

Section 23 of the *Homeowner Protection Act (consolidated 2007)*

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

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

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

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

(b) the date the new home was first occupied, is free from defects in the building envelope, including defects

resulting in water penetration, and will remain so for a period of at least 5 years after

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

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

the date the new home was first occupied, and

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

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

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

the date the new home was first occupied.

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

(3) The protection under subsection (1) is for the benefit of whoever is the owner of the new home from time to time until the end of the period within which an action may be brought under subsection (5), and that owner is deemed

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

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

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

(5) An action in respect of the protection under subsection (1) must be commenced within 10 years after the date of first occupancy of the new home or, in respect of

common property, common facilities and other assets of a strata corporation, the date the strata plan is deposited in a land title office in accordance with the *Strata Property Act*.

(6) Nothing in this section

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

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

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

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