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IMPORTANT INFORMATION

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Homeowner Protection Act and Insurance Act**HOMEOWNER PROTECTION ACT REGULATION**

[includes amendments up to B.C. Reg. 360/2004]

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Definitions

1 (1) In this regulation:

"Act" means the *Homeowner Protection Act*;

"building code" means, as applicable,

(a) the British Columbia Building Code established under the *Municipal Act*, or

(b) the Vancouver Building Bylaw established under the *Vancouver Charter*,

in force at the time that the building permit was issued for the new home or, in jurisdictions where a building permit is not required, in force when construction commences;

"building envelope" means the assemblies, components and materials of a new home which are intended to separate and protect the interior space of the new home from the adverse affects of exterior climatic conditions;

"common property" has the same meaning as in the *Condominium Act*, but does not include land;

"cooperative" means a building, or a portion of a building, provided for residential occupancy purposes to members of an association incorporated or continued under the *Cooperative Association Act*;

"defect" means any design or construction, that is contrary to the building code or that requires repair or replacement due to the negligence of a residential builder or person for whom the residential builder is responsible at law;

"defects in the building envelope" means defects that result in the failure of the building envelope to perform its intended function;

"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 home;

"director nominee" means the director of a residential builder

corporation named as the representative of the corporation on the licence of the residential builder;

"driveway" means a surface intended and constructed primarily to be used for vehicular access to or from a new home;

"dwelling unit" means a class of new home which is a building, or a portion of a building, that

- (a) is newly constructed,
- (b) is intended for residential occupancy,
- (c) is a single, self-contained residence usually containing cooking, eating, living, sleeping and sanitary facilities, and
- (d) may contain a secondary suite if permitted by local bylaws;

"factory built home" means a home which is governed by or required to be certified under CSA standard CAN/CSA-A277;

"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;

"home warranty insurance" has the same meaning as in section 189.1 (1) of the *Insurance Act*;

"load bearing" means subjected to or designed to carry loads in addition to its own dead load, but does not include a wall element subjected only to wind or earthquake loads in addition to its own dead load;

"manufactured home" means a factory built home or a mobile home;

"mobile home" means a home which is governed by or required to be certified under CSA standard CSA-Z240;

"multi-unit building" means a building containing 2 or more dwelling units together with associated common property, if any;

"rental purposes" means an occupancy or intended occupancy which is or would be governed by a tenancy agreement as defined in section 1 of the *Residential Tenancy Act*;

"secondary suite" means a suite located in and forming part of a

dwelling unit where the dwelling unit remains as a single legal title;

"walkway" means a surface intended and constructed primarily to be used as a pedestrian access to or from a new home, and may include stairs.

(2) For the purposes of the Act and this regulation, **"new home"** includes

(a) a non-residential building, or portion thereof, converted to use for residential occupancy and sale, and

(b) a cooperative.

(3) If a residential builder or owner is more than one person, the obligation of each person is deemed to be joint and several.

[am. B.C. Reg. 126/99, s. 1.]

Part 1 — Administration and Licensing

Exemptions

2 (1) The following classes of new homes, other than new homes that are strata titled, are exempt from the definition of "new home" in section 1 of the Act:

(a) hotels and motels;

(b) dormitories;

(c) care facilities;

(d) floating homes.

(2) A multi-unit building that is constructed for rental purposes and is

(a) owned under a single legal title, or

(b) strata-titled with all the dwelling units held under one ownership

is exempt from sections 22 and 26 of the Act provided that a restrictive covenant is registered on the title restricting the sale or other disposition of any dwelling unit for 10 years from the date of first occupancy of a dwelling unit in the building.

(3) Repealed. [B.C. Reg. 360/2004, Sch. A, s. 1.]

(4) For the purpose of section 19 (3) of the Act, a worker who installs eavestroughs and downspouts need not be certified as a sheet metal

worker.

[am. B.C. Regs. 126/99, s. 2; 360/2004, Sch. A, s. 1.]

Homeowner Protection Office

- 3** The Homeowner Protection Office must, on or before December 31 in each year, submit to the minister and to Treasury Board for review and approval an annual business plan that includes the following:
- (a) revenue, expenditure, borrowing and lending proposals;
 - (b) a statement of assets and liabilities;
 - (c) any other information that the minister may require.

Residential builder licence

- 4** (1) A person may apply to the registrar for a residential builder licence, or renewal of a residential builder licence, by providing, in a form acceptable to the registrar, all of the following:
- (a) particulars respecting the applicant and director nominee, if any, including name, address, telephone numbers, fax number and driver's licence number;
 - (b) if the applicant is a corporation, the name of a director nominee of the corporation who agrees to act as representative of the corporation and in whose name the licence will issue;
 - (c) the name of each partner, director and officer of the applicant;
 - (d) evidence of acceptance for home warranty insurance from all warranty providers that may have accepted the applicant under section 5;
 - (e) a list of, and the locations of, all new homes completed by the residential builder over the 36 month period immediately preceding the application, including the building type and the number of dwelling units;
 - (f) a list of all new home construction-related organization memberships that are held by the applicant and each partner, director and officer named under paragraph (c);
 - (g) a list of professional courses related to new home construction taken by each partner, officer and director named

- under paragraph (c), including industry accreditation;
- (h) an undertaking by the applicant to ensure that every person employed in the construction of a new home who is required under the Act to be licensed has a current licence;
- (i) an undertaking by the applicant not to employ a person to work in a compulsory certification occupation or a compulsory certification trade if the applicant knows, or would reasonably be expected to know, that the person is not permitted to work in that trade or occupation;
- (j) an undertaking by the applicant to comply with the regulations and standards in force that are applicable to any new home to be constructed by the applicant;
- (k) particulars of any convictions or judgements against any person named in paragraph (c) for fraud or for offences committed under the *Trade Practice Act*, the *Consumer Protection Act* or the *Business Practices and Consumer Protection Act*;
- (l) the signature of the applicant or, in the case of a corporation, the director nominee named under paragraph (b).

- (2) An application or renewal under subsection (1) must be accompanied by the fee set out in section 1 or 2 of Schedule 1.
- (3) On receipt, evaluation and approval of a completed application as required by subsection (1), the registrar may issue to the applicant a residential builder licence.
- (4) In addition to the fee payable under subsection (2), a residential builder must pay the fee set out in section 3 of Schedule 1 at the time that home warranty insurance is approved for a new home.
- (5) For the purposes of Part 9 of the Act, a residential builder must pay the fee set out in section 4 of Schedule 1 at the time that home warranty insurance is approved for a new home.
- (6) The licensing requirements of section 14 of the Act do not apply to an individual who, as an employee of a residential builder licensed under this section, works as a project manager or construction manager.

[am. B.C. Reg. 274/2004, Sch. 3, s. 3.]

Part 2 — Home Warranty Insurance

Acceptance of residential builder for home warranty insurance

5 (1) Before accepting a residential builder for home warranty insurance, a warranty provider may make inquiries about the applicant as follows:

(a) does the applicant have the financial resources to undertake the construction of the number of new homes being proposed by the applicant's business plan for the following 12 months;

(b) does the applicant and its directors, officers, employees and consultants possess the necessary technical expertise to adequately perform their individual functions with respect to their proposed role in the construction and sale of new homes;

(c) does the applicant and its directors and officers have sufficient experience in business management to properly manage the new home construction process;

(d) does the applicant and its directors, officers and employees have sufficient practical experience to undertake the proposed new home construction;

(e) does the past conduct of the applicant and its directors, officers, employees and consultants provide a reasonable indication of good business practices, and reasonable grounds for belief that its undertakings will be carried on in accordance with all legal requirements;

(f) is the applicant reasonably able to provide, or to cause to be provided, after-sale customer service for the new homes to be constructed.

(2) A warranty provider may charge a fee to make the inquiries permitted by subsection (1).

Approval of a new home for home warranty insurance

6 Before approving home warranty insurance for a new home, a warranty provider may make inquiries and impose conditions as follows:

(a) to determine if the applicant has the necessary capitalization or financing in place, including any reasonable contingency reserves, to undertake construction of the proposed new home;

(b) to determine if the applicant or, in the case of a

corporation, its directors, officers, employees and consultants possess reasonable technical expertise to construct the proposed new home, including specific technical knowledge or expertise in any building systems, construction methods, products, treatments, technologies and testing and inspection methods proposed to be employed;

(c) to determine if the applicant or, in the case of a corporation, its directors, officers, employees and consultants have sufficient practical experience in the specific types of construction to undertake construction of the proposed new home;

(d) to determine if the applicant has sufficient personnel and other resources to adequately undertake the construction of the proposed new home in addition to other new homes which the applicant may have under construction or is currently marketing;

(e) to determine if

(i) the applicant is proposing to engage a general contractor to undertake all or a significant portion of the construction of the proposed new home,

(ii) the general contractor is a licensed residential builder registered with the Homeowner Protection Office, and

(iii) the general contractor meets the criteria set out in this section;

(f) requiring that a residential builder provide security in a form suitable to the warranty provider;

(g) establishing or requiring compliance with specific construction standards for the new home;

(h) restricting the applicant from constructing some types of new homes or using some types of construction or systems;

(i) requiring the use of specific types of systems, consultants or personnel for the construction;

(j) requiring an independent review of the new home building plans or consultants' reports or any part thereof;

(k) requiring third-party verification or certification of the construction of the new home or any part thereof;

- (l) providing for inspection of the new home or any part thereof during construction;
- (m) requiring ongoing monitoring of the new home, or one or more of its components, following completion of construction;
- (n) requiring that the residential builder or any of the design professionals, engineering professionals, consultants, general contractors or subcontractors maintain minimum levels of insurance, bonding or other security naming the potential owners and warranty provider as loss payees or beneficiaries of the insurance, bonding or security to the extent possible;
- (o) requiring that the residential builder provide a list of all design professionals and other consultants who are involved in the design or construction inspection, or both, of the new home;
- (p) requiring that the residential builder provide a list of trades employed in the construction of the new home, and requiring evidence of their current trades certification if applicable;
- (q) imposing on the residential builder other restrictions or conditions as the warranty provider sees fit.

Mandatory warranty conditions

- 7** For the purposes of section 189.1 (2) of the *Insurance Act*, home warranty insurance must include the mandatory warranty conditions set out in Schedule 2.

Minimum standards of coverage

- 8** For the purposes of section 189.1 (3) of the *Insurance Act*, home warranty insurance must provide, as applicable, the minimum standards of coverage set out in Schedule 3.

Permitted warranty terms

- 9** A warranty provider may include any of the following provisions in home warranty insurance:
- (a) if the warranty provider makes a payment or assumes liability for any payment or repair under home warranty insurance,

(i) the warranty provider is subrogated to all rights of recovery of an owner against any person or persons who may have caused or contributed to the requirement for the payment or repair under home warranty insurance,

(ii) the warranty provider may bring an action at its own expense, in the name of the owner or of the warranty provider, to enforce such rights, and

(iii) the owner must fully support and assist the warranty provider in the pursuit of those rights if the warranty provider pursues such subrogated rights;

(b) implied or expressed warranties or representations made by a residential builder to an owner are not binding on the warranty provider except as set out in the Act and this regulation or as set out in the applicable home warranty insurance;

(c) an owner must permit the warranty provider or residential builder, or both, to enter the new home at all reasonable times, on the giving of reasonable notice to the owner,

(i) to monitor the new home or its components,

(ii) to inspect for required maintenance,

(iii) to investigate complaints or claims, or

(iv) to undertake repairs under the home warranty insurance,

and, if any reports are produced as a result of any of the activities referred to in subparagraphs (i) to (iv), the reports must be provided to the owner on request;

(d) Repealed. [B.C. Reg. 126/99, s. 3.]

