build or directly manage the construction of the new home; otherwise, it is not an owner-built home. If the owner-builder does not build or manage the construction of the new home as required, and instead hires a builder or construction manager to perform these functions, both the owner-builder and the hired builder/ construction manager could face prosecution for offences under the *Homeowner Protection Act*.

⁶ Homeowner Protection Office, “Highlights Homeowner Protection Act and Regulations for Licensing and Mandatory Third-Party Warranty Insurance for New Residential Construction ”

- Every person who knowingly furnishes false information on an Owner Builder Authorization, fails to file a declaration with the building department or the HPO or illegally acts as an owner-builder has committed an offence under the *Homeowner Protection Act* and is liable upon conviction to a fine of up to \$25,000, imprisonment for a term of up to one year, or both.⁷

Definitions associated with owner-builders

The following are defined under the *Homeowner Protection Act Regulations*.

- **developer** means a residential builder that sells the residential builder's ownership in a new home, and includes a vendor that contracts with a general contractor for the construction of a new home⁸;
- **general contractor** means a residential builder that is engaged under contract by an owner, developer or vendor to perform or cause to be performed all or substantially all of the construction of a new home, and includes a construction manager and project manager;⁹
- **owner-builder** means an individual who:
 - (a) for personal use builds, or undertakes the renovation of, a detached self-contained dwelling unit or any building, or portion of a building, of a class prescribed by the regulations, and
 - (b) has not, within the previous 18 months, built or undertaken the renovation of a dwelling unit or building referred to in paragraph (a).¹⁰
- **residential builder** means a person who engages in, arranges for or manages all or substantially all of the construction of a new home or agrees to do any of those things, and includes a developer and a general contractor.¹¹

⁷ Homeowner Protection Office, "Important Information for Owner-Builders," Nov. 2007.

⁸ *Ibid.*

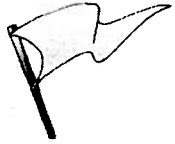
⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

In the area of owner-built homes, the licensee must exhibit extra care and attention to ensure that their buyer is aware of ALL aspects of the risks associated with the purchase of an owner-built home.

An owner-built home can provide all the comfort and long-term value of a warranty covered home, provided the proper checks and balances exist. One of the keys to ensuring your buyer can assess an owner-built home is for the buyer's agent to ensure that both a professional inspection and background check on the owner-builder is completed.



Immense liability hangs over the head of a licensee who has sold a buyer an owner-built home without ensuring the buyer has carefully reviewed and understands the answers to the following questions:

1. Is there a 10-year defect liability and does the buyer have the methods and ability to collect in the event of defects?
2. Has a careful review of a professional building inspection report been provided by an independent individual retained by the buyer?
3. Has a careful review been done of the owner-builder's background? The issue here is, does the owner-builder have the capacity financially to stand behind the 10-year defect liability and is there a realistic chance of success in a subsequent buyer collecting on defect liability?
4. Is a copy of the Owner Builder Authorization attached to the Contract of Purchase and Sale? This form should be completed and the buyer should initial acknowledgment of understanding on the document.

Note: A copy of the HPO information publication *Important Information for Owner Builders* is included in Appendix A.

The following clause from the *Licensee Practice Manual (LPM)* is suggested for the sale of owner-built homes and for any subsequent sales within the 10-year construction period.

The Buyer acknowledges having received a copy of the Owner-Builder Declaration and Disclosure Notice dated (date), prior to making this offer, in accordance with the Homeowner Protection Act and regulations.¹²

UNDERSTANDING COMPANIES PROVIDING HOME WARRANTY

A list of providers of home warranty products is provided by the Homeowner Protection Office. While there is more than one company offering home warranty insurance, the coverage and protection is the same to the consumer. This is due to the fact that the coverage offered is mandatory under the *Act*. To get a copy of insurers who are active with the HPO you can visit: www.hpo.bc.

PROHIBITION ON SALES AND OFFERS TO SELL

- 20.1** (1) Subject to subsection (2), an owner builder must not sell or offer to sell a new home
- (a) while the new home is being constructed, or
 - (b) within the prescribed period of time after the new home has been built, unless the registrar permits the sale or offer under subsection (2).
- (2) On application to the registrar, an owner builder may be permitted to sell or offer for sale a new home despite the requirements of subsection (1) if
- (a) the registrar is satisfied that the person would suffer undue hardship if the permission is not granted, and
 - (b) the person pays the prescribed fee.
- (3) The registrar may impose conditions on a permission granted under subsection (2).¹³

¹² *Real Estate Council of BC, Licensee Practice Manual (Real Estate Council of BC, Vancouver, 2006) 6th Edition, p. 235.*

