

1980

## c 350 Ontario New Home Warranties Plan Act

Ontario

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## CHAPTER 350

Ontario New Home Warranties  
Plan Act

## 1. In this Act,

Interpre-  
tation

- (a) "builder" means a person who undertakes the performance of all the work and supply of all the materials necessary to construct a completed home whether for the purpose of sale by himself or under a contract with a vendor or owner;
- (b) "Corporation" means the corporation designated under section 2;
- (c) "guarantee fund" means the provision made by the Corporation for compensation under the Plan;
- (d) "home" means,
- (i) a self-contained one-family dwelling, detached or attached to one or more others by common wall,
  - (ii) a building composed of more than one and not more than two self-contained, one-family dwellings under one ownership,
  - (iii) a condominium dwelling unit, including the common elements, or
  - (iv) any other dwelling of a class prescribed by the regulations as a home to which this Act applies,

and includes any structure or appurtenance used in conjunction therewith, but does not include a dwelling built and sold for occupancy for temporary periods or for seasonal purposes;

- (e) "inspector" means an inspector appointed by the Corporation under section 18;
- (f) "Minister" means the Minister of Consumer and Commercial Relations;
- (g) "owner" means a person who first acquires a home from its vendor for occupancy, and his successors in title;
- (h) "Plan" means the Ontario New Home Warranties Plan referred to in section 11;
- (i) "prescribed" means prescribed by the regulations;
- (j) "Registrar" means the Registrar appointed by the Corporation under section 3;
- (k) "regulations" means the by-laws of the Corporation made under section 23;
- (l) "sell" includes entering into an agreement to sell;
- (m) "Tribunal" means The Commercial Registration Appeal Tribunal under the *Ministry of Consumer and Commercial Relations Act*;
- (n) "vendor" means a person who sells on his own behalf a home not previously occupied to an owner and includes a builder who constructs a home under a contract with the owner;
- (o) "warranty" means a warranty set out in section 13. 1976, c. 52, s. 1.

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c. 274

**Designation  
of  
Corporation**  
R.S.O. 1980,  
c. 95

**2.—(1)** The Lieutenant Governor in Council shall designate a non-profit corporation incorporated without share capital under the *Corporations Act* to be the Corporation for the purposes of this Act.

**Objects**

(2) Upon its designation, the objects of the Corporation are extended to include,

- (a) the administration of the Ontario New Home Warranties Plan;
- (b) the establishment and administration of a guarantee fund providing for the payment of compensation under section 14, whether by the establishment of a fund for the purpose or by contract with licensed insurers;

- (c) assisting in the conciliation of disputes between vendors and owners; and
- (d) engaging in undertakings for the purpose of improving communications between vendors and owners.

(3) The *Insurance Act* does not apply to the Corporation and its undertakings in respect of any matter within its objects or authorized by this Act. 1976, c. 52, s. 2. Application of R.S.O. 1980, c. 218

**3.** The Corporation shall appoint a Registrar who shall perform the duties and exercise the powers given to him by this Act and the regulations under the supervision of the Corporation and shall perform such other duties as are assigned to him by the Corporation. 1976, c. 52, s. 3. Registrar

**4.** All moneys payable under this Act to the Corporation shall be retained by the Corporation and applied to defray the expenses incurred and expenditures made in the carrying out of its duties under this Act and otherwise for the purposes of its objects set out in subsection 2 (2). 1976, c. 52, s. 4. Revenues and expenses

**5.** The Corporation shall make a report annually to the Minister upon the affairs of the Corporation, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next ensuing session. 1976, c. 52, s. 5. Annual reports

**6.** No person shall act as a vendor or a builder unless he is registered by the Registrar under this Act. 1976, c. 52, s. 6. Registration required

**7.—(1)** An applicant is entitled to registration by the Registrar except where, Registration of vendors and builders

- (a) having regard to his financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of his undertakings;
- (b) the past conduct of the applicant affords reasonable grounds for belief that he will not carry on his undertakings in accordance with law and with integrity and honesty;
- (c) the applicant is a corporation and,
  - (i) having regard to its financial position, it cannot reasonably be expected to be finan-

cially responsible in the conduct of its undertakings, or

- (ii) the past conduct of its officers or directors affords reasonable grounds for belief that its undertakings will not be carried on in accordance with law and with integrity and honesty; or

(d) in the case of an application for registration as a builder, the applicant does not have sufficient technical competence to consistently perform the warranties.