(e) an owner must provide to the warranty provider all information and documentation that the owner has available, as reasonably required by the warranty provider, in order to investigate a claim or maintenance requirement, or to undertake repairs under the home warranty insurance;

(f) to the extent that damage to a new home is caused by the unreasonable refusal of an owner or occupant to permit the warranty provider or residential builder access to the new home for the reasons set out in paragraph (c) or to provide

the information required by paragraph (e), such damage is excluded from the home warranty insurance.

[am. B.C. Reg. 126/99, s. 3.]

Permitted exclusions — general

10 (1) The following may be excluded by a warranty provider from home warranty insurance:

(a) landscaping, both hard and soft, including plants, fencing, detached patios, planters, gazebos and similar structures;

(b) non-residential detached structures including sheds, garages, carports or outbuildings, or any structure or construction not attached to or forming an integral part of a multi-unit building or other new home;

(c) any commercial use area and any construction associated with a commercial use area;

(d) roads, curbs and lanes;

(e) subject to section 11 (m), site grading and surface drainage except as required by the building code;

(f) the operation of municipal services, including sanitary and storm sewer;

(g) septic tanks or septic fields;

(h) the quality or quantity of water, either from a piped municipal water supply or from a well;

(i) a water well but excluding equipment installed for the operation of a water well used exclusively for a new home, which equipment is considered to be part of the plumbing system for that new home for the purposes of the home warranty insurance.

(2) The exclusions permitted by subsection (1) do not include any of the following:

(a) a driveway or walkway;

(b) recreational and amenity facilities situated in, or included as the common property of, a new home;

(c) a parking structure in a multi-unit building;

(d) a retaining wall that

- (i) an authority having jurisdiction requires to be designed by a professional engineer, or
- (ii) is reasonably required for the direct support of, or retaining soil away from, a new home, driveway or walkway.

Permitted exclusions — defects

11 (1) A warranty provider may exclude any or all of the following items from home warranty insurance:

- (a) weathering, normal wear and tear, deterioration or deflection consistent with normal industry standards;
- (b) normal shrinkage of materials caused by drying after construction;
- (c) any loss or damage which arises while a new home is being used primarily or substantially for non-residential purposes;
- (d) materials, labour or design supplied by an owner;
- (e) any damage to the extent that it is caused or made worse by an owner or third party, including
 - (i) negligent or improper maintenance or improper operation by anyone other than the residential builder or its employees, agents or subcontractors,
 - (ii) failure of anyone, other than the residential builder or its employees, agents or subcontractors, to comply with the warranty requirements of the manufacturers of appliances, equipment or fixtures,
 - (iii) alterations to the new home, including the conversion of non-living space into living space or the conversion of a dwelling unit into 2 or more units, by anyone other than the residential builder or its employees, agents or subcontractors while undertaking their obligations under the sales contract, and
 - (iv) changes to the grading of the ground by anyone other than the residential builder or its employees, agents or subcontractors;
- (f) failure of an owner to take timely action to prevent or minimize loss or damage, including the failure to give prompt

notice to the warranty provider of a defect or discovered loss or a potential defect or loss;

(g) any damage caused by insects or rodents and other animals, unless the damage results from non-compliance with the building code by the residential builder or its employees, agents or subcontractors;

(h) accidental loss or damage from acts of nature including, but not limited to, fire, explosion, smoke, water escape, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide, and changes in the level of the underground water table which are not reasonably foreseeable by the residential builder;

(i) bodily injury or damage to personal property or real property which is not part of a new home;

(j) any defect in, or caused by, materials or work supplied by anyone other than the residential builder or its employees, agents or subcontractors;

(k) changes, alterations or additions made to a new home by anyone after initial occupancy, except those performed by the residential builder or its employees, agents or subcontractors as required by the home warranty insurance or under the construction contract or sales agreement;

(l) contaminated soil;

(m) subsidence of the land around a new home or along utility lines, other than subsidence beneath footings of a new home or under driveways or walkways;

(n) diminution in the value of the new home.

(2) Subsection (1) (i) includes bodily injury, or damage to personal property, caused by mold.

[am. B.C. Reg. 360/2004, Sch. A, s. 2.]

Limits on home warranty insurance coverage

12 (1) If a warranty provider establishes a limit on claims under home warranty insurance, the limits must not be less than the following:

(a) for a dwelling unit in fee simple ownership, the lesser of
(i) the original purchase price paid by the owner, and

- (ii) \$200 000;
 - (b) for a dwelling unit in a strata titled or multi-unit building, the lesser of
 - (i) the original purchase price paid by the owner, and
 - (ii) \$100 000;
 - (c) for the common property in a strata titled building or in a multi-unit building that is not strata-titled, the least of
 - (i) the total original purchase price for all components of the multi-unit building,
 - (ii) \$100 000 times the number of dwelling units, and
 - (iii) \$2 500 000.
- (2) If a strata plan consists of a number of buildings, the limit under subsection (1) (c) applies to each building.
- (3) When calculating the cost of warranty claims in respect of the standard limits under home warranty insurance, a warranty provider may include
- (a) the cost of repairs,
 - (b) the cost of any investigation, engineering and design required for the repairs, and
 - (c) the cost of supervision of repairs, including professional review but excluding legal costs.

[am. B.C. Reg. 126/99, s. 4.]

Home warranty insurance documentation

- 13** (1) A warranty provider must not include in home warranty insurance any provision that requires an owner
- (a) to sign a release before repairs are performed under the home warranty insurance, or
 - (b) to pay a deductible for the repair of any defect covered by the home warranty insurance.
- (2) All exclusions, as permitted by this regulation, must be stated in the home warranty insurance.
- (3) Not less than 60 days before putting into public use a new or amended document or contract form intended for use by owners and containing the terms and conditions of home warranty insurance, a warranty provider must submit the document or contract form to the

Homeowner Protection Office.

Consequences of not providing information

- 14** (1) If coverage under home warranty insurance is conditional on an owner undertaking proper maintenance, or if coverage is excluded to the extent that damage is caused by negligence on the part of the owner with respect to maintenance or repair by the owner, such conditions or exclusions apply only to maintenance requirements or procedures which have been provided to the original owner by the residential builder or warranty provider.
- (2) To the extent that an original owner has not been provided with manufacturer's documentation or warranty information, or both, or with recommended maintenance and repair procedures for any component of a new home, the relevant exclusion is deemed to not apply.

[am. B.C. Reg. 126/99, s. 5.]

Mandatory notice of expiry of warranty

- 15** (1) A warranty provider must, as soon as reasonably possible after the commencement date for the home warranty insurance, provide an owner with a schedule of the expiry dates for coverages under the home warranty insurance as applicable to the dwelling unit and, in the case of a dwelling unit which is part of a strata plan, the schedule must include the expiry dates of the coverages applicable to the common property.
- (2) The schedule referred to in subsection (1) must set out all the required expiry dates on an adhesive label that is a minimum size of 150 mm by 150 mm and is suitable for affixing by the owner in a conspicuous location in the dwelling unit.

Notice of claim

- 16** (1) Within a reasonable time after the discovery of a defect and before the expiry of the applicable home warranty insurance coverage, an owner must give to the warranty provider and the residential builder written notice in reasonable detail that provides particulars of any specific defects covered by the home warranty insurance.
- (2) The warranty provider may require the notice under subsection (1) to include
- (a) the home warranty insurance number, and
 - (b) copies of any relevant documentation and correspondence

between the owner and the residential builder.

Duty to mitigate

- 17** (1) The warranty provider may require an owner to mitigate any damage to a new home, including damage caused by defects or water penetration, as set out in the home warranty insurance.
- (2) Subject to subsection (3), for defects covered by the home warranty insurance, the duty to mitigate is met through timely notice in writing to the warranty provider.
- (3) The owner must take all reasonable steps to restrict damage to the new home if the defect requires immediate attention.
- (4) The owner's duty to mitigate survives even if
- (a) the new home is unoccupied,
 - (b) the new home is occupied by other than the owner,
 - (c) water penetration does not appear to be causing damage, or
 - (d) the owner advises the strata corporation about the defect.
- (5) To the extent that damage to a new home is caused or made worse by the failure of an owner to take reasonable steps to mitigate as set out in this section, such damage may, at the option of the warranty provider, be excluded from home warranty insurance coverage.

Part 3 — General Provisions

Disclosure requirement

- 18** (1) If a residential builder offers a dwelling unit for sale after the commencement of any associated home warranty insurance on the common property, the residential builder must disclose to prospective purchasers that the home warranty insurance on the common property is already in effect, and identify the expiry dates of the home warranty insurance.
- (2) If a residential builder fails to disclose to a person purchasing a dwelling unit from the residential builder that the associated common property home warranty insurance is already in effect, the residential builder must, at the request of that person,
- (a) release the prospective purchaser from the sale if the title

has not transferred, or

(b) indemnify the owner against any special assessment for common property repairs such that the full benefit of the common property home warranty insurance is, in effect, applied in favour of that owner.

Spent

18.1 Spent. [per subsection (4)]

Home built by owner builder

19 (1) An owner builder must not build a new home other than a detached dwelling unit under one legal title.

(2) Subject to local bylaws, the new home referred to in subsection (1) may include a secondary suite.

(3) For the purposes of the Act, all persons ordinarily resident in the same dwelling unit are deemed jointly and severally to be the same owner builder.

(4) An owner builder must complete and file with the appropriate authority at the time of the building permit application or, if a building permit is not required, with the registrar before commencing construction, an Owner Builder Declaration and Disclosure Notice in the form set out in Schedule 4.

(5) An owner builder must not sell a home to which subsection (1) applies unless

(a) the home is covered by home warranty insurance, or

(b) the owner builder has provided to the person offering to purchase the home a copy of the Owner Builder Declaration and Disclosure Notice referred to in subsection (4).

(6) Subsection (5) applies to the owner builder of a new home and any subsequent owner during the 10 year period commencing on the earlier of

(a) the date that the new home is first occupied, and

(b) the granting of an occupancy permit or similar right to occupy by an authority having jurisdiction.

Offence and penalty

- 20** A person who contravenes section 4 (4) or (5), 18 (1), or 19 (1), (4) or (5) commits an offence and is liable on conviction to a fine of not more than \$25 000 or to imprisonment for a term of not more than one year, or to both.

[am. B.C. Reg. 203/2000, s. 2.]

Transitional

- 21** The Act and this regulation, except to the extent necessary for section 18.1 of this regulation to apply, do not apply to a home that is under construction or constructed

(a) under a building permit applied for on or before June 30, 1999, or

(b) if the construction of the home did not require a building permit, beginning on or before June 30, 1999.

[en. B.C. Reg. 203/2000, s. 3.]

Schedule 1

[am. B.C. Reg. 126/99, s. 6.]

