



Province of Alberta

INSURANCE ACT

HOME WARRANTY INSURANCE REGULATION

Alberta Regulation 225/2013

Extract

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ALBERTA REGULATION 225/2013

Insurance Act

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Definitions

1 In this Regulation,

- (a) “Act” means the *Insurance Act*;
- (b) “delivery and distribution system” has the same meaning as in section 1(1)(m) of the *New Home Buyer Protection Act*;
- (c) “home warranty insurance contract” has the same meaning as in section 548.1(2) of the Act;
- (d) “new home” has the same meaning as in section 1(1)(s) of the *New Home Buyer Protection Act*;
- (e) “owner” has the same meaning as in section 1(1)(t) of the *New Home Buyer Protection Act*;
- (f) “owner builder” has the same meaning as in section 1(1)(u) of the *New Home Buyer Protection Act*;

- (g) “Provincial Historic Resource” has the same meaning as in section 1(i) of the *Historical Resources Act*;
- (h) “purchase period” has the same meaning as in section 1(1)(y) of the *New Home Buyer Protection Act*;
- (i) “reconstruction” has the same meaning as in section 1(1)(z) of the *New Home Buyer Protection Act*;
- (j) “recorded mail” means recorded mail as defined in the *Alberta Rules of Court* (AR 124/2010);
- (k) “Registered Historic Resource” has the same meaning as in section 1(j) of the *Historical Resources Act*;
- (l) “residential builder” has the same meaning as in section 1(1)(dd) of the *New Home Buyer Protection Act*;
- (m) “warranty provider” has the same meaning as in section 548.1(1) of the Act.

Home warranty insurance policy limits

2(1) Every home warranty insurance policy must provide coverage for defects as required by section 3(6) of the *New Home Buyer Protection Act*.

(2) Where an insured has purchased additional coverage as required to be offered by a warranty provider under section 3(7) of the *New Home Buyer Protection Act*, the home warranty insurance policy must provide coverage for those defects.

(3) Limits of coverage provided under subsection (1), exclusive of interest and costs, must not be less than the following:

- (a) for a single dwelling unit constructed by a residential builder, the lesser of the original purchase price paid to the residential builder and \$265 000;
- (b) for a single dwelling unit constructed by an owner builder, the lesser of the appraised value of the new home at the time of commencement of coverage and \$265 000;
- (c) for a single dwelling unit in a condominium or a multiple family dwelling, the lesser of the original purchase price paid to the residential builder and \$130 000;
- (d) subject to subsection (4), for the common property in a condominium or a multiple family dwelling, or for the property for which a condominium corporation is responsible under its bylaws, the lesser of

- (i) \$130 000 times the number of single dwelling units in the condominium or multiple family dwelling, and
- (ii) \$3 300 000.

(4) If a condominium consists of a number of buildings, the applicable coverage limit in subsection (3)(d) applies to each building.

(5) For greater certainty, in this section,

- (a) “the original purchase price paid to the residential builder” does not include the portion of the purchase price attributable to the purchase of the land, and
- (b) “the appraised value of the new home” does not include the value of the land.

Other rights not affected

3(1) Nothing in this regulation affects the rights of an insured under the insured’s contract with a residential builder.

(2) An insured may exercise rights and seek remedies under a home warranty insurance policy without exercising any rights referred to in subsection (1).

(3) No home warranty insurance policy may contain requirements contrary to subsection (2).

Notice of coverage

4(1) A warranty provider must, as soon as reasonably possible after the commencement of coverage under the home warranty insurance policy, provide the owner with details of coverage under the home warranty insurance policy and with a schedule of the expiry dates for all types of coverage.

(2) The schedule referred to in subsection (1) must include an adhesive label that is a minimum size of 150 mm by 150 mm and is suitable for affixing by the owner in a conspicuous location in the new home.

(3) The adhesive label referred to in subsection (2) must set out all the expiry dates for all types of coverage.

Policy conditions

5(1) The conditions set out in this section must be included in every home warranty insurance policy in force in Alberta and must be printed under the heading “Policy Conditions”.

(2) No variation or omission of or addition to any policy condition is binding on the insured.

Policy Conditions

In these policy conditions, unless the context otherwise requires, “insured” means a person insured by the home warranty insurance contract whether named in the home warranty insurance contract or not.

REQUIREMENTS AFTER DISCOVERY OF

DEFECT 1(1) Within a reasonable time after the discovery of a defect in a new home, the insured must, if the defect is covered by the policy, give notice of the defect in reasonable detail to the warranty provider.

(2) The warranty provider may require that the notice from the insured be in writing.

WHO MAY GIVE NOTICE AND PROOF 2 Notice of a defect under Policy Condition 1(1) may be given

- (a) by the agent of the insured if
 - (i) the insured is absent or unable to give the notice or make the proof, and
 - (ii) the absence or inability is satisfactorily accounted for,

or

- (b) by any person who has an insurable interest in the new home, if the named insured fails or refuses to do so, or in the circumstances described in clause (a) of this condition.

MITIGATION 3(1) In the event of loss or damage to a new home resulting from a defect, the insured must take all reasonable steps to prevent further loss or damage to the new home as a result of the defect.