Conditions of registration

(2) A registration is subject to such terms and conditions to give effect to the purposes of this Act as are consented to by the applicant or imposed by the Tribunal or prescribed by the regulations.

Registration not transferable

(3) A registration is not transferable. 1976, c. 52, s. 7.

Refusal to register

8.—(1) Subject to section 9, the Registrar may refuse to register an applicant where in the Registrar's opinion the applicant is disentitled to registration under section 7.

Revocation and refusal to renew

(2) Subject to section 9, the Registrar may refuse to renew or may suspend or revoke a registration for any reason that would disentitle the registrant to registration under section 7, if he were an applicant, or where the registrant has a record of breaches of warranties or of failure or unwillingness to complete performance of contracts or is in breach of a term or condition of the registration. 1976, c. 52, s. 8.

Notice of proposal to refuse or revoke

9.—(1) Where the Registrar proposes to refuse to grant or renew a registration or proposes to suspend or revoke a registration, he shall serve notice of his proposal, together with written reasons therefor, on the applicant or registrant.

Notice requiring hearing

(2) A notice under subsection (1) shall inform the applicant or registrant that he is entitled to a hearing by the Tribunal if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing requiring a hearing to the Registrar and the Tribunal, and he may so require such a hearing.

Powers of Registrar where no hearing

(3) Where an applicant or registrant does not require a hearing by the Tribunal in accordance with subsection (2), the Registrar may carry out the proposal stated in his notice under subsection (1).

Powers of Tribunal

(4) Where an applicant or registrant requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal

shall appoint a time for and hold the hearing and, on the application of the Registrar at the hearing, may by order direct the Registrar to carry out his proposal or refrain from carrying out his proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

(5) The Tribunal may attach such terms and conditions to its order or to the registration as it considers proper to give effect to the purposes of this Act. Conditions of order

(6) The Registrar, the applicant or registrant who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. Parties

(7) Notwithstanding subsection (1), the Registrar may cancel a registration upon the request in writing of the registrant in the prescribed form surrendering his registration. Voluntary cancellation

(8) Where, within the time prescribed therefor or, if no time is prescribed, before expiry of his registration, a registrant has applied for renewal of his registration and paid the prescribed fee, his registration shall be deemed to continue, Continuance pending renewal

(a) until the renewal is granted; or

(b) where he is served with notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, where a hearing is required, until the Tribunal has made its order.

(9) Notwithstanding that a registrant appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately, but the Tribunal may grant a stay until disposition of the appeal. 1976, c. 52, s. 9. Order effective, stay  
R.S.O. 1980,  
c. 274

10. A further application for registration may be made upon new or other evidence or where it is clear that material circumstances have changed. 1976, c. 52, s. 10. Further applications

11.—(1) The Ontario New Home Warranties Plan is continued comprised of the warranties and the guarantee fund and compensation provided for by this Act. Ontario New Home Warranties Plan

(2) When a vendor enters into a contract for the sale Disclosures on entering into contract

of a home to an owner or for the construction of a home for an owner, the vendor shall deliver to the owner such documentation and notices respecting the Plan as are prescribed by the regulations. 1976, c. 52, s. 11.

Notice of  
commencing  
construction

**12.** A builder shall not commence to construct a home until he has notified the Corporation of the fact, has provided the Corporation with such particulars as the Corporation requires and has paid the prescribed fee to the Corporation. 1976, c. 52, s. 12.

Warranties

**13.—(1)** Every vendor of a home warrants to the owner,

(a) that the home,

(i) is constructed in a workmanlike manner and is free from defects in material,

(ii) is fit for habitation, and

(iii) is constructed in accordance with the Ontario Building Code;

(b) that the home is free of major structural defects as defined by the regulations; and

(c) such other warranties as are prescribed by the regulations.