(section 4 (2) and (4))

Fees

- 1** The application fee for a residential builder licence is \$600.
- 2** The renewal fee for a residential builder licence is \$500.
- 3** In addition to the fee payable under section 1 or 2, a residential builder must pay a licence fee of \$25 for each dwelling unit for which home warranty insurance is provided.
- 4** In addition to the fee payable under sections 1 to 3, a residential builder must pay a fee of \$750 for each new dwelling unit
 - (a) that is in a multi-unit building containing 2 or more dwelling units under separate title,
 - (b) that is located in a geographic area of British Columbia referred to in section 5 of this Schedule, and
 - (c) for which home warranty insurance is provided.

- 5 The following geographic areas of British Columbia are prescribed for the purposes of section 26 of the Act:
- (a) Capital Regional District;
 - (b) Fraser Valley Regional District;
 - (c) Greater Vancouver Regional District;
 - (d) Regional District of Alberni-Clayoquot;
 - (e) Regional District of Comox-Strathcona, excluding Electoral Areas G, I and J and the villages of Gold River, Tahsis and Zeballos;
 - (f) Regional District of Cowichan Valley;
 - (g) Regional District of Nanaimo;
 - (h) Regional District of Powell River;
 - (i) Squamish-Lillooet Regional District, excluding Electoral Areas A and B and the District of Lillooet;
 - (j) Sunshine Coast Regional District.
- 6 If a fee referred to in this Schedule is overdue by 30 days, interest may be charged on the outstanding amount payable at an annual rate of 18%.

Schedule 2

(section 7)

Mandatory Warranty Conditions

Mediation

- 1 (1) In this section:

"mediation" means a collaborative process in which 2 or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them;

"mediation session" means a meeting between 2 or more parties to a dispute during which they are engaged in mediation;

"mediator" means a neutral and impartial facilitator with no decision making power who assists parties in negotiating a mutually

acceptable settlement of issues in dispute between them;

"roster organization" means any body designated by the Attorney General to select mediators for the purpose of this regulation.

(2) If a dispute between a warranty provider and an owner arising under home warranty insurance cannot be resolved by informal negotiation within a reasonable time, the owner may, at the owner's sole election, require that the dispute be referred to mediation by delivering to the warranty provider a written request to mediate.

(3) If the owner delivers a request to mediate under subsection (2), the warranty provider and the owner must attend a mediation session in relation to the dispute.

(4) In addition to the requirements of subsection (3), a warranty provider or an owner may invite to participate in the mediation any other party to the dispute who may be liable.

(5) Within 21 days after the owner has delivered a request to mediate under subsection (2), the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.

(6) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subsection (5), the owner may apply to a roster organization which must appoint a mediator taking into account

- (a) the need for the mediator to be neutral and independent,
- (b) the qualifications of the mediator,
- (c) the mediator's fees,
- (d) the mediator's availability, and
- (e) any other consideration likely to result in the selection of an impartial, competent and effective mediator.

(7) Promptly after a roster organization selects the mediator under subsection (6), the roster organization must notify the parties in writing of that selection.

(8) The mediator selected by a roster organization is deemed to be appointed by the parties effective the date of the notice sent under subsection (7).

(9) The date, time and place of the first mediation session must be scheduled by the mediator, and the first mediation session must occur within 21 days of the appointment of the mediator.

(10) Despite subsection (3), a party may attend a mediation session by representative if

- (a) the party is under legal disability and the representative is that party's guardian ad litem,
- (b) the party is not an individual, or
- (c) the party is a resident of a jurisdiction other than British Columbia and will not be in British Columbia at the time of the mediation session.

(11) A representative who attends a mediation session in the place of a party referred to in subsection (10)

- (a) must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely, and
- (b) must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.

(12) A party or a representative who attends the mediation session may be accompanied by counsel.

(13) Any other person may attend a mediation session if that attendance is with the consent of all parties or their representatives.

(14) At least 7 days before the first mediation session is to be held, each party must deliver to the mediator a statement briefly setting out

- (a) the facts on which the party intends to rely, and
- (b) the matters in dispute.

(15) Promptly after receipt of all of the statements required to be delivered under subsection (14), the mediator must send each party's statement to each of the other parties.

(16) Before the first mediation session, the parties must enter into a retainer with the mediator which must

- (a) disclose the cost of the mediation services, and
- (b) provide that the cost of the mediation will be paid
 - (i) equally by the parties, or
 - (ii) on any other specified basis agreed by the parties.

(17) The mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a resolution that is

timely, fair and cost-effective.

(18) A person must not disclose, or be compelled to disclose, in any proceeding oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a mediation session.

(19) Nothing in subsection (18) precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

(20) A mediation session is concluded when

- (a) all issues are resolved,
- (b) the mediator determines that the process will not be productive and so advises the parties or their representatives, or
- (c) the mediation session is completed and there is no agreement to continue.

(21) If the mediation resolves some but not all issues, then at the request of all parties the mediator may complete a report setting out any agreements that the parties to the mediation have made as a result of the mediation, including, without limitation, any agreements made by the parties on any of the following:

- (a) facts;
- (b) issues;
- (c) future procedural steps.

Transfer of warranty to subsequent purchasers

2 (1) Home warranty insurance pertains solely to the new home for which it provides coverage and no notice to the warranty provider is required on a change of ownership.

(2) All of the applicable unused benefits under home warranty insurance are automatically transferred to any subsequent owner on a change of ownership.

Handling of claims

3 (1) A warranty provider must, on receipt of a notice of a claim under home warranty insurance, promptly make reasonable attempts to

contact the owner to arrange an evaluation of the claim.

(2) The warranty provider must make all reasonable efforts to avoid delays in responding to a claim under home warranty insurance, evaluating the claim and scheduling any required repairs.

(3) If, following evaluation of a claim under home warranty insurance, the warranty provider determines that the claim is not valid or not covered under the home warranty insurance, the warranty provider must notify the owner of the decision in writing, setting out the reasons for the decision.

(4) The notice under subsection (3) must also set out the rights of the parties under the third party dispute resolution process referred to in section 1 of this Schedule.

(5) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labour.

(6) On completion of any repairs, the warranty provider must deliver a copy of the repair specifications to the owner along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in section 8 of Schedule 3.

Disclosure of claims history

4 (1) On receipt of an inquiry from an owner of a new home covered by home warranty insurance regarding the claims experience of that new home, a warranty provider must provide the owner with a history of claims.

(2) The history of claims referred to in subsection (1) must include, for each claim, not less than the following information for both the dwelling unit and, if applicable, the associated common property:

- (a) the type of claim that was made;
- (b) the resolution of the claim;
- (c) the type of repair performed;
- (d) the date of the repair;
- (e) the cost of the repair.

(3) A warranty provider may charge an owner a fee of up to \$25 to provide the history of claims.

Schedule 3

(section 8)

Minimum Standards of Coverage

2 year materials and labour warranty

- 1 (1) The minimum coverage for the 2 year materials and labour warranty is as follows:
 - (a) in the first 12 months, for other than the common property, common facilities and other assets of a strata corporation,
 - (i) coverage for any defect in materials and labour, and
 - (ii) subject to subsection (2), coverage for a violation of the building code;
 - (b) in the first 15 months, for the common property, common facilities and other assets of a strata corporation,
 - (i) coverage for any defect in materials and labour, and
 - (ii) subject to subsection (2), coverage for a violation of the building code;
 - (c) in the first 24 months,
 - (i) coverage for any defect in materials and labour supplied for the electrical, plumbing, heating, ventilation and air conditioning delivery and distribution systems,
 - (ii) coverage for any defect in materials and labour supplied for the exterior cladding, caulking, windows and doors that may lead to detachment or material damage to the new home,
 - (iii) coverage for any defect in materials and labour which renders the new home unfit to live in, and
 - (iv) subject to subsection (2), coverage for a violation of the building code.
- (2) Non-compliance with the building code is considered a defect covered by home warranty insurance if the non-compliance
 - (a) constitutes an unreasonable health or safety risk, or
 - (b) has resulted in, or is likely to result in, material damage to the new home.

5 year building envelope warranty

- 2 The minimum coverage for the building envelope warranty is 5 years for defects in the building envelope of a new home including a defect which permits unintended water penetration such that it causes, or is likely to cause, material damage to the new home.

10 year structural defects warranty

- 3 The minimum coverage for the structural defects warranty is 10 years for
 - (a) any defect in materials and labour that results in the failure of a load bearing part of the new home, and
 - (b) any defect which causes structural damage that materially and adversely affects the use of the new home for residential occupancy.

Commencement dates for fee simple new homes

- 4 (1) The commencement date for home warranty insurance coverage of a new home held in fee simple is as follows:
 - (a) for a new home constructed by a residential builder on land owned by the owner, the commencement date is the earliest of
 - (i) the date of actual occupancy of the new home,
 - (ii) the granting of an occupancy permit or similar right to occupy by the authority having jurisdiction, and
 - (iii) the date that the new home is completed and ready for occupancy;
 - (b) for a new home constructed by a residential builder on land not owned by the owner, the commencement date is the earlier of
 - (i) the date of actual occupancy of the new home, and
 - (ii) the transfer of the legal title of the new home to the owner.
- (2) For the purposes of subsection (1) (a), in a jurisdiction where occupancy permits are not issued, a new home is deemed to have reached the stage of occupancy when it
 - (a) is "completed" as that term is defined by the *Builders' Lien*

Act, and

(b) is capable of being occupied.

Commencement dates for strata new homes

- 5** (1) If a new home is included in a strata plan, the home warranty insurance must provide coverage for the following:
- (a) the dwelling unit comprising the strata lot;
 - (b) the common property.
- (2) For the dwelling unit comprising the strata lot, the commencement date of the home warranty insurance coverage is the earlier of
- (a) actual occupancy of the dwelling unit, and
 - (b) the transfer of legal title to the strata lot.
- (3) For the common property, the commencement date of the home warranty insurance coverage is concurrent with the first commencement date for a dwelling unit in each separate multi-unit building comprising the strata plan.

Commencement dates for special cases

- 6** (1) If an unsold new home owned by a residential builder is occupied as a rental unit, the home warranty insurance commencement date is the date the new home is first occupied.
- (2) If the residential builder subsequently offers to sell a new home which is rented, the residential builder must disclose, in writing, to each prospective purchaser, the date on which the home warranty insurance expires.
- (3) For multi-unit buildings not in a strata plan, the commencement date of the home warranty insurance is concurrent with the date of first occupancy of a dwelling unit in the multi-unit building.

Living-out allowance

- 7** (1) If repairs are required under home warranty insurance and damage to the new home or the extent of the repairs renders the dwelling unit uninhabitable, the home warranty insurance must cover reasonable living-out expenses incurred by the owner.
- (2) If a warranty provider establishes a maximum amount per day for claims for living-out expenses, the limit must be not less than \$100 per

day for the complete reimbursement of the actual accommodation expenses incurred by the owner at a hotel, motel or other rental accommodation up to the day the dwelling unit is ready for occupancy, subject to the owner receiving 24 hours advance notice.

Warranty on repairs and replacements

8 (1) All repairs and replacements made under home warranty insurance must be warranted against defects in materials and labour until the later of

(a) the first anniversary of the date of completion of the repair or replacement, and

(b) the expiry of the applicable new home warranty insurance coverage.