¹³ *Homeowner Protection Act.*

STATUTORY PROTECTION

23 (1) *A residential builder or an owner builder and a vendor of a new home are both deemed to have agreed with the owner of the new home, to the extent of labour, materials and design supplied, used or arranged by the residential builder, owner builder or vendor, that the new home, except to the extent prescribed by regulation,*

(a) is free from defects in materials and labour and will remain so for a period of at least 2 years after

(i) the date an occupancy permit with respect to the new home was first issued, or

(ii) if no occupancy permit has been issued with respect to the new home, the date the new home was first occupied,

(b) is free from defects in the building envelope, including defects resulting in water penetration, and will remain so for a period of at least 5 years after

(i) the date an occupancy permit with respect to the new home was first issued, or

(ii) if no occupancy permit has been issued with respect to the new home, the date the new home was first occupied, and

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

(i) the date an occupancy permit with respect to the new home was first issued, or

(ii) if no occupancy permit has been issued with respect to the new home, the date the new home was first occupied.

(2) Any term of an agreement that purports to waive, exclude, limit or qualify the protection under subsection (1) is of no effect.

(3) The protection under subsection (1) is for the benefit of whoever is the owner of the new home from time to time until the end of the period within

which an action may be brought under subsection (5), and that owner is deemed

(a) to have given good consideration for the benefit of the protection, and

(b) to be the only person entitled to recover damages for a breach of the protection.

(4) Despite subsection (3), if the ownership of the new home changes during the course of an action for breach of the protection under subsection (1), the new owner is entitled to be substituted as plaintiff and to enforce all rights that the former owner could have enforced.

(5) An action in respect of the protection under subsection (1) must be commenced within 10 years after the date of first occupancy of the new home or, in respect of common property, common facilities and other assets of a strata corporation, the date the strata plan is deposited in a land title office in accordance with the Strata Property Act.

(6) Nothing in this section

(a) excludes, qualifies or limits any other term, express or implied,

(b) relieves any person of liability to which they would otherwise be subject, or

(c) subjects a municipality or regional district to any greater liability than if this section were not in force.

(7) This section does not apply to a new home covered by home warranty insurance.¹⁴

THE DIFFERENCES BETWEEN OLD AND NEW CONSTRUCTION WARRANTED PROPERTIES

While representing buyers in the field, the licensee will often be showing both new and used products. The goal of this section is to provide the licensee with a basic understanding of the differences between pre-July 1999 and post-July 1999 building exterior construction so that licensees are able to explain and display these differences to the buyer. Basic troubleshooting for moisture penetration and the deficiency walk-through process are also included.

FACE-SEALED EXTERIOR WALLS

Traditionally, builders have relied on an exterior wall system, called face-sealed walls, where a completely waterproof barrier is created at the outer face of the building. This system can work if all conditions are perfect; however, slight imperfections and design faults can lead to leaking that results in rot and mould in the internal wall components.

What happens in leaky buildings is that when the exterior surface is frequently or continually wet, any imperfections, cracks or holes lead to air movement between the interior of the building and the exterior (moist) air. This air exchange is the bus which carries water into the building and the completely sealed wall system. Once in, the water is trapped and, over time, creates rot, mould and general chaos in what is supposed to be a sealed, dry environment.



Many building codes have not been amended to prevent face-sealed walls. When dealing with an owner-built home, the licensee should enquire about what rain penetration system is used for the building and what steps have been taken for the prevention of moisture penetration.

RAINSCREEN TECHNOLOGY

Many exterior wall systems built by licensed builders under the 2-5-10 year warranty program utilize rainscreen technology exterior wall systems. Why? The warranty companies require it. In areas where the warranty companies feel it is warranted, (the wet areas of BC) they seek rainscreen

exteriors. In dry areas the companies will permit the traditional face sealed systems, which function well in the dry climate.

Rainscreen technology is a system that sees the exterior *skin* deflect the majority of water at the exterior cladding. Behind the exterior skin, a cavity of air provides a drainage path for any water that penetrates the cladding. This air cavity runs from the top to the bottom of the wall with deliberately created openings to facilitate drainage and drying. A “rainscreen consultant,” approved by the warranty company, inspects the finished exterior for each building carrying a 2-5-10 year warranty.

The small amount of water that passes through the exterior cladding drains through the air cavity and leaves the interior of the wall system completely dry.

Rainscreen technology is utilized for all exterior cladding materials. In the case of concrete high-rise buildings, an air cavity exists between the interior concrete wall and the exterior panel, which deflects the majority of the moisture.