


**PROVINCE OF BRITISH COLUMBIA**  
**ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL**

Order in Council No. **675**, Approved and Ordered **OCT 18 2007**

  
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Lieutenant Governor

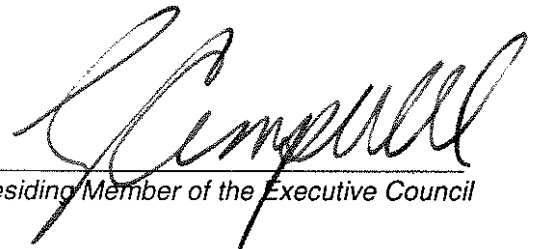
**Executive Council Chambers, Victoria**

On the recommendation of the undersigned, the Lieutenant Governor, by and with the advice and consent of the Executive Council, orders that, effective November 19, 2007,

- (a) the Homeowner Protection Amendment Act, 2007, S.B.C. 2007, c. 20, is brought into force, and*
- (b) the Homeowner Protection Act Regulations, B.C. Reg. 29/99, are amended as set out in the attached Schedule.*



\_\_\_\_\_  
*Minister of Forests and Range and  
Minister Responsible for Housing*



\_\_\_\_\_  
*Presiding Member of the Executive Council*

*(This part is for administrative purposes only and is not part of the Order.)*

**Authority under which Order is made:**

Act and section:- *Homeowner Protection Amendment Act, 2007, S.B.C. 2007, c. 20, s. 27;  
Homeowner Protection Act, S.B.C. 1998, c. 31, s. 32*

Other (specify):- *oic 137/99*

## SCHEDULE

**1** *Section 1 (1) of the Homeowner Protection Act Regulations, B.C. Reg. 29/99, is amended*

- (a) by striking out “In this regulation” and substituting “In the Act and this regulation”,*
- (b) in the definition of “common property” by striking out “Condominium Act” and substituting “Strata Property Act”,*
- (c) by repealing the definition of “director nominee”, and*
- (d) by adding the following definitions:*

**“personal use”**, in relation to an owner builder, means residential occupancy by the owner builder and does not include rental use;

**“structural defect”** means

- (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 that causes structural damage that materially and adversely affects the use of the new home for residential occupancy;

**“vendor of a new home”**, for the purposes of section 23 (1) of the Act, does not include a person who purchased a new home from the residential builder or owner builder of that new home.

**2** *The title of Part 1 is repealed and the following substituted:*

### **PART 1 – ADMINISTRATION, LICENCES AND AUTHORIZATIONS**

**3** *Section 2 (2) is repealed and the following substituted:*

- (2) A person who builds a multi-unit building for rental purposes, if the building 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 14, 22 and 26 of the Act with respect to that building, 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.

- (2.1) A person who builds 3 or more dwelling units for rental purposes is exempt from sections 14, 22 and 26 of the Act with respect to those dwelling units, provided that
  - (a) the dwelling units are owned under a single legal title, and
  - (b) a restrictive covenant is registered on the title restricting the sale or other disposition of any of the dwelling units for 10 years from the date of first occupancy.

**4 Section 2 (4) is repealed.**

**5 Section 4 is amended**

**(a) in subsection (1) (a) by striking out “director nominee” and substituting “the individuals about whom disclosure is required under section 14 (3) of the Act” and by adding “, date of birth” after “fax number”,**

**(b) by repealing subsection (1) (b) and substituting the following:**

(b) if the applicant is a corporation, the name of a contact person for the corporation; ,

**(c) by repealing subsection (1) (c) and substituting the following:**

(c) if the applicant is a partnership, the name of each partner; ,

**(d) in subsection (1) (f) by striking out “each partner, director and officer named under paragraph (c)” and substituting “each partner of the applicant and each individual about whom disclosure is required under section 14 (3) of the Act”,**

**(e) by repealing subsection (1) (g) and substituting the following:**

(g) a list of professional courses related to new home construction taken by the applicant and, if applicable, by each partner of the applicant or by each individual about whom disclosure is required under section 14 (3) of the Act; ,

**(f) by repealing subsection (1) (h) and (i),**

**(g) in subsection (1) (j) by adding “legislation,” after “comply with the”,**

**(h) in subsection (1) (k) by striking out “any person named in paragraph (c)” and substituting “the applicant and, if applicable, any partner of the applicant or any individual about whom disclosure is required under section 14 (3) of the Act”,**

**(i) in subsection (1) (l) by striking out “the director nominee” and substituting “an individual authorized by the corporation to sign on its behalf”,**

**(j) by adding the following subsections:**

(2.1) An application to amend a licence under section 14 (2.2) of the Act must be accompanied by the fee set out in section 2.1 of Schedule 1.