(2) All repairs and replacements made under home warranty insurance must be completed in a reasonable manner using materials and labour conforming to the building code and industry standards.

Schedule 4

[en. B.C. Reg. 126/99, s. 7.]

(section 19 (4) and (5))

Owner Builder Declaration and Disclosure Notice

The purpose of this Disclosure Notice is to declare and disclose to the applicable municipality or regional district, and to all subsequent owners of the new home described below, that the new home is not built by a licensed residential builder and is not covered by home warranty insurance.

A. Owner Builder Information

Name:[*last*]
 [first][initial]

Address:
[*current home address*]

.....[*city/town*]
 [province][*postal code*]

Phone:

[home][business]

Driver's Licence No.:

List all persons over the age of sixteen ordinarily resident in your current residence.
 Note: all persons ordinarily resident in the same dwelling unit are deemed jointly and severally to be the owner builder

.....

B. Property Description of New Home

Civic

Address:

[new home address]

Legal

Description:

.....

Building Permit No.:

Issued by:

Date of issuance:

C. Sub-contractors/Suppliers

List of sub-contractors and suppliers to be utilized in the construction of the proposed new home:

Name	Phone #	Scope of Work

D. Undertakings by the Owner Builder

It is understood and agreed that as an owner builder:

- 1 I cannot build a new home other than a detached dwelling unit under one legal title which may, subject to local bylaws, include a secondary suite if permitted by the local authority;

- 2 I will not sell the home within the 10 year period from the date of actual occupancy or the granting of an occupancy permit unless
 - (a) the home is covered by home warranty insurance, or
 - (b) I provide to the person offering to purchase the home a copy of this Owner Builder Declaration and Disclosure Notice;
- 3 I have read the statutory protection provisions of the *Homeowner Protection Act* and understand my obligations to future purchasers of the home;
- 4 I have not built a new home for my personal use within the previous 18 months;
- 5 I will not, as an owner builder, build another new home for my personal use within the next 18 months after occupancy of the new home identified in Part B.

E. Declaration

I, (Owner Builder) have read and understood the relevant provisions of the *Homeowner Protection Act* and related regulations and declare that with respect to this new home, I am not a residential builder, nor am I contracting with a residential builder to construct this new home.

I make this solemn declaration, conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and by virtue of the *Evidence Act* (Canada).

DECLARED BEFORE ME in	}	
.....(<i>municipality</i>)	}	
in the Province of British Columbia,	}	
.....(<i>date</i>).	}	
	}
		<i>(Owner Builder)</i>
.....	}	
A Commissioner for taking affidavits for	}	
British Columbia / A Notary Public in and for	}	
the Province of British Columbia	}	

Schedule 5

Spent. [per s. 18.1 (4).]

[Provisions relevant to the enactment of this regulation: *Homeowner Protection Act*, S.B.C. 1998, c. 31, sections 21 and 32; and *Insurance Act*, R.S.B.C. 1996, c. 226, s. 192]

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B.C. Reg. 240/2000
O.C. 1010/2000

Deposited July 7, 2000

Homeowner Protection Act and Insurance Act

BUILDING ENVELOPE RENOVATION REGULATION

[includes amendments up to B.C. Reg. 360/2004]

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Schedule 1

Schedule 2

Schedule 3

Definitions

1 In this regulation:

"Act" means the *Homeowner Protection Act*;

"building code" has the same meaning as in the Homeowner Protection Act Regulation, B.C. Reg. 29/99;

"building envelope" means the assemblies, components and materials of a building that are intended to separate and protect the interior space of the building from the adverse effects of exterior climatic conditions;

"building envelope consultant" means a person, including an architect or professional engineer, who investigates defects in the building envelope of a residential building and provides plans, specifications or other advice on the design, evaluation or construction of a building envelope renovation or who is engaged to supervise the work of a building envelope renovator making a building envelope renovation;

"building envelope renovation" means construction work on a residential building

(a) to repair defects in the building envelope which allow unintended water penetration, or

(b) to repair damage caused by unintended water penetration;

"building envelope renovation schedule" means the form attached as Schedule 1;

"building envelope renovator" means a residential renovator who is licensed under Part 1 to engage in, arrange for or manage all, or substantially all, of a building envelope renovation;

"cladding surface" means components of a building which are exposed to the outdoor environment and are intended to provide protection against wind, water or vapour but does not include

(a) roof surfaces of the building, or

(b) a window unless the building envelope renovation includes
(i) the replacement of the window with a new window

or other material, or

(ii) the removal, modification and re-installation of the modified window;

"defects in the building envelope" has the same meaning as in the Homeowner Protection Act Regulation, B.C. Reg. 29/99;

"director nominee" means the director of a building envelope renovator corporation named as the representative of the corporation on the licence of the building envelope renovator;

"dwelling unit" means a building, or a portion of a building, that

(a) is intended for residential occupancy,

(b) is a single, self-contained residence usually containing cooking, eating, living, sleeping and sanitary facilities, and

(c) may contain a secondary suite if permitted by local bylaws;

"face", if used in reference to a building, means the entire surface area of the exterior of one of the elevations of the building, including all elements and components of the building that are supported by or attached to the exterior of that elevation but does not include horizontal deck or balcony surfaces, roof surfaces or window surfaces unless, in the case of the window surfaces, the building envelope renovation includes

(a) the replacement of the window with a new window or other material, or

(b) the removal, modification and re-installation of the modified window;

"holder", when used in reference to a residential building, means

(a) if a strata plan respecting the land on which the building is situated has been deposited with the registrar of the land title office for the district in which that land is situated, the strata corporation for the strata plan,

(b) a person who has a life interest in the residential building and whose interest is registered against the title to the land on which the residential building is situated in the land title office for the district in which the land is situated,

(c) a person registered in the land title office for the district in

which that land is situated as the purchaser under the last registered agreement for sale of the land on which the residential building is situated, or

(d) if none of paragraph (a), (b) or (c) apply, the person registered in the land title office as the registered owner in fee simple of the land on which the residential building is situated;

"materials and labour warranty" means home warranty insurance, as defined in section 189.1 (1) of the *Insurance Act*, covering defects in materials or labour used in a building envelope renovation;

"multi-unit building" means a building containing 2 or more dwelling units together with associated common property, if any;

"rental purposes" means an occupancy or intended occupancy which is or would be governed by a tenancy agreement as defined in section 1 of the *Residential Tenancy Act*;

"residential building" means a structure or that portion of a structure that is used or intended to be used for residential purposes;

"secondary suite" means a suite located in and forming part of a dwelling unit where the dwelling unit remains as a single legal title;

"substantially completed", when used in reference to a building envelope renovation, means that the building envelope renovation as described in section 5 of the building envelope renovation schedule can be completed at a cost of not more than the sum of

(a) 3% of the first \$500 000 of the cost of the building envelope renovation as set out in section 6 of the building envelope renovation schedule,

(b) 2% of the next \$500 000 of the cost of the building envelope renovation as set out in section 6 of the building envelope renovation schedule, and

(c) 1% of the balance of the cost of the building envelope renovation as set out in section 6 of the building envelope renovation schedule;

"unintended water penetration" means water penetration

(a) caused by defects in the building envelope, and

(b) not caused by flooding;

"water penetration warranty" means home warranty insurance, as defined in section 189.1 (1) of the *Insurance Act*, on a building envelope renovation which covers defects in a building envelope that cause or permit unintended water penetration and damage caused by that unintended water penetration.

[am. B.C. Reg. 317/2000, s. 1.]

Part 1 — Licensing

Licensing requirements for building envelope renovators

2 A person must not engage in, arrange for or manage a building envelope renovation unless the person is licensed as a building envelope renovator under this regulation.

Exemptions

3 (1) This regulation does not apply

(a) Repealed. [B.C. Reg. 317/2000, s. 2.]

(b) to a person performing a building envelope renovation on

(i) a detached self contained dwelling unit,

(ii) a building having only 2 self contained dwelling units,

(iii) a hotel or motel,

(iv) a dormitory,

(v) a care facility,

(vi) a floating home,

(vii) a multi-unit building owned by one person or group and having all dwelling units used or available for rental purposes, or

(viii) a multi-unit building in which the first occupancy of a dwelling unit occurred 25 or more years before the commencement of the building envelope renovation or, if applicable, the issuance of a building permit for the building envelope renovation, whichever is earlier,

(c) to the residential builder who

(i) is performing a building envelope renovation on a

residential building first constructed by that residential builder, and

(ii) pays the total cost of the building envelope renovation or, with the prior written agreement of the holder, pays a portion of the cost of the building envelope renovation,

(d) to a person engaged by a warranty provider to perform a building envelope renovation on a residential building if

(i) the residential building is covered by home warranty insurance in accordance with the Act and regulations,

(ii) the building envelope renovation is performed pursuant to that home warranty insurance, and

(iii) the building envelope renovation is warranted under section 8 of Schedule 3 of the Homeowner Protection Act Regulation, B.C. Reg. 29/99 or section 4 of Schedule 3 of this regulation, or

(e) if the total cost of a building envelope renovation is less than the greater of

(i) \$10 000, and

(ii) \$2 000 for each self contained dwelling unit within the residential building.

(2) This regulation does not apply to a building envelope renovation

(a) in a municipality or regional district where a building permit is required to authorize a building envelope renovation, if a properly completed application for a building permit for a proposed building envelope renovation is made to the municipality or regional district on or before September 30, 2000, and

(b) in an area of British Columbia where a building permit is not required to authorize a building envelope renovation, if the building envelope renovation is commenced on or before September 30, 2000 and continues to be performed without an interruption exceeding 30 days.

[am. B.C. Regs. 317/2000, s. 2; 360/2004, Sch. B, s. 1.]

Applications for licence

4 (1) A person may apply to the registrar for a building envelope

renovator licence, or renewal of a building envelope renovator licence, by providing, in a form acceptable to the registrar, all of the following:

- (a) particulars respecting the applicant including name, address, telephone numbers, fax number and driver's licence number;
- (b) if the applicant is a corporation, the name of the director nominee of the corporation who agrees to act as representative of the corporation and in whose name the licence will be issued;
- (c) the name of each partner, director and officer of the applicant;
- (d) evidence of acceptance for materials and labour warranty insurance and water penetration insurance from all warranty providers that may have accepted the applicant under section 8;
- (e) a list of, and the location of, all building envelope repairs completed by the building envelope renovator over the 36 month period immediately preceeding the application, including the building type, the number of self contained dwelling units and the total amount paid or payable to the applicant for each building envelope repair;
- (f) a list of all construction-related organization memberships that are held by the applicant and each partner, director and officer named under paragraph (c);
- (g) a list of professional courses related to new home construction, building envelope science and building envelope repairs taken by each partner, officer and director named under paragraph (c), including industry accreditation;
- (h) an undertaking by the applicant not to employ a person to work in a compulsory certification occupation or a compulsory certification trade if the applicant knows, or would reasonably be expected to know, that the person is not permitted to work in that trade or occupation;
- (i) the applicant's undertaking that any building envelope renovations performed by the applicant will comply with the building code;
- (j) particulars of any conviction or judgment against the

person or, if the applicant is a corporation or partnership, a partner, director or officer, for fraud or for an offence under the *Trade Practice Act*, the *Consumer Protection Act*, the *Business Practices and Consumer Protection Act*, or the *Homeowner Protection Act*;

(k) the signature of the applicant or, in the case of a corporation, the director nominee named under paragraph (b).