(2) The warranty provider must pay to the insured all reasonable and proper expenses incurred in connection with steps taken by the insured under subparagraph (1) of this condition.

ENTRY AND CONTROL 4 After a defect has been reported to a warranty provider, the warranty provider has an immediate right of access and entry to the new home by itself and by its accredited representatives, who may include the residential builder, sufficient to

- (a) enable them to determine if a defect exists,
- (b) make an estimate of the repairs required to rectify the defect, and
- (c) make the repairs necessary to rectify the defect.

MATERIAL CHANGE IN RISK 5(1) The insured must promptly give notice in writing to the warranty provider or its agent of any change that is

- (a) material to the risk, and
- (b) within the control and knowledge of the insured.

(2) The warranty provider may require that the notice from the insured be in writing.

IN CASE OF DISAGREEMENT 6(1) In the event of disagreement as to whether a defect exists, the nature and extent of the repairs or replacements required, the adequacy of repairs or replacements made or the amount of loss or damage, those questions must be determined using the applicable dispute resolution process set out in section 519 of the *Insurance Act* whether or not the insured's right to recover under the home warranty insurance contract is disputed, and independently of all other questions.

(2) There is no right to a dispute resolution process under this condition until

- (a) a specific demand is made for it in writing, and
- (b) the proof of loss has been delivered to the insurer.

TRANSFER OF TITLE 7 If title to the new home is transferred at any time during the purchase period, the home warranty insurance contract is transferred to the new owner and the new owner is deemed to have given good and valuable consideration to the warranty provider under the home warranty insurance contract.

ADDITIONAL LIVING EXPENSES 8(1) If a new home is uninhabitable as a result of a defect or during the rectification of a defect, then reasonable living expenses incurred by the insured will be payable by the warranty provider to the insured to a maximum of \$150 per day or such greater amount as may be established from time to time by the Superintendent of Insurance.

(2) The total amount payable under subparagraph (1) of this condition shall not exceed \$15 000 for each period of time the home is uninhabitable while warranty coverage is in effect.

WARRANTY OF REPAIRS OF DEFECTS 9(1) All repairs and replacements made to rectify defects are warranted against defects in materials and labour until the later of the first anniversary of the date of completion of the repair or replacement and the expiry of coverage for that type of defect under the home warranty insurance policy.

(2) If an insured accepts payment from a warranty provider in lieu of repairs or replacements to rectify a defect, then no further warranty coverage applies to the defect covered by the payment.

NOTICE 10(1) Written notice to the warranty provider may be delivered, or sent by recorded mail, to the chief agency or head office of the warranty provider in the province.

(2) Written notice to the insured may be personally delivered, or sent by recorded mail addressed, to the address of the new home covered by the home warranty insurance policy.

Permitted coverage exclusions

6 A warranty provider may exclude the following from coverage under a home warranty insurance policy:

- (a) any non-residential use area and any construction or reconstruction associated with a non-residential use area;
- (b) site grading and surface drainage except as required by a building code, and not including subsidence beneath footings of a home or under driveways or walkways;
- (c) utility services;
- (d) septic tanks and septic or absorption fields, unless constructed or otherwise provided by the residential builder or owner builder;
- (e) home appliances, including but not limited to refrigerators, stoves, ovens, garbage disposal units, dishwashers, microwaves, clothing washers, clothing dryers and freezers;
- (f) water wells, except equipment installed for the operation of the water well where the equipment is part of a delivery and distribution system;
- (g) the quality or quantity of water from a municipal water supply, a water well or any other source;
- (h) any component of a Registered Historic Resource or Provincial Historic Resource that is being converted from

commercial to residential use, where that component has been exempted from the application of any provision contained in any building code pursuant to section 51 of the *Historical Resources Act*;

- (i) designs, materials or labour supplied by anyone other than the residential builder or the employees, agents or subcontractors of a residential builder, but not including any designs, material or labour retained by the residential builder or by an owner builder in a reconstruction.

Permitted loss or damage exclusions

7 A warranty provider may exclude from coverage under a home warranty insurance policy any loss or damage resulting from the following:

- (a) weathering, normal wear and tear, deterioration or deflection consistent with normal industry standards;
- (b) normal shrinkage of materials caused by drying after construction;
- (c) substantial use of the residence for non-residential purposes;
- (d) negligent or improper maintenance or improper operation of the new home or anything in the new home by anyone other than the residential builder or its employees, agents or subcontractors;
- (e) alterations to the home by anyone other than the residential builder or its employees, agents or subcontractors;
- (f) changes to the grading of the ground by anyone other than the residential builder, or its employees, agents or subcontractors;
- (g) insects, rodents or other animals, unless the damage results from non-compliance with a building code by the residential builder or its employees, agents or subcontractors, or the owner builder;
- (h) acts of nature;
- (i) bodily injury, disease, illness or death resulting from any cause;
- (j) damage to personal property or real property that is not part of a new home;

- (k) contaminated soil, except where supplied by or through the residential builder and the residential builder knew or ought to have known that the soil was contaminated;
- (l) subsidence of the land around a new home or along utility lines, not including subsidence beneath footings of a new home or under driveways or walkways;
- (m) diminished value of a new home or any component of a new home;
- (n) deficiencies that have been agreed to between a residential builder and the insured prior to or at the time of possession;
- (o) defects that have been caused or substantially contributed to by a change that is material to the risk and is within the control and knowledge of the insured;
- (p) fire, explosion, smoke, flooding or sewer back-up;
- (q) loss of income or opportunity;
- (r) loss of enjoyment, use or benefit of the new home;
- (s) inconvenience or distress to the owner;
- (t) any professional fees, including legal, consulting or medical costs.

