

# Regulatory Bulletin

## Heritage Buildings and the Homeowner Protection Act

### Overview

This bulletin explains how conversion and renovation projects involving heritage buildings with a residential component are affected by the Homeowner Protection Act and Regulations. Property owners, builders and others can use this bulletin to assess whether work on a heritage building<sup>1</sup> triggers the requirements of the Act and Regulations, and whether home warranty insurance is required under the Act.

### Are projects involving heritage buildings captured under the Act?

#### a) Residential to Residential

##### What triggers the Act and Regulations?

A heritage building whose present use and end use is one of residential occupancy/purposes (“residential to residential”) is only captured by the Act and Regulations if the work on the building meets the definition of “substantial reconstruction.”

A significant amount of structure must be removed and/or replaced for a project to be deemed a substantial reconstruction. The two most common scenarios involving a heritage building are:

- › when more than 75% of the structure above its foundation is removed and/or replaced; and
- › when a new foundation is laid and the total amount of new structural components, including the foundation, make up 50% of the total finished structure.

A substantially reconstructed home is considered a “new home” under the Act. As a result, the work must be completed by a Licensed Residential Builder and the home must be covered by home warranty insurance before a building permit is issued.

This coverage must cover all components of the “new home” – both pre-existing and newly built. There are no permitted exclusions under the Act for pre-existing components of a new home, including the substantial reconstruction of a heritage home.



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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](http://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:

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<sup>1</sup> See the definition of “designated heritage building” in section 10(1.1) of the Regulations.

If you need help determining if a proposed project involving a residential heritage building would be a substantial reconstruction, please see [Regulatory Bulletin Number 6: Substantially Reconstructed Homes and the Homeowner Protection Act](#) or contact Licensing and Consumer Services, branch of BC Housing by email: [licensinginfo@bchousing.org](mailto:licensinginfo@bchousing.org).

### When are the Act and Regulations not triggered?

Many heritage renovations will not trigger requirements for a Licensed Residential Builder and home warranty insurance due to the amount of components/work that must remain to maintain the building's heritage value. For example, if a two-storey 1910 home on a local government heritage register had its interior components completely gutted except for the first-floor framing, attached heritage windows and cladding, without any significant addition to the home – the Act and Regulations would not apply. The reason for this is because the foundation plus more than 25% of the structure above remains.

Another common scenario involves a plan to increase the number of units in the home. For example, if a 1906 home protected by a heritage covenant is converted from a single-unit dwelling to one with three units, largely within the confines of the original structure/envelope, the Act and Regulations are not triggered. That's because not more than 75% of the structure is removed/replaced and the additional units are contained within the existing structure.



Photo courtesy of the BC Heritage Branch, Ministry of Forests, Lands and Natural Resource Operations

### Communication is critical

Clearly, it's important for the architect, designer, developer and/or builder to have early and open communication with both the local government planning and building departments, and the warranty provider being considered for a substantial reconstruction project involving a heritage home. At the end of the day, a warranty provider of a substantially reconstructed heritage home has to be comfortable with any pre-existing components if they are going to agree to provide coverage for the project. A report from a suitably qualified registered professional, such as an engineer, is often critical in helping a home warranty insurance company gain this comfort level.

### b) Conversions from non-residential to residential

A heritage building being converted from non-residential use to residential use **and for sale** is considered a new home and is therefore covered by the Act and Regulations. Section 1(2)(b) of the Regulations states that a new home includes: "...a non-residential building, or portion thereof, converted to use for residential occupancy and sale."

Home warranty insurance must cover both pre-existing components and newly built components. The exception is for components of "heritage value" in a "designated heritage building" (See definition below. Please note that the definition of a designated heritage building in the Homeowner Protection Act is different from the definition in the Local Government Act).

### Possible exclusions for components with heritage value

The Regulations outline what a warranty company may exclude from a policy of home warranty insurance on all new homes, including the allowable exclusions for heritage buildings under section 10(1)(j). As of June 24, 2010, pre-existing/remaining components of a heritage building may be excluded from mandatory home warranty insurance coverage (known as 2-5-10 and defined in the Act and Regulations) on a project only if **all** of the following conditions are met:

- › The building is a conversion from commercial use to residential use;

- › The building being converted is a “designated heritage building”;
- › The component contributes to the “heritage value” of the heritage building; and
- › The component does not conform to the current BC Building Code.

Section 10 (1.1) states that a “...designated heritage building” means a building that is:

- (a) a Provincial heritage site within the meaning of the Heritage Conservation Act or included in the Provincial heritage register under that Act, or
- (b) protected through heritage designation or included in a heritage register under the Local Government Act, the Vancouver Charter or the Islands Trust Act.”

*Example:* A former warehouse building in a Heritage Conservation Area is being converted to live/work lofts over ground-floor retail. The solid brick exterior walls and the double-hung sash windows contribute to the heritage value of the building and the overall ambience of the Heritage Conservation Area. While a warranty provider may consider these elements to not comply with current code requirements for rainscreen and weather tightness, as heritage characteristics these components may be excluded from the requirement for home warranty insurance.

In determining the “heritage value” of a component, a Statement of Significance could assist in making this determination.<sup>2</sup>

**Important:** Please note that this exclusion only determines which components of the project may be excluded from mandatory home warranty insurance coverage. It does not exclude a Licensed Residential Builder from having to enroll a designated heritage building with home warranty insurance prior to obtaining a building permit.

Windows are a common example of components with heritage value that may remain and not be replaced by new windows. If all of the conditions listed above apply, these windows could be excluded from coverage and the owner may not be able to make a claim against their home warranty insurance policy if the windows failed.

## Note for owners of heritage homes

- › Purchasers of renovated or converted heritage homes should find out whether the home is covered by home warranty insurance and, if so, which exclusions to coverage may apply. Check the New Homes Registry, available on BC Housing’s website, to see if the home is covered and read this bulletin to learn more about possible exclusions.
- › Owners may also check whether their home is a designated heritage building by contacting their local government to find out if their home is on the Community Heritage Register or within a Heritage Conservation Area.

Property owners, builders and others can use this bulletin to assess whether work on a heritage building triggers the requirements of the Act and Regulations.



Photo courtesy of the BC Heritage Branch, Ministry of Forests, Lands and Natural Resource Operations

<sup>2</sup> For more information on whether a component may be seen as having “heritage value” please contact the Provincial Heritage Branch by email: [heritage@gov.bc.ca](mailto:heritage@gov.bc.ca), or by phone at 250-356-1432; toll free 1-800-663-7867 or visit <http://www.for.gov.bc.ca/heritage>.