(2) An application or renewal under subsection (1) must be accompanied by the fee set out in section 5.

(3) Subject to section 14 of the Act, the registrar may issue a building envelope renovator licence to an applicant who has submitted a completed application under subsection (1) and paid the fee required under subsection (2).

[am. B.C. Reg. 274/2004, Sch. 3, s. 1.]

Licence fees

5 (1) For the purposes of section 4 (3)

(a) if the applicant holds a valid and subsisting residential builder licence under B.C. Reg.29/99, the Homeowner Protection Act Regulation, the application fee for a building envelope renovator licence is \$100,

(b) if paragraph (a) does not apply, the application fee for a building envelope renovator licence is \$600,

(c) if the licence holder is renewing a residential builder licence at the same time, the renewal fee for a building envelope renovator licence is \$0, and

(d) if paragraph (c) does not apply, the annual renewal fee for a building envelope renovator licence is \$500.

(2) For each self contained dwelling unit in a residential building for which a warranty provider has agreed to provide a materials and labour warranty or a water penetration warranty with respect to a building envelope renovation, a building envelope renovator must pay an additional licence fee of \$25.

Employee exemptions

6 Section 14 of the Act does not apply to an employee who works on a building envelope renovation as a project manager or construction

manager for a licensed building envelope renovator.

Licence conditions

- 7** It is a condition of every licence issued to a building envelope renovator that the renovator must not undertake a building envelope renovation for which warranty insurance is required under section 10 or 11 unless
- (a) the applicable warranty insurance is provided for the benefit of the holder,
 - (b) a building envelope consultant first completes a building envelope renovation schedule in the form attached as Schedule 1 to this regulation, and
 - (c) the building envelope renovator provides a copy of the building envelope renovation schedule, with sections 1 to 8 completed, to the holder before applying for a building permit for the building envelope renovation.

Part 2 — Building Envelope Renovation Warranty Insurance

Warranty provider acceptance of building envelope renovator

- 8** Before accepting a building envelope renovator for a materials and labour warranty or a water penetration warranty, a warranty provider may make inquiries about the applicant and satisfy itself that:
- (a) the applicant, its directors and officers, if applicable, and its employees and consultants possess the necessary technical expertise to adequately perform their individual functions with respect to their proposed role in building envelope renovation;
 - (b) the applicant has the financial resources to undertake the building envelope renovations it proposes for the following 12 months;
 - (c) the applicant and its directors and officers, if applicable, have sufficient experience in business management to properly manage building envelope renovations;
 - (d) the applicant, its directors and officers if applicable, and employees have sufficient practical experience to undertake building envelope renovations;
 - (e) the applicant has not constructed residential buildings or

mixed use buildings that have suffered damage from unintended water penetration of the building envelope;

(f) the past conduct of the applicant provides a reasonable indication of good business practices and reasonable grounds for belief that its undertakings will be carried out in accordance with all legal requirements;

(g) the applicant, its directors and officers, if applicable, and employees have been reasonably prudent in updating their skills and in continuing their education in the field of building envelope science;

(h) the applicant is reasonably able to provide or cause to be provided customer service on the building envelope being renovated after completion of that renovation.

Warranty provider conditions

9 Before agreeing to provide a materials and labour warranty or a water penetration warranty on a building envelope renovation, a warranty provider may make inquiries and impose conditions as follows:

(a) to determine if the applicant has the necessary capitalization or financing in place, including any reasonable contingency reserves, to undertake the proposed building envelope renovation;

(b) to determine if the applicant, its directors and officers, if applicable, and employees and consultants possess a reasonable level of technical expertise to perform the proposed building envelope renovation, including specific technical knowledge or expertise in any building systems, construction methods, products, treatments, technologies and testing and inspection methods proposed to be employed;

(c) to determine if the applicant, its directors and officers, if applicable, and its employees and consultants have sufficient practical experience in building envelope science to perform the proposed building envelope renovation;

(d) to determine if the applicant has sufficient personnel and other resources to adequately undertake the proposed building envelope renovation in addition to any new homes or other building envelope renovations which the applicant may have undertaken;

- (e) requiring that a building envelope renovator provide security in a form suitable to the warranty provider;
- (f) establishing or requiring compliance with specific construction standards, not inconsistent with the building code and bylaws enacted under the authority of Part 21 of the *Local Government Act* or Part IX of the *Vancouver Charter*, for the building envelope renovation;
- (g) restricting the applicant from performing building envelope renovations on some types of residential buildings or using some types of construction or systems;
- (h) requiring the use of specific types of systems, consultants or personnel for the building envelope renovation;
- (i) requiring that the building envelope renovation be designed, supervised or reviewed by a building envelope consultant acceptable to the warranty provider;
- (j) requiring that the building envelope renovator provide a list of all building envelope consultants and other consultants who are or will be participating in the design or construction inspection, or both, of the building envelope renovation;
- (k) requiring an independent review of the building envelope renovation plan or building envelope consultants' reports or any part thereof;
- (l) requiring third-party verification or certification of completion of the building envelope renovation or any part thereof;
- (m) providing for inspection of the building envelope renovation or any part thereof during construction;
- (n) requiring ongoing monitoring of the building envelope renovation, or one or more of its components, following completion of the building envelope renovation;
- (o) requiring that the building envelope renovator or any of the design professionals, engineering professionals or consultants maintain minimum levels of insurance, bonding or other security naming the holder and warranty provider as loss payees or beneficiaries of the insurance, bonding or security to the extent possible;
- (p) requiring that the building envelope renovator provide a

list of tradespeople employed in the building envelope renovation and requiring evidence of their current trades certification, if applicable;

(q) imposing on the building envelope renovator other restrictions or conditions the warranty provider considers necessary or advisable.

Circumstances in which materials and labour warranty insurance must be provided

10 The building envelope renovator must provide, for the benefit of the holder, materials and labour warranty insurance on the building envelope renovation for a period of at least 2 years after the date on which the building envelope renovation was substantially completed if

(a) the total cost of the building envelope renovation is greater than or equal to the greater of

(i) \$10 000, and

(ii) \$2 000 for each self contained dwelling unit within the residential building, and

(b) the building envelope renovation includes the replacement of 60% or more of the cladding surface of

(i) the residential building, or

(ii) a face of the residential building.

[en. B.C. Reg 360/2004, Sch. B, s. 2.]

Water penetration warranty insurance

11 (1) If a building envelope renovator is required to provide materials and labour warranty insurance under section 10, the building envelope renovator must also provide, for the benefit of the holder, water penetration warranty insurance on the building envelope renovation for a period of at least 5 years after the date on which the building envelope renovation was substantially completed.

(1.1) Despite subsection (1), the water penetration warranty insurance need not be made applicable to damage to the parts of the cladding surface that are not part of the building envelope renovation.

(2) The building envelope renovator must obtain the water penetration warranty insurance required by subsection (1) from a warranty provider and that warranty insurance must provide coverage against,

(a) if subsection (1) (a) applies, further defects in the building envelope; or

(b) if subsection (1) (b) applies, further defects in the building envelope on each applicable face of a residential building.

(3) If a warranty provider establishes a limit on claims under a water penetration warranty required by subsection (1), the limit must not be less than 125% of the total cost of the building envelope renovations covered by that warranty.

(4) In all other respects, and for the purposes of section 189.1 (3) of the *Insurance Act*, the water penetration warranty required by subsection (1) must provide, as applicable, at least the minimum standards of coverage set out in sections 2, 3 and 4 of Schedule 3.

[am. B.C. Reg. 360/2004, Sch. B, s. 3.]

Mandatory warranty conditions — Schedule 2

12 For the purposes of section 189.1 (2) of the *Insurance Act*, each materials and labour warranty and each water penetration warranty must include the mandatory warranty conditions set out in Schedule 2.

Warranty conditions

13 In addition to the conditions required under section 12, the following are conditions of every materials and labour warranty and water penetration warranty provided by a warranty provider on a building envelope renovation:

(a) if the warranty provider makes a payment or assumes liability for any payment or repair under a materials and labour warranty or a water penetration warranty,

(i) the warranty provider is subrogated to all rights of recovery of a holder against any person or persons who may have caused or contributed to the requirement for the payment or repair,

(ii) the warranty provider may bring an action at its own expense, in the name of the holder or of the warranty provider, to enforce such rights, and

(iii) the holder must fully support and assist the warranty provider in the pursuit of those rights if the warranty provider pursues such subrogated rights;

(b) implied or expressed warranties or representations made

by a building envelope renovator to a holder are not binding on the warranty provider except as set out in the Act and this regulation or as set out in the applicable material and labour warranty or water penetration warranty;

(c) a holder must permit the warranty provider or building envelope renovator, or both, to enter the residential building at all reasonable times, on the giving of reasonable notice to the holder,

(i) to monitor the building envelope renovation or its components,

(ii) to inspect for required maintenance,

(iii) to investigate complaints or claims, or

(iv) to undertake repairs under the materials and labour warranty or water penetration warranty;

(d) if any reports are produced as a result of any of the activities referred to in paragraph (c), the reports must be provided to the holder on request;

(e) a holder must provide to the warranty provider all information and documentation that the holder has available, as reasonably required by the warranty provider, to investigate a claim or maintenance requirement, or to undertake repairs under the materials and labour warranty or water penetration warranty;

(f) to the extent that damage to a residential building is caused by the unreasonable refusal of a holder or occupant to permit the warranty provider or building envelope renovator access to the residential building for the reasons set out in paragraph (c) or to provide the information required by paragraph (e), such damage is excluded from the materials and labour warranty or water penetration warranty.

Optional exclusions

14 (1) A warranty provider may exclude any or all of the following items from a materials and labour warranty or water penetration warranty:

(a) weathering, normal wear and tear, deterioration or deflection consistent with normal industry standards;

(b) any damage to the extent that it is caused or made worse

by an owner, holder or third party, including by negligent or improper maintenance by anyone other than the building envelope renovator or its employees, agents or subcontractors;

(c) any damage caused by the unreasonable failure of a holder to take timely action to prevent or minimize loss or damage, including the failure to give prompt notice to the warranty provider of a defect or discovered loss or a potential defect or loss;

(d) any damage caused by insects or rodents and other animals, unless the damage results from non-compliance with the building code by the building envelope renovator or its employees, agents or subcontractors;

(e) accidental loss or damage from acts of nature including, but not limited to, fire, explosion, smoke, water escape, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide, and changes in the level of the underground water table which are not reasonably foreseeable by the building envelope renovator;

(f) bodily injury or damage to personal property or real property which is not part of the residential building;

(g) any defects in, or caused by, materials or work supplied by anyone other than the building envelope renovator, building envelope consultant or the employees, agents or subcontractors of either.

(2) Subsection (1) (f) includes bodily injury, or damage to personal property, caused by mold.

[am. B.C. Reg. 360/2004, Sch. B, s. 4.]

Warranty conditions respecting the costs included in calculation of renovation cost limits

15 (1) It is a condition of a warranty required by section 10 or 11 that if a building envelope renovation is performed on more than one building in a single strata plan, the limits of coverage under section 10 (3) or 11 (3) apply with respect to the cost of the renovation of each building.

