

Regulatory Bulletin

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

Overview

A home or a multi-unit building must be registered with BC Housing and enrolled in home warranty insurance before a building permit is obtained and construction begins. 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 the Insurance Act and can result in penalties for the builder, developer and/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 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.

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 when a builder or developer request it from the warranty provider. The warranty provider can also de-enrol a new home. The de-enrollment creates both legal and practical issues. Legally, the new home is required to be covered by home warranty insurance. The practical solution will depend on the circumstances of the project and the de-enrollment. Some common reasons for de-enrollment include:

- › Cancellation of the project before construction begins
- › Cancellation of contract between general contractor and developer
- › Cancellation of a contract between Licensed Residential Builder and custom home owner
- › Failure of Licensed Residential Builder to meet terms and conditions of warranty provider
- › Sale of the new home or multi-unit project during construction
- › Foreclosure on project during construction



No 10 | October 2021

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.

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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?

In each case, de-enrollment puts the owner and Licensed Residential 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. The party that originally enrolled the new home with coverage may be obligated to re-enroll the home, depending on the circumstances.

1. Cancellation of project before construction begins

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 or earlier), the owner, builder or developer are in the same position as if enrollment never occurred. If the project is revived, the current owner, builder or developer must ensure the home is registered with home warranty insurance coverage 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 as the change will not affect warranty registration. A general contractor needs to be a Licensed Residential Builder in order to construct homes under Part 9 of the BC Building Code
- › If the licensed general contractor enrolled the Part 9 project and is no longer on the job, a licensed developer may:
 - (i) Enroll the project at any stage of construction. However, the developer must also be licensed as a general contractor or hire a licensed general contractor to complete the home; or
 - (ii) Wish to have the new general contractor enroll the project. However, the warranty provider must agree to this arrangement prior to re-enrollment. The party who enrolls the home assumes responsibility under a policy of home warranty insurance for the work completed by the previous builder; or

- (iii) Seek legal remedies to compel the original contractor to re-enroll the new home.

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

For 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 in the early stages of construction, the owner has three options:
 - (i) Hire a new Licensed Residential Builder who registers the new home and ensures it is enrolled in home warranty insurance; or
 - (ii) Become licensed as a licensed general contractor and enroll the home with home warranty insurance; or
 - (iii) Successfully apply and be approved for an Owner Builder Authorization from BC Housing's Licensing and Consumer Services, and complete the home, acting as their own general contractor. This requires that the owner manage all or substantially all of the construction and therefore is not an option if construction has progressed too far.

In each case, the individual who takes over the project will be required to assume liability for the home from the beginning of construction to its completion. Whoever 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.

Taking over an unfinished new home?

“**Residential builder**” is defined in the Homeowner Protection Act as 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;

Owner builders do not need to be licensed or arrange for home warranty insurance. In order for a person to qualify as an “**owner builder**” and be approved for an Owner Builder Authorization, they must intend to engage in, arrange for or manage all or substantially all of the construction of the new home. Only one person can manage “all or substantially all” of the construction of a new home.

Whether the person taking over construction is required to be licensed and ensure coverage with home warranty insurance will depend on whether the new home is sufficiently early in its construction. Subject to a few exemptions (including owner builders), a person who builds a new home must ensure that it remains covered with home warranty insurance.

If the home is further along in construction when the contract ceases, there are fewer options as only one person can be responsible for managing all or substantially all of the construction of the new home:

- › 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 might be contravening section 22 of the Act and could then be required to re-enroll the home.
- › Licensed Residential 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. This includes 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. If the builder leaves the project after managing all or substantially all of the construction, and the owner completes the home themselves (or by hiring another builder or sub-trades), the original builder is not responsible for providing warranty coverage for work completed by the owner or the owner’s trades. It’s important that both the builder and owner communicate with the 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, offering to sell, or sale of the new home cannot take place without re-enrollment in home warranty insurance coverage. When a warranty provider de-enrolls a custom home that is far along in its construction, BC Housing may enforce 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 managed all or substantially all of 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, there are two options. The project must either be re-enrolled by a Licensed Residential Builder prior to offering the property for sale, or the owner must obtain permission to sell from the Registrar of BC Housing as per section 22 of the Act.

6. Foreclosure on project during construction

In most cases, depending on the court order, the entity having conduct of sale for the property in foreclosure will be responsible for ensuring home warranty insurance is in place before offering the home for sale. In this situation, the Act still requires home warranty insurance coverage prior to continuing construction, offering for sale and/or being sold. There are no special exemptions or provisions for mortgage-holders or receivers under these circumstances. If the project is de-enrolled, the mortgage-holder or receiver is responsible for ensuring that the home is enrolled with home warranty insurance before continuing construction or offering home for sale. This requirement applies regardless of whether the original builder is available to assist with either the security or remedying defects that may arise.

7. Insurance Act requirements

Note: The Insurance Act does not permit a policy of home warranty insurance to be waived or invalidated.

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

Details about commencement can be found in Schedule 3 of the [Homeowner Protection Act Regulation](#).

New Homes Registry

The New Homes Registry is an important tool for prospective home buyers, real estate licensees and legal professionals. Available on the BC Housing website, this online resource helps to make informed purchasing decisions and can assist in 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.

Licensing and Consumer Services 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. Contact licensinginfo@bchousing.org.



If you need help to determine whether you are responsible for maintaining home warranty insurance coverage before you de-enroll a home, please contact the Compliance Department at 604-646-7050 (select Option 4) to speak with one of our team members or email compliance@bchousing.org