

Compliance Case Studies: No.3

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For more information, contact:

Licensing and Consumer Services

BC Housing

Suite 203-4555 Kingsway
Burnaby, BC V5H 4T8

Phone: 604-646-7050

Toll-free: 1-800-407-7757

E: licensinginfo@bchousing.org

www.bchousing.org

Twitter: @RegistrarBCH

False Owner Builder Authorization Proves Unsuccessful

Overview

A homeowner's involvement in the construction of their new home doesn't eliminate a builder's obligation to provide home warranty insurance.

This case study looks at how Todd Brown, a residential builder, attempted to avoid this obligation through a false Owner Builder Authorization. BC Housing ultimately issued a compliance order and Brown faced the possibility of a hefty fine.

Background

Brown is the co-owner of a company that applied for and was approved as a BC Housing licensed residential builder.

In the same month, property owner Leanne Carter obtained an Owner Builder Authorization from BC Housing for the construction of a new home. In her application, she stated she was not hiring a builder or construction manager and would arrange for and manage most of the construction herself. Obtaining the Owner Builder Authorization meant home warranty insurance would not be mandatory for the home.

Carter went on to obtain a New Home Registration Form from BC Housing and a building permit from her city, and the new home was constructed.

Later that year, Carter contacted a BC Housing compliance investigator and said Brown had advised her to obtain an Owner Builder Authorization, but had in fact been hired as the construction manager and was responsible for building all or substantially all of her new home. Brown managed and scheduled all the trades, and arranged and managed the inspection process from start to finish, Carter said.

Carter provided BC Housing with a copy of a construction contract listing Brown's company as a licensed residential builder and Brown as the construction manager. She also supplied a copy of the \$10,000 cheque payable to Brown as first payment for the construction, and a list of the trades involved in the project.

Results

The compliance investigator contacted Brown to inquire about his involvement in the construction of the home. Brown said he had been a consultant rather than a construction manager. He explained that although he had hired some of the trades, Carter was responsible for paying them. Brown also stated the construction contract was only in place to allow Carter to receive financing from her lender. He said he would provide proof that he did not manage the construction.

The compliance investigator never received any proof, and later confirmed with several key trades that they understood that Brown had been hired by Carter to be the construction manager and that he had overseen their work from start to finish.

Carter also provided BC Housing with records of payments for Brown's management fees, and copies of emails sent between her and Brown during the construction that suggested Brown was in fact the construction manager.

Based on the collected evidence, BC Housing cancelled Carter's Owner Builder Authorization and later issued a compliance order ordering Brown's company to obtain home warranty insurance for Carter's home.

Three months after the compliance order was issued, Brown submitted a Registrar Review Request Form asking for the order to be set aside and for Carter to be required to provide the home warranty insurance, on the basis that Brown was never a residential builder or general contractor for Carter's home.

The Registrar upheld the compliance order based on the evidence. Brown then appealed to the British Columbia Safety Standards Appeal Board, but was unsuccessful there as well.

As a result, Brown was required to obtain home warranty insurance for Carter's home and faced a monetary penalty if he didn't comply. Continued non-compliance with the Homeowner Protection Act and its Regulations can lead to a monetary penalty of up to \$25,000 or imprisonment for a term of not more than one year, or both.

Lessons learned

Brown expended considerable time, effort and legal fees to deal with BC Housing's Licensing & Consumer Services team and to appeal the compliance order, but was ultimately unsuccessful.

This could have been avoided if he had complied with the [requirements of the Act](#).

Construction professionals can have different roles, responsibilities and types of involvement in an owner-builder project. Our regulatory bulletin, [What Builders Need to Know About Owner-Builder Projects](#), outlines these in full.

Relevant legislation

The following sections of the Homeowner Protection Act apply to this case:

- › Section 1 of the Act, states that a "residential builder" is, "...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."
- › Section 22(1) of the Act states, "A person must not build a new home unless the new home is registered for coverage by home warranty insurance provided by a warranty provider."