(2) To calculate the cost of warranty claims in respect of the limits under a materials and labour warranty or water penetration warranty, a

warranty provider may include the following:

- (a) the cost of repairs;
- (b) the cost of investigation, engineering and design required for the repairs;
- (c) the cost of supervising the repairs, including the cost of professional review of the repairs.

Prohibited provisions and copy of amended contract to the homeowner protection office

16 (1) A warranty provider must not include in a materials and labour warranty or water penetration warranty any provision that requires a holder

- (a) to sign a release before repairs are performed under the materials and labour warranty or water penetration warranty, or
- (b) to pay a deductible for the repair of any defect covered by the materials and labour warranty or water penetration warranty.

(1.1) Subsection (1) (b) does not apply to a window that

- (a) is a component of a building envelope,
- (b) is removed from the building envelope for the purpose of a building envelope renovation,
- (c) is re-installed as part of the building envelope renovation, and
- (d) causes damage by unintended water penetration to the building.

(2) All exclusions, as permitted by this regulation, must be stated in the materials and labour warranty or water penetration warranty.

(3) Not less than 30 days before putting into public use a new or amended document or contract form intended for use by holders and containing the terms and conditions of a materials and labour warranty or water penetration warranty, a warranty provider must submit the document or contract form to the Homeowner Protection Office.

[am. B.C. Reg. 360/2004, Sch. B, s. 5.]

Deductions allowed for re-installed windows

16.1 (1) If section 16 (1.1) applies to windows re-installed as part of a building envelope renovation, a warranty provider may require the holder to pay a deductible of up to \$500 for each re-installed window that caused unintended water penetration.

(2) The maximum amount of the deductible under subsection (1) for each dwelling unit is \$1 000.

[en. B.C. Reg. 360/2004, Sch. B, s. 6.]

Consequences of not informing holder of maintenance requirements

17 (1) If coverage under a materials and labour warranty or water penetration warranty is conditional on a holder undertaking proper maintenance, or if coverage is excluded to the extent that damage is caused by the negligence of the holder with respect to maintenance or repair, such conditions or exclusions apply only to maintenance requirements or procedures the requirement for which the holder has been informed in writing by the building envelope renovator or warranty provider.

(2) To the extent that the original holder has not been provided with manufacturer's documentation or warranty information, or both, or with recommended maintenance and repair procedures for any component of a building envelope, the relevant exclusion is deemed to not apply.

Schedule of expiry dates to be provided to holder

18 A warranty provider must, as soon as reasonably possible after the commencement date for the materials and labour warranty or water penetration warranty, provide the original holder with a schedule of the expiry dates for coverages under the materials and labour warranty or water penetration warranty as applicable to the building envelope repair.

Holder to give warranty provider notice of defects

19 (1) Within a reasonable time after the discovery of a defect covered by a materials and labour warranty or a water penetration warranty, and before the expiry of the coverage of that materials and labour warranty or water penetration warranty, a holder must give the warranty provider and the building envelope renovator written notice of that defect which includes particulars of the defect in reasonable detail.

(2) The warranty provider may require that the notice under

subsection (1) include

- (a) the materials and labour warranty or water penetration warranty number, and
- (b) copies of any relevant documentation and correspondence between the holder and the building envelope renovator.

Mitigation of damage by holder

- 20** (1) The warranty provider of a materials and labour warranty or a water penetration warranty may require a holder to mitigate any damage caused by defects in materials or labour or by water penetration, as set out in the materials and labour warranty or water penetration warranty.
- (2) Subject to subsection (3), for defects covered by a materials and labour warranty or water penetration warranty, the duty of the holder to mitigate is met through timely notice in writing to the warranty provider.
- (3) The holder must take all reasonable steps to limit the damage to the residential building if the defect requires immediate attention.
- (4) To the extent that damage to the building envelope of a residential building is caused or made worse by the failure of a holder to take reasonable steps to mitigate as set out in this section, such damage may, at the option of the warranty provider, be excluded from the materials and labour warranty or water penetration warranty, as applicable.

Application of provisions of the Act

- 21** Provisions of the Act that apply to residential renovators apply to building envelope renovators.

Schedule 1

Building Envelope Renovation Schedule

The purpose of this Schedule is to provide a record of information concerning building envelope renovations that are governed by the requirements of the *Homeowner Protection Act* and the regulations under it.

SECTION 1 — PROJECT IDENTIFICATION:

.....

Strata Corporation Number *(If Applicable)*

.....

Street Address

.....

City/town

Pos

.....

Strata Council President / Building Owners

Phc

.....

Property Manager *(If Applicable)*

Phc

SECTION 2 — IDENTIFICATION OF BUILDING ENVELOPE CONSULTANT:

.....

Name

Designation: (P.Eng., MAIBC, C

.....

Street Address

.....

City/town

Province

.....

Phone Number

Cell Phone

Fax Number

SECTION 3 — IDENTIFICATION OF BUILDING ENVELOPE RENOVATOR:

.....

Name

.....

Street Address

.....

City/town

Province

.....

Phone Number

Cell Phone

Fax Number

SECTION 4 — TESTING PERFORMED IN DETERMINING THE SCOPE OF REPAIRS:

(Describe in detail the type and extent of testing completed or supervised by the building envelope consultant to identify the residential building components in need of building envelope renovations.)

SECTION 5 — SCOPE OF REPAIRS:

(Describe in detail the portions of the residential building or buildings that will

undergo building envelope renovations, the specific components to be repaired or replaced, and the nature of the work that is to be completed.)

SECTION 6 — REPAIR COSTS:

(Indicate the approximate repair cost of the building envelope renovation, including all applicable taxes. If the repair is to be phased, indicate the estimated cost of each phase and the total overall cost once all repairs are be completed.)

SECTION 7 — MAINTENANCE REQUIREMENTS:

(Specify the scope, nature and timing of owner maintenance that will be required following the completion of building envelope renovations, including the estimated annual cost of such owner maintenance.)

SECTION 8 — DECLARATION / ACKNOWLEDGMENTS:

A. BUILDING ENVELOPE CONSULTANT

I hereby declare that I have read and understood the relevant provisions of the *Homeowner Protection Act* and related regulations and declare that, with respect to this building envelope renovation, I am the building envelope consultant and that the information contained in this building envelope renovation schedule, to the best of my knowledge, is complete, true and accurate.

.....
 Signature _____ Date _____

B. BUILDING ENVELOPE RENOVATOR

I hereby declare that I have read and understood the relevant provisions of the *Homeowner Protection Act* and related regulations and declare that with respect to this building envelope renovation I am the building envelope renovator and that the information contained in this building envelope renovation schedule, to the best of my knowledge, is complete, true and accurate.

.....
 HPO Licence Number _____ Expiry Date _____

.....
 Signature _____ Date _____

C. STRATA CORPORATION / HOLDER

I hereby acknowledge that I/we have received and have read a copy of this building envelope renovation schedule and that to the best of our understanding the information is complete, true and accurate.

.....
 Signature Date Title (Holder, Strata Presic

SECTION 9 — BUILDING PERMIT INFORMATION:

(To be completed by the municipality or regional district prior to issuing a building permit.)

.....
 Municipality or Regional District Building Permit No. Date Permit Issued

Schedule 2

[section 12]

Mandatory Warranty Conditions

Mediation

1 (1) In this section:

"mediation" means a collaborative process in which 2 or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them;

"mediation session" means a meeting between 2 or more parties to a dispute during which they are engaged in mediation;

"mediator" means a neutral and impartial facilitator with no decision making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them;

"roster organization" means any body designated by the Attorney General to select mediators for the purpose of this regulation.

(2) If a dispute between a warranty provider and a holder arising under a materials and labour warranty or water penetration warranty cannot be resolved by informal negotiation within a reasonable time, the holder may, at the holder's sole election, require that the dispute be referred to mediation by delivering to the warranty provider a written request to mediate.

(3) If the holder delivers a request to mediate under subsection (2), the warranty provider and the holder must attend a mediation session in relation to the dispute.

(4) In addition to the requirements of subsection (3), a warranty provider or a holder may invite to participate in the mediation any other party to the dispute who may be liable.

(5) Within 21 days after the holder has delivered a request to mediate under subsection (2), the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.

(6) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subsection (5), the holder may apply to a roster organization which must appoint a mediator taking into account

- (a) the need for the mediator to be neutral and independent,
- (b) the qualifications of the mediator,
- (c) the mediator's fees,
- (d) the mediator's availability, and
- (e) any other consideration likely to result in the selection of an impartial, competent and effective mediator.

(7) Promptly after a roster organization selects the mediator under subsection (6), the roster organization must notify the parties, in writing, of that selection.

(8) The mediator selected by a roster organization is deemed to be appointed by the parties effective the date of the notice sent under subsection (7).

(9) The date, time and place of the first mediation session must be scheduled by the mediator, and the first mediation session must occur within 21 days of the appointment of the mediator.

(10) Despite subsection (3), a party may attend a mediation session by representative if

- (a) the party is under legal disability and the representative is that party's guardian ad litem,
- (b) the party is not an individual, or
- (c) the party is a resident of a jurisdiction other than British Columbia and will not be in British Columbia at the time of the mediation session.

(11) A representative who attends a mediation session in the place of a party referred to in subsection (10)

(a) must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely, and

(b) must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.

(12) A party or a representative who attends the mediation session may be accompanied by counsel.

(13) Any other person may attend a mediation session if that attendance is with the consent of all parties or their representatives.

(14) At least 7 days before the first mediation session is to be held, each party must deliver to the mediator a statement briefly setting out

(a) the facts on which the party intends to rely, and

(b) the matters in dispute.

(15) Promptly after receipt of all of the statements required to be delivered under subsection (14), the mediator must send each party's statement to each of the other parties.

(16) Before the first mediation session, the parties must enter into a retainer with the mediator which must

(a) disclose the cost of the mediation services, and

(b) provide that the cost of the mediation will be paid

(i) equally by the parties, or

(ii) on any other specified basis agreed by the parties.

(17) The mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a solution that is timely, fair and cost-effective.

(18) A person must not disclose, or be compelled to disclose, in any proceeding, oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a mediation session.

(19) Nothing in subsection (18) precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

(20) A mediation session is concluded when

- (a) all issues are resolved,
- (b) the mediator determines that the process will not be productive and so advises the parties or their representatives, or
- (c) the mediation session is completed and there is no agreement to continue.

(21) If the mediation resolves some but not all issues, then at the request of all parties the mediator may complete a report setting out any agreements that the parties to the mediation have made as a result of the mediation, including, without limitation, any agreements made by the parties on any of the following:

- (a) facts;
- (b) issues;
- (c) future procedural steps.

Transfer of warranty to subsequent holders

- 2** (1) A materials and labour warranty or water penetration warranty pertains solely to the residential building for which it provides coverage and no notice to the warranty provider is required on a change of ownership.
- (2) All of the applicable unused benefits under a materials and labour warranty or water penetration warranty are automatically transferred to any subsequent holder on a change of ownership.