Deductibles

8(1) Subject to subsection (2), a warranty provider may require an insured to pay a deductible on claims made under a home warranty insurance policy.

(2) An insured may bundle any number of defects into a single claim to be submitted to a warranty provider.

(3) Only one deductible is payable per claim submitted to a warranty provider, regardless of the number of defects reported by the insured to the warranty provider in that claim.

(4) The maximum amount of a deductible payable under subsection (1) shall not exceed

- (a) for claims related to the common property, common facilities and other assets of a condominium corporation
 - (i) \$100 for claims related to the coverage in section 3(6)(a) of the *New Home Buyer Protection Act*, and

(ii) \$500 for all other claims,

and

(b) for all other claims, \$50.

(5) The total sum of deductibles payable in each calendar year for claims made, not including claims relating to the common property, common facilities and other assets of a condominium corporation, must not exceed \$300.

(6) A warranty provider may refund a deductible paid or waive a deductible payable by an insured.

(7) When a home warranty insurance contract evidenced by a policy contains a deductible clause, the contract must have printed or stamped on the first page in conspicuous bold type the words:

This policy contains a clause which may limit the amount payable.

and unless these words are so printed or stamped, the clause is not binding on the insured.

Calculation of claim

9 When a warranty provider calculates the cost of a claim, the warranty provider may include

- (a) the cost of repairs,
- (b) the cost of any investigation, engineering and design required for the repairs,
- (c) the cost of adjusting and supervision of repairs, including professional review but excluding legal costs,
- (d) the cost of mitigation paid by a warranty provider to an insured, and
- (e) the cost of additional living expenses of an owner paid by a warranty provider.

Termination of insurance

10(1) The home warranty insurance contract may only be terminated by the warranty provider before coverage begins by giving the insured 15 days' notice of termination by recorded mail or 5 days' written notice of termination personally delivered.

(2) If the home warranty insurance contract is terminated by the warranty provider,

- (a) the warranty provider must refund the excess of premium actually paid by the insured over the prorated premium for the expired time, and
 - (b) the refund must accompany the notice unless the premium is subject to adjustment or determination as to amount, in which case the refund must be made as soon as practicable.
- (3) The 15-day period referred to in subsection (1) starts to run on the day the letter was sent by recorded mail or notification of it is delivered to the insured's postal address.

Reconstructions

11 Subject to section 6(h), when a reconstruction occurs, the coverage in the home warranty insurance policy must cover all elements of the home, including those areas retained or not reconstructed.

Alberta New Home Warranty Program

12 The Alberta New Home Warranty Program is prescribed as a person for the purposes of section 548.1(1)(b) of the Act.

Consequential Amendments

Classes of Insurance Regulation

13(1) The *Classes of Insurance Regulation (AR 144/2011)* is amended by this section.

(2) Section 1(1) is amended

(a) by adding the following after clause (f):

- (f.1) "deposit protection insurance" means insurance against the loss of a deposit paid to a residential builder or developer for the construction or reconstruction of a new home or for the purchase of land;

(b) by adding the following after clause (i):

- (i.1) "home completion insurance" means insurance against the default of a residential builder to complete the construction or reconstruction of a new home;

- (i.2) “home warranty insurance” means insurance against defects in the construction of a new home and consequential losses or costs incurred by the owner;

(c) by adding the following after clause (n):

- (n.1) “new home” has the same meaning as in section 1(1)(s) of the *New Home Buyer Protection Act*;

(d) by adding the following after clause (o):

- (o.1) “owner” has the same meaning as in section 1(1)(t) of the *New Home Buyer Protection Act*;

(e) by adding the following after clause (q):

- (q.1) “reconstruction” has the same meaning as in section 1(1)(z) of the *New Home Buyer Protection Act*;
- (q.2) “residential builder” has the same meaning as in section 1(1)(dd) of the *New Home Buyer Protection Act*;

(3) Section 2 is amended

(a) by adding the following after clause (f):

- (f.1) deposit completion insurance;

(b) by adding the following after clause (i):

- (i.1) home completion insurance;
- (i.2) home warranty insurance;

Fair Practices Regulation

14(1) The *Fair Practices Regulation* (AR 128/2001) is amended by this section.

(2) Section 5.8 is amended by adding “deposit protection insurance, home completion insurance, home warranty insurance,” before “mortgage insurance,”.

Expiry

15 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on February 1, 2019.

Coming into force

16 This Regulation comes into force on the coming into force of section 29 of the *New Home Buyer Protection Act*.



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