(7) For the purposes of section 14 (2) (a) (ii) of the Act, it is a condition for licensing a corporation that none of the individuals disclosed to the registrar under section 14 (3) of the Act

(a) has had a residential builder licence cancelled under section 15 (c) of the Act within the past 5 years, or

(b) has been or is in control of a corporation that has had a residential builder’s licence cancelled under section 15 (c) of the Act within the past 5 years.

**6 The following section is added to Part 1:**

## Owner builder authorizations

### 4.1 (1) In this section:

**“registered interest in land”** means any of the following interests in land, registered under the *Land Title Act*:

- (a) an interest in fee simple;
- (b) a life interest;
- (c) an interest under a lease with a term of at least 15 years;

**“first occupancy”** means

- (a) the date an occupancy permit with respect to the new home was first issued, or
- (b) if no occupancy permit has been issued with respect to the new home, the date the new home was first occupied.

### (2) The following criteria are prescribed for the purposes of section 20 (1) (a) of the Act:

- (a) the person must be an individual;
- (b) the person must intend to use the new home for personal use for at least one year from the date of first occupancy of the new home;
- (c) if the person has previously been issued an authorization, the person must not have been issued an authorization for at least the following period of time, determined from the date of first occupancy of the new home built under the most recent previous authorization:
  - (i) 18 months, if the person has been issued only one previous authorization;
  - (ii) 3 years, if the person has been issued two previous authorizations;
  - (iii) 5 years, if the person has been issued three or more previous authorizations;
- (d) the person must not ordinarily be resident with a person who does not meet the criteria set out in paragraph (c);
- (e) the person must
  - (i) have a registered interest in the land on which the new home is to be built and intend to maintain that interest for at least one year from the date of first occupancy, or
  - (ii) be a director of a family farm corporation, within the meaning of the *Property Transfer Tax Act*, that
    - (A) has a registered interest in the land on which the new home is to be built, and
    - (B) has passed a resolution affirming that it will not dispose of the interest referred to in clause (A) for at least one year from the date of first occupancy;
- (f) the person must intend to engage in, arrange for or manage all or substantially all of the construction of the new home;

- (g) the person must not have made a false statement in a previous application for an authorization;
  - (h) the person must not have failed to comply with sections 20.1 (1), 21 (2) and 22 of the Act or section 19 (1) of this regulation.
- (3) A person may apply to the registrar for an authorization by providing, in a form acceptable to the registrar, all of the following:
- (a) particulars respecting the applicant, including
    - (i) name and address,
    - (ii) telephone numbers and fax numbers,
    - (iii) date of birth, and
    - (iv) driver's licence number;
  - (b) a list of the persons ordinarily resident with the applicant and the particulars of each, including the particulars set out in paragraph (a) (i) to (iv);
  - (c) the civic address, legal description and parcel identification number of the location of the proposed owner-built home;
  - (d) a statement
    - (i) identifying who will build the new home and who will manage the building of the new home;
    - (ii) identifying the type of new home to be built;
    - (iii) describing the applicant's intended use of the new home and the intended duration of that use;
    - (iv) describing the applicant's interests in the land on which the new home is to be built;
    - (v) affirming that the person has read the statutory protection provision of the Act and understands his or her obligations to future purchasers of the new home;
    - (vi) setting out how many previous authorizations, if any, have been issued to the applicant or a person ordinarily resident with the applicant;
  - (e) an undertaking by the applicant to notify the registrar of the following when first occupancy occurs:
    - (i) the date on which first occupancy occurred;
    - (ii) the names of the tradespersons who contributed to the building of the new home;
  - (f) the signature of the applicant.
- (4) The period of time prescribed for the purposes of section 20.1 (1) (b) is 12 months.
- (5) An application under subsection (3) must be accompanied by the fee set out in section 4.1 of Schedule 1.
- (6) In addition to the fee payable under subsection (4), an applicant must pay the fee set out in section 4.2 of Schedule I at the time the authorization is issued to the applicant.