Handling of claims

- 3** (1) A warranty provider must, on receipt of a notice of a claim under a materials and labour warranty or a water penetration warranty, promptly make reasonable attempts to contact the holder to arrange an evaluation of the claim.
- (2) The warranty provider must make all reasonable efforts to avoid delays in responding to a claim under a materials and labour warranty or water penetration warranty, evaluating the claim and scheduling any required repairs.
- (3) If, following evaluation of a claim under a materials and labour warranty or water penetration warranty, the warranty provider determines that the claim is not valid or not covered under the materials and labour warranty or water penetration warranty, the

warranty provider must notify the holder of the decision in writing, setting out the reasons for the decision.

(4) The notice under subsection (3) must also set out the rights of the parties under the third party dispute resolution process referred to in section 1 of this Schedule.

(5) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labour.

(6) On completion of any repairs, the warranty provider must deliver a copy of the repair specifications to the holder along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in section 4 of Schedule 3.

Disclosure of claims history

4 (1) On receipt of an inquiry from a holder or a member of a strata corporation or other corporation that is a holder regarding the claims experience of a residential building to which a materials and labour warranty or a water penetration warranty applies, the warranty provider must provide the holder or member of the strata corporation or other corporation with a history of claims.

(2) The history of claims referred to in subsection (1) must include, for each claim, not less than the following information for both the residential building and, if applicable, the associated common property:

- (a) the type of claim that was made;
- (b) the resolution of the claim;
- (c) the type of repair performed;
- (d) the date of the repair;
- (e) the cost of the repair.

Schedule 3

Minimum Standards of Coverage

[sections 10 and 11]

Materials and labour warranty

1 (1) Despite section 1 of Schedule 3 to B.C. Reg. 29/99, the Homeowner

Protection Act Regulation, the minimum coverage for the materials and labour warranty on a building envelope renovation is 2 years for any defect in materials and labour and for non-compliance with the building code described in subsection (2).

- (2) Non-compliance with the building code is considered a defect covered by home warranty insurance if the non-compliance
- (a) constitutes an unreasonable health or safety risk, or
 - (b) has resulted in, or is likely to result in, material damage to the residential building.

Water penetration warranty

- 2** The minimum coverage for the water penetration warranty is 5 years for defects in the building envelope renovation, including a defect which permits unintended water penetration that causes, or is likely to cause, material damage to the residential building.

Living-out allowance

- 3** (1) If repairs are required under a materials and labour warranty or water penetration warranty and damage to the residential building, or a portion of it or the extent of the repairs renders the residential building or portion of it uninhabitable, the labour and materials warranty or water penetration warranty must cover reasonable living-out expenses incurred by the holder, or, in the case of a strata corporation or other corporation, members of that strata corporation or other corporation.
- (2) If a warranty provider establishes a maximum amount per day for living-out expenses, that maximum amount must be not less than \$100 per day for the complete reimbursement of the actual accommodation expenses incurred by a holder or member of a holder corporation at a hotel, motel or other rental accommodation up to the day the residential building or portion of it is ready for occupancy, subject to the owner receiving 24 hours advance notice that the residential building will be ready for occupancy on that day.

Warranty on repairs and replacements

- 4** (1) All repairs and replacements made under a materials and labour warranty or water penetration warranty must be warranted against defects in materials and labour until the later of
- (a) the first anniversary of the date of completion of the repair

or replacement, and

(b) the expiry of the applicable labour and materials warranty or water penetration warranty coverage.

(2) All repairs and replacements made under a labour and materials warranty or water penetration warranty insurance must be completed in a reasonable manner using materials and labour conforming to the building code and industry standards.

[Provisions relevant to the enactment of this regulation: *Homeowner Protection Act*, S.B.C. 1998, c. 31, section 32; *Insurance Act*, R.S.B.C. 1996, c. 226, section 192]

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B.C. Reg. 181/2002
O.C. 545/2002

Deposited July 5, 2002

Homeowner Protection Act
EXEMPTION REGULATION

New home

- 1** A new home is exempt from the definition of "new home" in section 1 of the *Homeowner Protection Act* if
 - (a) the new home is constructed on the following property owned in fee simple by Fairhaven Ministries Association:

Parcel Identifier: 004-462-866
District Lot 3847, except Plan 30214, Osoyoos Division
Yale District,
 - (b) the new home is constructed
 - (i) for occupancy by employees of Fairhaven Ministries Association,
 - (ii) for occupancy under a licence to occupy from Fairhaven Ministries Association, or
 - (iii) for rental purposes,
 - (c) a restrictive covenant approved by the registrar is registered on the title restricting the sale or other disposition of the new home until January 1, 2020, and
 - (d) an application is made on or before January 1, 2014 for a building permit for the new home.

[Provisions of the *Homeowner Protection Act*, S.B.C. 1998, c. 31, relevant to the enactment of this regulation: section 32]

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IMPORTANT INFORMATION

B.C. Reg. 334/2000
M 312/2000

Deposited September 28, 2000

Homeowner Protection Act
FORM OF EVIDENCE REGULATION

Form prescribed

- 1** For the purposes of section 33 (b) of the *Homeowner Protection Act*, evidence provided to the authority issuing a permit for a building envelope renovation must be in the following form:

Form of Evidence

This form provides a record of information concerning building envelope repairs that are governed by the requirements of the *Homeowner Protection Act* and the regulations under it, and sets out the evidence that must be provided to the authority issuing a building permit for a building envelope renovation.

Section 1 — Project Identification: (to be completed by the Building Envelope Renovator)

.....

Strata Corporation Number (if applicable): Name of Strata

.....

Legal Description:

.....

Street Address:

.....

City/Town: Province: Postal Code:

.....

Strata Council President/Holder Phone number F

Section 2 — Identification of Building Envelope Consultant: (to be completed by the Buildi

.....

Name: Designation: (P.Eng, MAIBC, other — sp

.....

Street Address:

.....

City/Town: Province: Postal Code:

.....
Phone number: Cell phone number Faxnumber: er

Section 3 — Identification of Building Envelope Renovator: (to be completed by the Buildin

.....
Company Name: Contact Person

.....
Street Address:

.....
City/Town: Province: Postal Code:

.....
Phone number: Cell phone number: Fax number: e

Warranty Information: The proposed building envelope renovation will be covered by:

- (a) 2-year material and labour (only)
- (b) 2-year material and labour plus 5-year water penetration
- (c) other warranty exceeding the requirements of the *Homeowner Protection Act* and regulations (Specify)

.....
Warranty Provider: Policy number

.....
Signature of Warranty Provider representative: Date:

[Provisions of the *Homeowner Protection Act*, S.B.C. 1998, c. 31, relevant to the enactment of this regulation: section 33.]

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IMPORTANT INFORMATION

B.C. Reg. 152/99
O.C. 652/99

Deposited May 28, 1999

Homeowner Protection Act
NOTICE TO MEDIATE
(RESIDENTIAL CONSTRUCTION) REGULATION

Contents

- 1 Definitions
- 2 Delivery of Notice to Mediate
- 3 Appointment of mediator
- 4 Selection of mediator if participants are unable to agree
- 5 Pre-mediation conference
- 6 Attendance at pre-mediation conference and mediation session
- 7 Exemption from pre-mediation conference and mediation session
- 8 Applications to court
- 9 Scheduling of mediation session
- 10 Pre-mediation disclosure of information
- 11 Fee declaration
- 12 Conduct of a mediation
- 13 Declaration of Default
- 14 Effect of a Declaration of Default
- 15 Confidentiality and compellability
- 16 Concluding a mediation

Form 1

Form 2

Form 3

Form 4

Form 5

Definitions

1 In this regulation:

"deliver" has the same meaning as in the Rules of Court;

"government body" has the same meaning as in the *Financial Administration Act* and includes the government of British

Columbia or of any other province, the government of Canada, the government of any municipality or regional district in Canada and any body created or controlled by any of those governments;

"insurer" means an insurer, as defined in the *Financial Institutions Act*, that has provided a policy of insurance to a party in a residential construction action in relation to matters or property in issue in that action, and includes a surety of such a party if a claim has been made on a surety bond related to the matters in issue in that action;

"mediation" means a collaborative process in which 2 or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them;

"mediator" means a neutral and impartial facilitator with no decision making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them;

"mediation session" means a meeting between 2 or more parties to a residential construction action during which they are engaged in mediation;

"party", in respect of a residential construction action, includes an insurer of a party of record to the action;

"participant" means a party to a residential construction action who has not been exempted, under section 7 (2) (b) or 8 (c), from attending the mediation session;

"residential construction" means the construction, renovation or repair of a building, or a portion of a building, that is intended for residential occupancy, and includes a new home as defined by the *Homeowner Protection Act*;

"residential construction action" means an action commenced in the Supreme Court arising out of or in connection with residential construction;

"roster organization" means any body designated by the Attorney General to select mediators for the purposes of this regulation;

"strata corporation" has the same meaning as in the *Condominium Act*.

Delivery of Notice to Mediate

- 2** (1) Any party to a residential construction action may initiate mediation in that action by delivering a Notice to Mediate in Form 1 to
- (a) every other party to the action, and
 - (b) the Dispute Resolution Office in the Ministry of the Attorney General.
- (2) A Notice to Mediate may be delivered under subsection (1) at any time after the action has been commenced and, unless the court otherwise orders or the parties otherwise consent, no later than 180 days before the date set for the commencement of the trial.
- (3) Unless the court otherwise orders, not more than one mediation may be initiated under this regulation in relation to any residential construction action.

Appointment of mediator

- 3** Within 21 days after the Notice to Mediate has been delivered to all parties, the participants must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.

Selection of mediator if participants are unable to agree

- 4** (1) If the participants do not jointly appoint a mutually acceptable mediator within the time required by section 3, any participant may apply to a roster organization for an appointment of a mediator under this section.
- (2) The following procedure applies if an application to a roster organization is made under subsection (1):
- (a) the roster organization must, within 7 days after receiving the application, communicate to all participants an identical list of possible mediators containing at least 6 names;
 - (b) each participant must, within 10 days after receipt of the list referred to in paragraph (a),
 - (i) delete from the list up to 2 names to which the participant objects,
 - (ii) number the remaining names on the list in order of preference, and
 - (iii) deliver the amended list to the roster organization;

(c) if a participant does not deliver the amended list within the time referred to in paragraph (b), the participant is deemed to have accepted all of the names;

(d) within 7 days after the expiry of the 10 day period referred to in paragraph (b), the roster organization must select the mediator from the remaining names on the list or, if no names remain on that list, from any available mediators, whether or not the selected mediator was included on the original list provided under paragraph (a), taking into account

- (i) the order of preference indicated by the participants on the returned lists,
- (ii) the need for the mediator to be neutral and independent,
- (iii) the qualifications of the mediator,
- (iv) the mediator's fees,
- (v) the mediator's availability, and
- (vi) any other consideration likely to result in the selection of an impartial, competent and effective mediator.

(3) Promptly after a roster organization selects the mediator under this section, the roster organization must notify the participants in writing of that selection.

(4) The mediator selected by a roster organization is deemed to be appointed by the participants effective the date of the notice sent under subsection (3).

(5) If the mediator selected by the roster organization under subsection (2) (d) is unable or unwilling to act as mediator, the selected mediator or any participant may so notify the roster organization and the roster organization must, within 7 days after receiving that notice, select a new mediator in accordance with subsection (2) (d).