Exclusions

(2) A warranty under subsection (1) does not apply in respect of,

(a) defects in materials, design and workmanship supplied by the owner;

(b) secondary damage caused by defects, such as property damage and personal injury;

(c) normal wear and tear;

(d) normal shrinkage of materials caused by drying after construction;

(e) damage caused by dampness or condensation due to failure by the owner to maintain adequate ventilation;

(f) damage resulting from improper maintenance;

(g) alterations, deletions or additions made by the owner;

(h) subsidence of the land around the building or along utility lines, other than subsidence beneath the footings of the building;

(i) damage resulting from an act of God;

(j) damage caused by insects and rodents, except where construction is in contravention of the Ontario Building Code;

(k) damage caused by municipal services or other utilities;

(l) surface defects in workmanship and materials specified and accepted in writing by the owner at the date of possession.

(3) The vendor of a home shall deliver to the owner a certificate specifying the date upon which the home is completed for his possession and the warranties take effect from the date specified in the certificate. Certificate of completion

(4) A warranty under subsection (1) applies only in respect of claims made thereunder within one year after the warranty takes effect, or such longer time under such conditions as are prescribed. Term of warranty under subs. (1)

(5) A warranty is enforceable notwithstanding that there is no privity of contract between the owner and the vendor. Privity of contract

(6) The warranties set out in subsection (1) apply notwithstanding any agreement or waiver to the contrary and are in addition to any other rights the owner may have and to any other warranty agreed upon. 1976, c. 52, s. 13. Application of warranties

**14.—(1) Where,**

Compensation

(a) a person who has entered into a contract with a vendor for the provision of a home has a cause of action in damages against the vendor for financial loss resulting from the bankruptcy of the vendor or the vendor's failure to perform the contract;

(b) an owner has a cause of action against a vendor for damages resulting from a breach of warranty; or

(c) the owner suffers damage because of a major structural defect as defined in the regulations for the purposes of section 13, and the claim is made



within four years after the warranty expires or such longer time under such conditions as are prescribed,

the person or owner is entitled to be paid out of the guarantee fund the amount of such damage subject to such limits as are fixed by the regulations.

Other recovery

(2) In assessing damages, the Corporation shall take into consideration any benefit, compensation or indemnity payable to the person or owner from any source.

Performance

(3) The Corporation may perform or arrange for the performance of any work in lieu of or in mitigation of damages claimed under subsection (1). 1976, c. 52, s. 14.

Condominiums

**15.** For the purposes of sections 13 and 14, a condominium corporation shall be deemed to be the owner of the common elements of the condominium and the warranties take effect on the date of the registration of the declaration and description. 1976, c. 52, s. 15.

Notice of decision under s. 14

**16.**—(1) Where the Corporation makes a decision under section 14, it shall serve notice of the decision, together with written reasons therefor, on the person or owner affected.

Notice requiring hearing

(2) A notice under subsection (1) shall inform the person served that he is entitled to a hearing by the Tribunal if he mails or delivers, within fifteen days after the notice under subsection (1) is served on him, notice in writing requiring a hearing to the Corporation and the Tribunal, and he may so require such a hearing.

Powers of Tribunal

(3) Where a person served requires a hearing by the Tribunal in accordance with subsection (2), the Tribunal shall appoint a time for and hold the hearing and may by order direct the Corporation to take such action as the Tribunal considers the Corporation ought to take in accordance with this Act and the regulations, and for such purposes the Tribunal may substitute its opinion for that of the Corporation.

Parties

(4) The Corporation, the person or owner who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. 1976, c. 52, s. 16.

Conciliation of disputes

**17.**—(1) The Corporation may, upon the request of an owner, conciliate any dispute between the owner and a vendor.

(2) Where there is a dispute between a vendor and an owner arising out of the contract, neither party shall commence any proceeding in respect thereof until after fifteen days after the party notifies the Corporation of the dispute for the purpose of giving the Corporation an opportunity to effect conciliation. Idem

(3) Each party to a dispute shall supply the Corporation with such particulars thereof as the Corporation requires. Information to Corporation

(4) Every agreement between a vendor and prospective owner shall be deemed to contain a written agreement to submit present or future differences to arbitration, subject to appeal to the Divisional Court, and the *Arbitrations Act* applies. 1976, c. 52, s. 17. Arbitration R.S.O. 1980, c. 25

**18.**—(1) The Corporation shall appoint inspectors for the purposes of this Act. Inspectors

(2) An inspector may, for the purpose of inspecting a home during its construction, enter in or upon and inspect the premises constituting the site of the construction at any time without a warrant. Power of entry

(3) For the purposes of an inspection, the inspector may, Powers of inspector

(a) require the production of the drawings and specifications of a home or any part thereof, including any drawings prescribed by the regulations, for his inspection and may require information from any person concerning any matter related to a home or part thereof;

(b) be accompanied by any person who has special or expert knowledge of any matter in relation to a home or part thereof; and

(c) alone or in conjunction with such other person or persons possessing special or expert knowledge, make such examinations, tests, or inquiries as are necessary for the purposes of the inspection.

