

Regulatory Bulletin

De-enrolling Homes from Home Warranty Insurance and the Homeowner Protection Act

Overview

Continued enrollment of a new home with home warranty insurance is essential throughout its construction and sale. If a new home is de-enrolled from home warranty insurance for any reason, construction cannot continue. Furthermore, the new home cannot be offered for sale or sold without being re-enrolled with home warranty insurance. Continued de-enrollment of a new home may contravene the Homeowner Protection Act (the “Act”) and can result in penalties for the builder, developer or owner.

Legal requirements under the Act

Under section 22 of the Homeowner Protection Act, a person must not build, sell, or offer to sell a new home unless it is first registered for coverage by home warranty insurance provided by a warranty provider. See Regulatory Bulletin No. 8: Registering and Enrolling New Homes for Home Warranty Insurance Coverage for more information about registering and enrolling new homes.

What is a de-enrollment?

A de-enrollment occurs when the commitment for home warranty insurance on a home or multi-unit project is cancelled. BC Housing does not initiate de-enrollments. De-enrollments occur at either the builder’s or developer’s request to the warranty provider or on the warranty provider’s initiative. Some common reasons for de-enrollment include:

- › Cancellation of the project
- › Cancellation of contract between general contractor and developer
- › Cancellation of a contract between builder and custom home owner
- › Failure of builder to meet terms and conditions of warranty provider
- › Sale of the project during construction
- › Foreclosure on project during construction



No 10 | May 2012

Regulatory Bulletins are a series of publications developed by BC Housing to provide information on the Homeowner Protection Act. All Regulatory Bulletins can be viewed at www.bchousing.org.

This bulletin and the website are for convenience only, they do not constitute legal advice. For complete details consult the Act and its regulations. For more information contact:

Licensing and Consumer Services | Branch of BC Housing

Phone: **604-646-7050**

Toll-free: **1-800-407-7757**

Fax: **604-646-7051**

E: licensinginfo@bchousing.org

W: www.bchousing.org

[@RegistrarBCH](https://twitter.com/RegistrarBCH)

What happens when de-enrollment occurs?

The consequences of de-enrollment and options to remedy are different depending on the reason for the de-enrollment and at what stage of construction it takes place. In each case, de-enrollment puts the owner and builder in the position of no longer satisfying the requirements of section 22 of the Act. This situation must be remedied before continuing with construction, offering for sale, and/or selling of the new home.

1. Cancellation of project

In general, de-enrollments that occur earlier in the construction process are easier to manage. When a project is cancelled and de-enrollment occurs before construction begins (e.g. excavation stage) the owner builder or developer is in the same position than if enrollment never occurred. If the project is revived, the current owner, developer or builder must ensure a new enrollment is in place before obtaining a building permit and starting construction.

2. Cancellation of contract between general contractor and developer

- › If a licensed developer originally enrolled the project, the enrollment can continue even
- › If the general contractor changes at any stage of construction. It is the developer who accepts liability for construction by enrolling the project. A general contractor needs to be a Licensed Residential Builder.
- › If the licensed general contractor enrolled the project and is no longer on the job, a licensed developer may enroll the project at any stage of construction in order to continue.
- › If the general contractor changes prior to the new home or project being substantially complete, (definition below) the developer may wish to have the new general contractor enroll the project. However, the warranty provider must agree to this arrangement prior to re-enrollment. In most cases, the warranty provider will prefer the developer to enroll the project. Note: The general contractor who enrolls the home assumes responsibility under a policy of home warranty insurance for the work arranged by the previous

builder as well as their own work required to complete the project.

- › If the general contractor changes after the new home or project is substantially complete, the developer may enroll the project themselves. Note: A general contractor cannot enroll a residential construction project under a policy of home warranty insurance if they did not substantially complete the construction of the residential project.

3. Cancellation of a contract between builder and custom home owner

In custom home contracts, the options available when an owner and Licensed Residential Builder part ways depend on the stage of construction:

If the home is not yet substantially complete, the owner has two options:

- i. Hire a new general contractor who must register the new home and ensure it is enrolled in home warranty insurance; or
- ii. Successfully apply for Owner Builder Authorization from Licensing and Consumer Services branch of BC Housing and complete the home, acting as his or her own general contractor.

In each case, the individual who takes over the project assumes all liability for the home from the beginning of construction to its completion, without exemptions or exclusions. A general contractor who enrolls the new home assumes responsibility under a policy of home warranty insurance for all work arranged by the previous builder, as well as all work required to complete the home. Similarly, an owner builder takes on full statutory warranty liability for all previous work plus all work required to complete the home.