Pre-mediation conference

5 (1) Within 60 days after his or her appointment, the mediator must hold a pre-mediation conference unless the pre-mediation conference is waived by agreement of all of the participants and that agreement is confirmed by the mediator in writing.

(2) At a pre-mediation conference, the mediator must endeavour to

have the participants consider all organizational matters including the following:

- (a) whether the pleadings are final and complete;
 - (b) the issues that are to be dealt with during the mediation process;
 - (c) pre-mediation disclosure of documents;
 - (d) exchange of documents;
 - (e) obtaining and exchanging expert reports;
 - (f) preparation of any summary documentation for the purpose of organizing facts or issues;
 - (g) scheduling;
 - (h) time limits;
 - (i) providing a Statement of Facts and Issues to the mediator before the mediation.
- (3) The mediator must give notice of the pre-mediation conference to all parties.

Attendance at pre-mediation conference and mediation session

- 6** (1) Unless relieved of the obligation to attend under section 7,
- (a) each party who receives notice under section 5 (3) must attend the pre-mediation conference, and
 - (b) each party must attend a mediation session in relation to the action.
- (2) Despite subsection (1), a party referred to in that subsection may
- (a) attend a pre-mediation conference by counsel, or
 - (b) attend one or both of a pre-mediation conference and a mediation session by representative if
 - (i) the party is under legal disability and the representative is that party's guardian ad litem,
 - (ii) the party is not an individual, or
 - (iii) the party is a resident of a jurisdiction other than British Columbia and will not be in British Columbia at the time of the pre-mediation conference or the mediation session, as the case may be.

(3) A party or representative who attends a pre-mediation conference or a mediation session may be accompanied by counsel.

(4) Any other person may attend a pre-mediation conference or a mediation session if that attendance is with the consent of all participants.

(5) A representative who attends a mediation session in the place of a party referred to in subsection (2) (b) (i), (ii) or (iii) must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely and must

(a) if the party on whose behalf the representative attends is a government body or a strata corporation, have access, at the earliest practicable opportunity, to a person who has, or to a group of persons who collectively have, full authority to settle on behalf of that party, or

(b) in any other case, have full authority to settle, or have immediate access, during the mediation, to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.

Exemption from pre-mediation conference and mediation session

7 (1) Parties to a residential construction action need not attend a pre-mediation conference or a mediation session if all of the parties to the action have already been involved in a mediation session in relation to the matters in issue in that action.

(2) A party need not attend a pre-mediation conference or a mediation session if

(a) the party is exempted from attending the pre-mediation conference or the mediation session, as the case may be, under section 8 (c), or

(b) the participants agree that the party need not attend the pre-mediation conference or the mediation session, as the case may be, and that agreement is confirmed by the mediator in writing.

Applications to court

8 On an application, the court may order that

(a) the mediation proceed on the terms and conditions, if any,

and at the time or times, that the court considers appropriate,

- (b) the mediation be adjourned for the period or on the terms and conditions that the court considers appropriate, or
- (c) one or more of the parties is exempt from attending one or both of a pre-mediation conference and a mediation session if in the court's opinion it is materially impracticable or unfair to require the party to attend.

Scheduling of mediation session

- 9** (1) A mediation session must occur within 150 days after the appointment of the mediator unless a later specified date
- (a) is agreed on by all participants and that agreement is confirmed by the mediator in writing, or
 - (b) is ordered by the court.
- (2) On an application under subsection (1) (b) for an order that a mediation session occur later than 150 days after the appointment of the mediator, the court
- (a) must take into account all of the circumstances, including
 - (i) whether a party intends to bring a motion for summary judgment or for a special case,
 - (ii) whether the mediation will be more likely to succeed if it is postponed to allow the participants to acquire more information, and
 - (iii) any other circumstances the court considers appropriate, and
 - (b) may make an order referred to in section 8.

Pre-mediation disclosure of information

- 10** (1) At least 14 days before a mediation session is to be held, each participant must, if requested to do so by the mediator, deliver to the mediator a Statement of Facts and Issues in Form 2 setting out
- (a) the facts on which the participant intends to rely, and
 - (b) the matters in issue in the action.
- (2) Promptly after receipt of all of the Statements of Facts and Issues required to be delivered under subsection (1), the mediator must send each participant's Statement to each of the other participants.

Fee declaration

- 11** (1) Before or at the pre-mediation conference to be held in relation to a residential construction action, the participants must complete a fee declaration in accordance with subsection (2).
- (2) A fee declaration under subsection (1) must be in Form 3 and must
- (a) disclose the cost of the mediation services, and
 - (b) contain a declaration by the participants that the cost of the mediation will be paid
 - (i) equally by the participants, or
 - (ii) on any other specified basis agreed to by the participants.
- (3) A fee declaration completed under this section is binding on the participants.
- (4) Despite subsection (3), nothing in subsection (2) or in the fee declaration under this section precludes there being included in the costs awarded to a party in the residential construction action an amount to compensate the party for the share of the cost of the mediation that that party paid under the declaration.

Conduct of a mediation

- 12** The mediator may conduct the mediation in any manner he or she considers appropriate to assist the participants to reach a resolution that is timely, fair and cost-effective.

Declaration of Default

- 13** Any participant may file with the court a Declaration of Default in Form 4 respecting any other participant who fails to comply with a provision of this regulation.

Effect of a Declaration of Default

- 14** (1) If a Declaration of Default is filed, the court may, on application made on notice to the participant in respect of whom the Declaration of Default is filed, do any one or more of the following unless that participant satisfies the court that the default did not occur or that there is a reasonable excuse for the default:
- (a) adjourn the application and order that a mediation session

occur, on any terms the court considers appropriate;

(b) adjourn the application and order that the defaulting participant attend one or both of a pre-mediation conference and a mediation session;

(c) adjourn the application and order that the defaulting participant file a Statement of Facts and Issues;

(d) stay the action until the defaulting participant attends mediation;

(e) dismiss the proceeding or strike out the statement of defence and grant judgment;

(f) make any order it considers appropriate with respect to costs.

(2) The court may consider the existence of a Declaration of Default in making any order about costs, whether that order is made following final disposition of the action or otherwise.

Confidentiality and compellability

15 (1) A person must not disclose, or be compelled to disclose, in any civil, criminal, quasi-criminal, administrative or regulatory action or proceeding, oral or written information acquired or an opinion formed, including, without limitation,

(a) any document made for the mediation, or

(b) any offer or admission made in anticipation of, during or in connection with a mediation session.

(2) Nothing in this section precludes a party from introducing into evidence in any civil, criminal, quasi-criminal, administrative or regulatory action or proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

Concluding a mediation

16 (1) A mediation is concluded when

(a) all issues are resolved,

(b) the mediator determines that the process will not be productive and so advises the participants, or

(c) the mediation session is completed and there is no

agreement to continue.

(2) When a mediation is concluded, the mediator must deliver a Certificate of Completed Mediation in Form 5 to each of the participants who requests one or to their counsel.

Form 1

Section 2 (1)

No.

..... Registry

In the Supreme Court of British Columbia

Between

, Plaintiff(s)

and

, Defendant(s)

NOTICE TO MEDIATE

TO:

AND TO: The Dispute Resolution Office
Ministry of Attorney General
P.O. Box 9280, Stn. Provincial Government
Victoria, BC V8W 9J7 (facsimile: (250) 387-1189)

TAKE NOTICE that this claim is to be mediated in accordance with the Notice to Mediate (Residential Construction) Regulation (B.C. Reg. 152/99).

WITHIN 21 DAYS after delivery of this Notice to all parties, the parties who have not been exempted from attending the mediation session must jointly appoint a mutually acceptable mediator. Otherwise, any of those parties may apply to a designated roster organization for appointment of a mediator.

Dated at, British Columbia,
.....[*date*]

.....
Party [*or party's solicitor*]

Party delivering this Notice:

Form 2

Section 10 (1)

No.

..... Registry

In the Supreme Court of British Columbia

Between

, Plaintiff(s)

and

, Defendant(s)

STATEMENT OF FACTS AND ISSUES

THESE ARE THE FACTS on which I intend to rely in this mediation:

[Set out a brief summary of the facts in numbered paragraphs]

- 1.
- 2.

THESE ARE THE MATTERS IN ISSUE in this mediation:

[Set out a brief summary of the issues in numbered paragraphs]

- 1.
- 2.

This mediation takes place under the Notice to Mediate (Residential Construction) Regulation (B.C. Reg. 152/99).

Dated at, British Columbia,
.....[*date*]

.....
Party [*or party's solicitor*]

Form 3

Section 11 (2)

No.

..... Registry

In the Supreme Court of British Columbia

Between

, Plaintiff(s)

and

, Defendant(s)

MEDIATION FEE DECLARATION

WHEREAS:

(a) we, or our representatives, are participating in a mediation under the Notice to Mediate (Residential Construction) Regulation (B.C. Reg. 152/99);

(b) the mediator will be
of, B.C.;

(c) the cost of the mediation services will be \$..... for a completed mediation session, or will be calculated at \$..... per hour plus necessary disbursements, or will be calculated as follows:

WE WILL, subject to any agreement reached during mediation, pay the cost of the mediation services:

In equal shares OR As follows:

WE MAKE THIS DECLARATION under section 11 (2) of the Notice to Mediate (Residential Construction) Regulation (B.C. Reg. 152/99).

Dated at, British Columbia,
.....[date]

.....
Party [or party's solicitor]

.....
Party [or party's solicitor]

Form 4

Section 13

No.

..... Registry

In the Supreme Court of British Columbia

Between

....., Plaintiff(s)

and

....., Defendant(s)

DECLARATION OF DEFAULT

I DECLARE THAT has failed to comply with section of the Notice to Mediate (Residential Construction) Regulation (B.C. Reg. 152/99).

THE CIRCUMSTANCES OF THE DEFAULT are as follows:

[Set out the circumstances in numbered paragraphs]

Dated at, British Columbia,
.....[*date*]

.....
Party [*or party's solicitor*]

Form 5

Section 16 (2)

No.

..... Registry

In the Supreme Court of British Columbia

Between

....., Plaintiff(s)

and

....., Defendant(s)

CERTIFICATE OF COMPLETED MEDIATION

THIS IS TO CERTIFY THAT has concluded a mediation session in this matter in accordance with the Notice to Mediate (Residential Construction) Regulation (B.C. Reg. 152/99) and that

[] all issues are resolved

some issues are resolved

the process will not be productive and I have so advised the parties

the mediation session is completed and there is no agreement to continue

Dated at, British Columbia,
.....[date]

.....
Mediator

Name:

Address:
.....

[Provisions of the *Homeowner Protection Act*, S.B.C. 1998, c. 31, relevant to the enactment of this regulation: section 29]

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IMPORTANT INFORMATION

B.C. Reg. 377/98
O.C. 1330/98

Deposited October 23, 1998

Homeowner Protection Act

PRESCRIBED PERSONS REGULATION

Prescribed persons

- 1 The Chief Executive Officer, Homeowner Protection Office, may enter into agreements with the following prescribed persons:

- (a) any *National Housing Act* approved lender.

[Provisions of the *Homeowner Protection Act*, S.B.C. 1998, c. 31, relevant to the enactment of this regulation: section 28]

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