(4) No person shall hinder, obstruct, molest or interfere with or attempt to hinder, obstruct, molest or interfere with an inspector in the exercise of a power or performance of a duty under this Act. 1976, c. 52, s. 18. Obstruction of inspectors

Restraining order

**19.**—(1) Where it appears to the Corporation that any vendor or builder does not comply with any provision of this Act or the regulations, notwithstanding the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the Corporation may apply to a judge of the High Court for an order directing such person to comply with such provision and, upon the application, the judge may make the order or such other order as the judge thinks fit.

Appeal

(2) An appeal lies to the Divisional Court from an order made under subsection (1). 1976, c. 52, s. 19.

Service of notice

**20.** Any notice or document required by this Act to be served or given may be served or given personally or by registered mail addressed to the person to whom notice is to be given at his last known address and, where notice is served or given by mail, the service shall be deemed to have been made on the fifth day after the day of mailing unless the person to whom notice is given establishes that he, acting in good faith, through absence, accident, illness or other cause beyond his control, did not receive the notice, or did not receive the notice until a later date. 1976, c. 52, s. 20.

Certificate of evidence

**21.** A statement as to,

- (a) the registration or non-registration of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Corporation; or
- (c) any other matter pertaining to such registration, non-registration, filing or non-filing,

purporting to be certified by the chairman of the board of directors of the Corporation is, without proof of the office or signature of the chairman, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution. 1976, c. 52, s. 21.

Offences

**22.**—(1) Every person who,

- (a) knowingly furnishes false information in any application under this Act or in any statement or return required to be furnished under this Act or the regulations; or
- (b) contravenes section 6 or 12 or subsection 18 (4),

and every director or officer of a corporation who knowingly concurs in such furnishing or contravention is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than one year, or to both.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed upon the corporation is \$25,000 and not as provided therein. 1976, c. 52, s. 22. Corporation

**23.**—(1) The Corporation may make by-laws, By-laws

(a) governing applications for registration of vendors and builders and the expiration and renewal of registration;

(b) subject to the approval of the Lieutenant Governor in Council, prescribing terms and conditions of registration;

(c) requiring the payment of fees on applications for registration or renewal of registration and prescribing the amounts thereof;

(d) prescribing the fees payable by builders to the Corporation in respect of the construction of a home or any class of home;

(e) governing applications for and the issuance of certificates under subsection 13 (3);

(f) governing agreements entered into between the Corporation and vendors;

(g) providing for the establishment and maintenance of the guarantee fund and governing procedures for claiming and determining claims for compensation from the guarantee fund;

(h) governing the procedures for conciliation of disputes and providing for the payment and refunding of fees respecting requests for conciliation;

(i) prescribing classes of dwellings for the purposes of subclause 1 (d) (iv);

(j) specifying warranties in addition to those provided for in clause 13 (1) (a) or (b) and the time of expiration thereof;

- (k) defining major structural defects for the purpose of clause 13 (1) (b);
- (l) requiring vendors and builders to be bonded in such form and terms and with such collateral security as are prescribed, and providing for the forfeiture of bonds and the disposition of the proceeds;
- (m) subrogating the Corporation or a named insurer to any right of recovery of a person in respect of a claim paid out of the insurance under the Plan and costs and providing the terms and conditions under which an action to enforce such rights may be begun, conducted and settled;
- (n) prescribing any matter required or authorized by this Act to be, or referred to in this Act as, prescribed by the regulations;
- (o) prescribing forms for the purposes of the Corporation.

Application  
of  
R.S.O. 1980,  
c. 446

(2) A by-law passed under subsection (1) shall be deemed to be a regulation to which the *Regulations Act* applies.

Act binds  
Crown

(3) This Act, except sections 6 to 10, binds the Crown.  
1976, c. 52, s. 23.