

A Discussion of Current and Proposed Legislation Affecting Owners of New Condominiums in Alberta

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**A DISCUSSION OF CURRENT AND PROPOSED LEGISLATION
AFFECTING OWNERS OF NEW CONDOMINIUMS IN ALBERTA**

February 1st, 2014 saw the implementation of the New Home Buyer Protection Act, R.S.A. 2012, c. N-3.2 applying to any new home building permit. This paper seeks to identify key legislative sections and discuss the first two years of application. It will also look to highlight un-proclaimed amendments to the *Condominium Property Act*, R.S.A. 2000 c. C-22, and how this may affect the condominium warranty program. ¹

LEGISLATION

The relevant legislation for new home buyers can be found in:

New Home Buyer Protection Act R.S.A. 2012 c. N-3.2

New Home Buyer Protection (Ministerial) Regulation (hereinafter referred to as “*Ministerial Regulation*”) AR 220/2013

New Home Buyer Protection (General) Regulation (hereinafter referred to as “*General Regulation*”). AR 211/2013

Home Warranty Insurance Regulation AR 225/2013

Note that the *Home Warranty Insurance Regulation* is a regulation to the *Insurance Act* R.S.A. 2000 c. I-3 and not the *New Home Buyer Protection Act*.

The *Condominium Property Amendment Act* was passed in December 2014; however has yet to be proclaimed. As of the date of the submission of this paper, the new or revised Condominium Property Regulations intended to support the *Condominium Property Amendment Act* have yet to be approved.

MANDATORY COVERAGE PERIODS

Section 3 of the *New Home Buyer Protection Act* sets mandatory coverage as the following:

3(6) a home warranty insurance contract must provide coverage in accordance with the *Insurance Act* for

- (a) defects in materials and labour for a period of at least one year starting on the date on which the coverage begins;

¹ This paper is an update and revision to a paper the author first prepared in October 2014 for the Legal Education Society.

- (b) defects in materials and labour related to delivery and distribution systems for a period of at least two years starting on the date on which the coverage begins;
- (c) defects in the building envelope for a period of at least five years starting on the date on which the coverage begins; and
- (d) structural defects for a period of at least 10 years starting on the date in which coverage begins.

BUILDING ASSESSMENT REPORTS

To assist the homeowner, warranty provider and the developer, the *General Regulation* requires that a Building Assessment Report (“BAR”) be conducted to examine the state of the building. The warranty providers will then use the BAR to provide developers the opportunity to correct defects identified. The BAR will be available to owners and condominium corporations to assist in identifying defects and examining long-term strategies to mitigate risk.

At section 4 of the *General Regulation*, a residential builder must arrange for a “qualified person” to prepare a BAR for the common property and common facilities of a condominium building.

WHO CAN BE A QUALIFIED PERSON?

Under the *General Regulation* a “qualified person” is defined to include a professional engineer, professional technologist or a registered architect. Parties can ask for an exemption to be included as a qualified person. Note that the definition under the *General Regulation* is different than that under the *Condominium Property Regulations*, where a qualified person is defined as:

21(1)(c) “qualified person” means, in respect of the depreciating property, an individual who, based on reasonable and objective criteria, is knowledgeable with respect to:

- (a) the depreciating property or that type of depreciating property;
- (b) the operation and maintenance of the depreciating property or that type of depreciating property; and
- (c) the costs of replacement of or repairs to, as the case may be, the depreciating property or that type of depreciating property.

Practice Point: The major difference in the definitions between the *General Regulation* for a BAR provider and a party under the *Condominium Property Regulation* is that a person cannot self-nominate or declare their fitness to be a “qualified person” under the *General Regulation*. This is a strong change. Interested parties in a condominium corporation ought to familiarize themselves of