

Summary of Amendments to the *Homeowner Protection Act* Regulations Effective July 28, 2004



Effective July 28, 2004, amendments made to the *Homeowner Protection Act (HPA)* regulations through an Order in Council came into force. These regulation changes respond to various issues that have arisen with the previous requirements. This summary is only intended to aid in the understanding of these amendments and does not replace or supercede Order in Council #771 containing these regulation amendments. Please refer to this Order in Council on the Homeowner Protection Office website.

1. Elimination of the Stand-alone 2-year Labour and Materials Warranty Insurance for Minor Building Envelope Renovations and Clarification of the Requirements for the 2-5-year Water Penetration Warranty

Regulation Amendments:

1. The requirement for a stand-alone 2-year labour and materials warranty for minor building envelope renovations has been eliminated.

The requirement for 2-5-year home warranty insurance* on building envelope renovations when both the dollar value threshold** and the 60+% replacement of cladding threshold are met, remains in effect.

2. The amendment provides clarification that warranty providers are not required to provide warranty insurance on portions of a building which are not part of the building envelope renovation.

* 2 years on labour and materials and 5 years on the building envelope including water penetration

** the total cost of the building envelope renovation is greater than or equal to the greater of \$10,000 and \$2,000 for each self-contained dwelling unit within the residential building

Rationale for Amendments:

1. **Elimination of mandatory 2-year labour and materials warranty:** The elimination of the requirement for the stand-alone 2-year warranty insurance is aimed at reducing costs for consumers with respect to “targeted” building envelope renovations and simplifying requirements for building envelope warranty insurance for both the industry and consumers. The cost for this 2-year warranty insurance may range from 5% to 15% of the total repair cost, which is significant when compared to the relatively short time frame of the insurance coverage. Repairs in the \$2,000 per unit range (the dollar threshold stated in the regulation) often border on maintenance items, calling into question the requirement for warranty insurance on this work.

Warranty insurance providers may still choose to offer the stand-alone 2-year labour and materials warranty as optional coverage.

2. Clarification of warranty insurance coverage: It is not the intent of the regulation to impose warranty coverage on neighboring areas of a building envelope where work has not been performed. The amendment provides additional clarification of this intent.

This clarification reduces the possible reluctance of building envelope consultants and warranty providers to become involved in projects that do not involve 100% of the building face. In the past, this lack of clarification in the regulations caused debate about the need for coverage on areas where building envelope renovation work was not performed, but was adjoined or in close proximity to the renovated area.

It is believed that the clarification of the 2-5-year warranty will help encourage effective, long-term repairs at more controllable costs for the owners.

2. Re-use of Windows in Building Envelope Renovations

Regulation Amendment: The amendment permits warranty providers to charge a deductible of up to \$500 for each re-installed window used as part of a building envelope renovation (whether the window is modified or not). The maximum amount of the deductible for each dwelling unit that re-uses windows as part of the building envelope renovation is \$1,000. Any damage caused to the building as a result of defects in re-used windows must be covered under home warranty insurance, but is subject to the deductible.

Rationale for Amendment: Given that there is no warranty insurance exclusion available for re-used windows, some warranty providers in the past would only offer warranty insurance on renovations that either included new windows or unaltered existing windows. Building envelope consultants would rarely support the reuse of existing windows without trying to improve their performance through modifications. Consequently, in most cases, existing windows were being replaced with new windows which increases the renovation cost for owners by up to 15%.

This amendment introduces a deductible for the repairs to windows that are re-used as part of a building envelope renovation whether the window is modified or not. Consequently, this deductible enables the re-use of windows that demonstrate a reasonable level of performance, but previously represented a level of risk that was sometimes undesirable for warranty insurance providers. Owners can potentially benefit from lower renovation costs.

Damage caused from re-used windows is also subject to the terms of the deductible. Damage to the building envelope that is caused by the re-use of a window is still covered by warranty insurance, albeit with the applicable deductible per unit. Therefore, consumers can be assured that windows are re-used only when appropriate.

Consumers can select a repair option that either uses new windows or, alternately, re-uses existing windows, which may entail a deductible associated with a re-used window or damage to a building envelope renovation as a result of re-using a window.