- (7) An application under section 20.1 (1) of the Act must be accompanied by the fee set out in section 4.3 of Schedule 1.

7 *The title of Part 2 is repealed and the following substituted:*

## **PART 2 – HOME WARRANTY INSURANCE AND STATUTORY PROTECTION**

8 *The following section is added to Part 2:*

### **Statutory protection – exclusions**

- 17.1 The agreement referred to in section 23 (1) of the Act does not extend to anything that may be excluded by a warranty provided under section 10 or 11.

9 *Section 19 is amended*

*(a) by repealing subsection (1) and substituting the following:*

- (1) An owner builder must not build a new home other than
- (a) a detached dwelling unit under one legal title, or
  - (b) a single dwelling unit in or attached to
    - (i) a pre-existing building, or
    - (ii) a new non-residential building that does not have another single dwelling unit in or attached to it. , *and*

*(b) by repealing subsections (3) to (6).*

10 *Section 20 is repealed.*

11 *The following section is added:*

### **Administrative penalties**

- 20.1 (1) Before the registrar imposes a monetary penalty on a person, the registrar must consider the following:
- (a) previous enforcement actions under the Act for contraventions of a similar nature by the person;
  - (b) the extent of the harm, or of the degree of risk of harm, to others as a result of the contravention;
  - (c) whether the contravention was deliberate;
  - (d) whether the contravention was repeated or continuous;
  - (e) the length of time during which the contravention continued;
  - (f) any economic benefit derived by the person from the contravention;
  - (g) any attempt by the person to remedy the harm done to others as a result of the contravention.

- (2) For the purpose of section 28.3 (1) (a) of the Act, the following provisions of the Act are prescribed:
  - (a) section 9 (3) [*obstruction of registrar or compliance officer*];
  - (b) section 14 (1) [*carrying on business of residential builder without licence*];
  - (c) section 14 (5) [*misrepresentation as licenced residential builder*];
  - (d) section 20.1 (1) [*sale of or offer to sell owner-built home*];
  - (e) section 21 (2) [*disclosure and security*];
  - (f) section 22 (1) [*building new home without insurance*];
  - (g) section 22 (1.1) [*sale of new home*].
- (3) For the purposes of section 28.3 (1) (a) of the Act, the following provisions of this regulation are prescribed:
  - (a) section 18 (1) [*disclosure*];
  - (b) section 19 (1) [*unauthorized new home*].

**12 Section 21 is amended by renumbering the section as section 21 (1) and by adding the following subsections:**

- (2) An owner builder, as defined before the coming into force of the *Homeowner Protection Amendment Act, 2007*, S.B.C. 2007, c. 20, may not apply for an authorization under section 20 (1) of the Act unless at least 18 months have expired since the date the owner builder, or anyone ordinarily resident with the owner builder, first took occupancy of the most recently built new home built by that owner builder, and if the owner builder is issued an authorization under that section, the authorization is to be considered the person's second authorization for the purposes of section 4.1 (2) (c) of this regulation.
- (3) Despite any regulation made under section 33 (b) of the Act, until 90 days after the date this section comes into force, a municipality or regional district may accept as evidence for the purpose of section 30 (1) (a) (ii) of the Act an Owner Builder Declaration and Disclosure Notice in the form set out in Schedule 4 of this regulation as it was before its repeal.

**13 Schedule 1 is amended**

- (a) *in section 3 by striking out "1 or 2" and substituting "1, 2 or 2.1" and by striking out "\$25" and substituting "\$40" and*
- (b) *by adding the following sections:*
  - 2.1** The application fee for an amendment of a licence under section 14 (2.2) is \$100.
  - 4.1** The application fee for an authorization under section 20 (1) of the Act is \$50.
  - 4.2** The issuance fee for an authorization under section 20 (1) of the Act is \$375.
  - 4.3** The application fee for a permission under section 20.1 of the Act is \$100.

**14 Section 3 of Schedule 3 is amended by striking out everything after "10 years".**

**15 Schedule 4 is repealed.**