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Builder Insurance and Guarantee Requirements Under the *Homeowner Protection Act*

Introduction

The *Homeowner Protection Act* (the "HPA") is a central piece of legislation for those in the home construction industry for one reason; it mandates specific insurance and guarantee requirements for certain constructors. This article explores the history of the HPA and provides a high-level overview of these requirements.

Why Do We Have Protections?

In the 1990's, British Columbia faced a crisis. The province was coming off a construction boom, and thousands of residential buildings were built. Many of these buildings utilized stucco cladding and water-resistant membranes between their building envelopes — the physical barrier separating a home's interior from the outside — and their internal structures. These membranes would frequently trap moisture, leading to premature rotting of internal components.[1] As a result, thousands of structures built in this period suffered from rot, mold, and structural damage.

Litigation over who would pay for building repairs stretched into the 2010's. In one case, a strata corporation applied to the British Columbia Supreme Court for a special levy of $16,000,000 from owners for repairs.[2] In several others, aggrieved strata lot owners sued developers arguing that their homes were negligently designed and constructed.[3] In many instances, homeowners faced financial hardship.

To address the challenges faced by homeowners who were often footing the costs of repairing their homes,[4] the province passed the *HPA* in 1998.

Requirements Under the Act

(A) Home Warranty Insurance

As part of the *HPA*'s protections, per section 22, persons generally are prohibited from selling any newly built homes, unless they first secured home warranty insurance that provided coverage for the following:

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(a) Defects in materials and labour for a period of at least two years after the date on which the warranty begins (the "two-year period");

(b) Defects in the building envelope, including defects resulting in water penetration, for a period of at least five years after the date on which the warranty begins (the "five-year period"); and

(c) Structural defects for a period of at least 10 years after the date on which the warranty begins.[5]

With respect to the two-year period, the *Homeowner Protection Act Regulation* (the "*HPA Regulation*") states that during the first 12 months, "Non-common" property of a strata corporation must be insured against defects in materials, labour, or violations of the *British Columbia Building Code*, while "Common" property is covered for 15 months. Common property includes infrastructure shared by members of a strata, such as a complex's sprinkler system.[6]

Furthermore, for the full two-year period, the *HPA Regulation* requires that insurance covers defects in materials and labour relating to electrical, plumbing, heating, ventilation, and air-conditioning delivery and distribution systems. "Delivery and Distribution Systems" are interconnected components of a building that specifically move, for example water, through a strata property.[7] The full two-year period must also protect against defects that renders a new home unfit to live in. Concurrent with the two-year period, the *HPA Regulation* clarifies that during the Five-year period warranty coverage must specifically be for unintended water penetration that causes, or is likely to cause, material damage to a new home.

Violations of section 22 can be steep. Per section 34(1) of the *HPA*, a person who violates section 22 is liable, upon conviction, to a fine of at most $25,000.[8] Liability cannot be not shielded against by the corporate veil, as per section 34(2), directors, officers, or others who authorized, permitted or acquiesced in the corporation's offence also commits an offence. In addition to these penalties payable to the Provincial government, section 35(1) of the *HPA* enables the court, upon convicting a person, to order that person to compensate owners up to $35,000 for losses suffered because of the offence.[9] This penalty is separate from damages that a homeowner would receive if they successfully commenced a lawsuit. In practice, courts adjust the penalty according to why home warranty insurance was not in place. In one case, a $7,500 penalty was instituted when a constructor sold a property after an insurance company abruptly pulled coverage.[10]

(B) Guarantees

In the case of those constructing new homes, and owners intending to renovate their homes, the *HPA* further obliges these persons to provide the following guarantees to new homeowners:

(a) The new home is free from defects in materials and labour and will remain so for a period of at least two years;

(b) The new home is free from defects in the building envelope, including defects resulting in water penetration for a period of at least five years; and

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(c) The new home is free from structural defects and will remain so for at least 10 years.[11]

These protections cannot be waived and must run continuously, irrespective of who owns the property subject to these guarantees. Imposing these guarantees provides two benefits. First, a breach of section 23 would be the basis of a new homeowners claim, with section 22 ensuring that a successful homeowner can be compensated. Second, section 23 provides a clarified avenue for aggrieved homeowners to sue, especially since explicit guarantees are generally interpreted broadly by courts.[12]

Conclusion

The *HPA* and the *HPA Reg* are important pieces of legislation that carry significant weight for those in the residential construction industry. Through the imposition of mandatory insurance requirements and guarantees, those in the home construction industry are subject to penalties and litigation if certain types of defects arise within proscribed periods. Thus, when building and renovating homes, constructors should be aware of the liability they face and ensure that they are prepared for litigation that may ensue years after a project is completed.

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1 See: REW: "A Short History of the Leaky Condo Crisis" (2024) https://www.rew.ca/guide/articles/a-short-history-of-the-leaky-condo-crisis

2 *Santos v. The Owners, Strata Plan LMA 1509* (2016 BCSC 1775) https://canlii.ca/t/gtwcl

3 See: *Kayne v. The Owners, Strata Plan LMS 2374* (2013 BCSC 51); and *413255 B.C. Ltd. v. Jesson et al.*, (2006 BCSC 1070) https://canlii.ca/t/fp109

4 1998 Legislative Session: 3rd session, 36th Parliament, Hansard. https://www.leg.bc.ca/hansard-content/Debates/36th3rd/19980326pm-Hansard-v8n1.HTM

5 *Homeowner Protection Act* (SBC 1998) Chapter 31 and s. 22 (the "HPA").

6 See: The Owners, Strata Plan 4249 v. Travelers Insurance Company of Canada, 2018 BCSC 114 https://canlii.ca/t/hq121

7 The *HPA*, *Supra,* note 5, s.22

8 The *HPA*, *Supra,* note 5, s.34

9 *The HPA, Supra, note 5. S.35.*

10 *R. v. Gill et al*, 2004 BCPC 513 https://canlii.ca/t/1jpxl

11 The *HPA*, *Supra*, note 5 s. 23

12 See: *Greater Vancouver Water District v. North American Pipe and Steel Ltd.,* 2012 BCCA 337. https://canlii.ca/t/fsb9n

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Peter is an associate lawyer with the firm practicing in a broad range of municipal matters. His practice includes assisting local governments with commercial real estate transactions and advising on planning, development, statutory and contract interpretation, corporate law and administrative law matters. Peter also has experience assisting with judicial reviews and other public law matters.

Peter obtained his Juris Doctor from the Peter A. Allard School of Law at the University of British Columbia ("Allard Law") in 2025. He was called to the British Columbia Bar in 2026 after articling at a local government law firm in Vancouver. During law school, Peter was a research assistant at Allard Law's International Justice and Human Rights Clinic and served as clinician at the Richards Buell Sutton LLP Business Law Clinic, where he provided legal assistance to entrepreneurs and small business under the supervision of practicing lawyers. Prior to law school, Peter obtained a bachelor's degree from Fairleigh Dickinson University. He also taught English in Japan, an experience that has strengthened his communication skills and broadened his international perspective.

During his free time, Peter enjoys travelling, spending time with family and friends, and keeping abreast with new developments in the law.

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