3. Clarification of Mold Exclusions

Regulation Amendment: This amendment clarifies that bodily injury or damage to personal property caused by the presence or growth of mold is a permitted exclusion for warranty insurance for new homes or building envelope renovations. Exclusions pertaining to bodily injury or damage to personal property already exist in the regulations; however, they were not specifically linked to mold.

Rationale for Amendment: Home warranty insurance relates solely to construction defects. It is not intended to cover personal injury, health care costs or compensatory and punitive damages. It is also not intended to cover the removal of mold that is not related to construction defects.

This clarification addresses warranty provider concerns that the regulations were not sufficiently clear with respect to their liabilities for mold damage. This perceived liability could have potentially undermined their ability to continue to offer home warranty insurance as a product line in B.C.

The regulation amendment does not reduce existing protections in place for homeowners in the context of mold. Warranty providers continue to be responsible for repairing defects that cause mold and for cleaning up such mold.

4. Maximum Age of Building for Building Envelope Renovation (BER) Regulation

Regulation Amendment: This amendment sets a maximum building age of 25 years for the application of the licensing and warranty insurance requirements of the BER regulation. The age of the building is determined on the basis of its date of first occupancy as a residential building.

Rationale for Amendment: The BER regulation was intended to address consumer protection issues as a result of premature building envelope failure. For a particular generation of buildings, i.e., those buildings that are 25 years old or less, building envelope failure is not considered normal or expected. This period is characterized by an unprecedented building boom in the multi-unit residential sector, and the wide-spread reliance within the industry on a “face-seal” technology to manage external moisture. This technology is now recognized as having failed to adequately deal with the external moisture and weather conditions of the coastal climate of British Columbia.

Buildings older than 25 years may require renovations or repair as part of the normal life-cycle replacement and renewal of aging building components, or as the result of a lack of adequate maintenance over the long-term. The consumer protections contained in the BER regulation were not intended to address these types of issues affecting an aging building.

5. Licensing and Warranty Insurance Requirements for Social Housing

Regulation Amendment: Licensing and warranty insurance requirements and exemptions for social housing have been amended to be in line with those that currently exist for private sector, multi-unit housing.

An exemption from the requirement for home warranty insurance and the reconstruction levy* is available for newly constructed, multi-unit residential buildings held by one party and built by a Licensed Residential Builder, if an appropriate covenant is placed on title.

As a consumer protection measure, in order for these types of new homes to be exempt from the requirement for home warranty insurance, the regulation requires that all multi-unit rental housing projects have a covenant registered on title that confirms that the building will be used for rental purposes and restricts the sale or other disposition of any dwelling unit for a period of 10 years from the date of first occupancy for a unit in the building, unless all units are sold together to one purchaser. This requirement exists regardless of whether the units are private sector market housing or social housing, or whether the units are strata-titled or not.

Multi-unit social housing buildings held by one party are also now exempt from the requirements of the building envelope renovation regulations. This puts these types of buildings in line with the similar exemption already in place for multi-unit rental buildings.

* \$750 collected on the construction of each dwelling unit in a multi-unit building located in the coastal climate zone

Rationale for Amendment: This amendment creates a level playing-field for all multi-unit buildings that are constructed for rental housing purposes and clarifies existing consumer protections. It also prevents an unscrupulous builder from converting a non-strata-titled building to a strata-titled building and offering the units for sale without home warranty insurance.

Social housing is a form of affordable rental housing built under a government funded housing program. As with private market rental housing, social housing is held under a single legal title, usually by a non-profit housing society for rental purposes.

Non-profit housing providers, in conjunction with BC Housing which administers social housing programs on behalf of the Province and housing funded by other levels of government, are considered equal to private market housing providers in their ability to determine their own best interests as building owners and; therefore, should be entitled to the same exemptions under the *Homeowner Protection Act* and regulations as private sector multi-unit rental housing. As with new private sector rental buildings, the construction of new social housing continues to be subject to builder licensing requirements.

This amendment clarifies that all new multi-unit buildings constructed for rental purposes, whether strata-titled or not, whether private market or social housing, are subject to the same consumer protection measures – specifically a Licensed Residential Builder must construct the building and the property owner must register a restrictive covenant on title restricting the sale or other disposition of any dwelling unit for 10 years from the date of first occupancy except when all units are sold together to one purchaser. Building owners are still permitted to sell the building as a whole as long as it continues to be used for rental purposes.