What does “substantially complete” mean?

A builder’s responsibility for a substantially complete new home derives from the definition of residential builder in section 1 of the Act:

“**residential builder**” means a person who engages in, arranges for or manages all or substantially all of the construction of a new home or agrees to do any of those things, and includes a developer and a general contractor;

Please note that the term ‘lock-up’ does not equate to substantial completion. In most cases, a substantially complete home is one for which a policy of home warranty insurance could be issued for all of the structural and building envelope components of the home at a minimum. The test is one of reasonableness – whether a reasonable person would consider that the builder had managed all or substantially all of the construction of a new home. For example, a home could also be substantially complete if a few items were incomplete from the building envelope component but a significant amount of interior finishing was complete in lieu. The Licensing and Consumer Services branch can be contacted for guidance on what reasonably constitutes a substantially complete home for the purposes of the Act.

If the home is substantially complete when the contract ceases:

- › General contractors are still legally obligated to stand behind their work as a residential builder. If they de-enroll the home at this stage, they would be contravening section 22 of the Act and would then be required to re-enroll the home.
- › Builders should be aware that, in addition to facing possible penalties imposed by BC Housing, re-enrolling a home bears additional costs imposed by the warranty provider in terms of re-inspections, administrative fees and possible higher enrollment fees.

Exclusions: Builders and owners in this situation should note that the policy of home warranty insurance may exclude any design, labour or materials provided by the owner. When the owner completes the home themselves (or by hiring another builder or sub-trades) after the builder leaves the substantially complete project, the builder will not be liable under the policy for the work completed by the owner or the owner’s trades. It’s important that both the builder and owner communicate with the applicable warranty provider to establish what items were done before and after the contract terminated.

4. Failure of builder to meet terms and conditions of warranty provider

When Licensed Residential Builders enroll a new home in home warranty insurance, they contract and sign terms and conditions with their warranty provider. If the builder breaches those terms and conditions, including being unable or unwilling to correct construction deficiencies during construction, warranty providers may de-enroll the project in order to manage their risk.

The consequences for the general contractor, developer and/or owner is the same as for any other cause of de-enrollment. Continued construction, offer to sell, or sale of the new home cannot take place without replacement documentation in place. In the rare case that a warranty provider de-enrolls a custom home that is substantially complete or final inspection has occurred, BC Housing enforces re-enrollment. Builders and owners are advised to work cooperatively with their warranty provider to avoid mistakes that may lead to de-enrollment and costly re-enrollment.

5. Sale of project during construction

A new home or multi-unit project may be sold during construction, provided that coverage for home warranty insurance remains in place (for example, if the general contractor stayed on the job or substantially completed construction but the owner or developer wants to sell the property). If the project is de-enrolled during construction and the owner wishes to sell, the project must either be re-enrolled by a Licensed Residential Builder prior to offering the property for sale, or special permission must be sought from the Registrar of BC Housing under section 22 of the Act.

6. Foreclosure on project during construction

In most cases, depending on the details of the court order, the entity having conduct of sale for the property as a result of foreclosure becomes the party responsible for ensuring home warranty insurance is in place prior to sale. In this situation, the Act still requires home warranty insurance coverage to be in place prior to offering for sale and/or sale; there are no special exemptions or provisions for mortgage-holders or receivers under these circumstances.

If home warranty insurance remains in place and the new home or project is offered for sale or sold, the warranty provider may want to renegotiate the provision of security from the mortgage-holder since the original developer or builder is very unlikely to be able to meet their financial obligations under the original terms and conditions. If the project is de-enrolled, the mortgage-holder or receiver will have to arrange for re-enrollment prior to offering for sale, regardless of whether the original builder is available to assist with either the security or remedying defects that may arise.

7. De-enrollment after home warranty insurance policy has commenced

Note: Insurance Act Regulations do not permit a policy of home warranty insurance to be waived.

Therefore, once a policy of home warranty insurance has commenced it may not be cancelled, including by de-enrollment.

New Homes Registry

The New Homes Registry, available on BC Housing's website, is an important tool for prospective home buyers, real estate licensees and legal professionals to assist with making purchasing decisions and completing real estate transactions related to new homes. All new homes registered with Licensing and Consumer Services on or after November 19, 2007 are included in the registry as well as details of any de-enrollments associated with those homes. The Licensing and Consumer Services branch at licensinginfo@bchousing.org can provide further details about the new home and the de-enrollment as well as information about all new homes registered prior to November 19, 2007.

