

# Compliance Case Studies: No.4

October 2018



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## Foreclosed Homes Must Still Comply With the Act

### Overview

When a home goes into receivership, the courts may grant the lender a Conduct of Sale permitting the sale of the property.

However, as this case study shows, A court order does not supersede the Homeowner Protection Act requirement for new homes to have home warranty insurance in order to be sold or offered for sale. One B.C. mortgage company paid a significant monetary penalty while learning this lesson.

### Background

In January 2010, a home builder obtained home warranty insurance for a home he was constructing on Vancouver Island. The home was substantially completed but never occupied, and when the home builder's company ran into financial troubles, the property went into receivership. In August 2011, the Supreme Court of British Columbia granted ABC Mortgage Corp. a Conduct of Sale to allow it to sell the property.

A month later, the warranty insurance provider de-enrolled the home because the builder failed to meet the program's requirements: the builder was bankrupted and the commencement date for home warranty insurance coverage had not been triggered.

Despite being bankrupted, the builder had a legal obligation to arrange home warranty insurance for the home as the builder had substantially completed construction on the home. With that said, under the Act, it was not legally permissible for ABC Mortgage Corp. to offer for sale or sell the home without home warranty insurance, despite having been granted a Conduct of Sale.

The matter came to the attention of BC Housing in late 2012 after the property was listed for sale. At that time, a BC Housing compliance investigator informed both the real estate professional and ABC Mortgage Corp. representative Don Smith that the home could not legally be sold or offered for sale because it was not covered by home warranty insurance.

However, Smith was also informed that he could apply to the BC Housing Registrar for permission to sell.

In the months that followed, the house remained on the market and no application was made to the Registrar. The compliance investigator reiterated the apparent contraventions and the Act requirements to Smith and also sent an information letter to both the real estate professional and his managing broker.

BC Housing and the Real Estate Council of British Columbia (RECBC) signed an Information Sharing Agreement, effective as of June 6, 2013, that allows both organizations to share pertinent information to their respective licensees. Information letters may be copied to the RECBC under this agreement, and there may be consequences with the RECBC for real estate professionals contravening the Act.

## Results

Smith made some attempts to address the situation later that spring, first pointing out that the warranty insurance had been in effect when ABC Mortgage Corp. obtained the Conduct of Sale (BC Housing later confirmed the home had been de-enrolled for non-compliance), and then contacting the insurance provider to arrange for warranty insurance. However, he didn't agree with the requirement that ABC Mortgage Corp. become a licensed residential builder, because he felt the builder had already paid the licensed residential builder's fee.

Under Section 22(1.2) of the Act, on application to the Registrar, a person may be permitted to sell or offer for sale a new home, despite the requirement for home warranty insurance, if the Registrar is satisfied that the person would suffer undue hardship if the permission is not granted. In June 2013, Smith applied to BC Housing requesting permission to sell the home and property under Section 22(1.2) of the Act.

As a result of ABC Mortgage Corp. not being able to prove undue hardship, the Registrar decided that the home could not be offered for sale or sold without home warranty insurance, and ABC Mortgage Corp. could either become a licensed residential builder to obtain the insurance, or hire an existing licensed residential builder to do so.

Smith requested that the Registrar review the decision in August 2013, indicating that no warranty company would provide insurance on a home that was already complete. In October 2013, the Registrar upheld the decision and informed Smith he had 30 days to appeal to the Safety Standard Appeal Board under Section 43 of the Safety Standards Act (Section 29.3 of the Act). It is important to note that the Act applies to foreclosed properties, and permission to sell is only granted if the applicant can prove undue hardship.

Smith did not file an appeal. Within three weeks of the Registrar's decision, the home was sold to Ray and Susan Turner. In January 2014, the Turners confirmed to the compliance investigator that they had purchased the property from ABC Mortgage Corp. through a court foreclosure and had been told it was not covered by home warranty insurance.

BC Housing sent a letter to the Turners, telling them they could not legally offer for sale or sell the new home for 10 years after the date of first occupancy, unless it was either enrolled in warranty insurance or the Registrar granted permission.

In July 2014, BC Housing issued ABC Mortgage Corp. and its directors a daily monetary penalty of \$260 for offering for sale and selling a new home that wasn't covered by home warranty insurance, and for acting as a developer (for selling the home as new and never-occupied) without being a licensed residential builder.

The penalty was applied for each day the contravention continued and eventually reached the maximum of \$7,800, which ABC Mortgage Corp. paid in full in October 2014.

## Lessons learned

Over the course of three years, ABC Mortgage Corp. expended considerable time, effort and funds learning that the Act's home warranty requirements apply to anyone selling new homes in British Columbia — including lenders awarded full receivership by the courts along with the right to sell the property.

The Turners also learned that buying a home that is in non-compliance with the Homeowner Protection Act severely limited their flexibility in selling the home.

## Relevant legislation

The following sections of the Homeowner Protection Act apply to this case:

**Section 14(1)** states: “A person must not carry on the business of a residential builder unless licensed under this Part.”

**Section 22(1.1) of the Act** states that subject to section 22 (1.2), a person must not sell or offer to sell a new home

- a) while the new home is being constructed, or
- b) within 10 years from
  - i. the date an occupancy permit was first issued with respect to the new home, or
  - ii. if no occupancy permit has been issued with respect to the new home, the date on which the registrar is satisfied the new home was first ready for occupancy, unless
- c) the new home is covered by home warranty insurance provided by a warranty provider, or
- d) the new home or the person is exempt by regulation from the requirement of this subsection

**Section 29.3** states: “A person who has received notice of a decision made by the registrar under Section 29.2 may, within 30 days after receiving the notice, appeal the decision to the appeal board.”

Contravention of Sections 14 and 22 made ABC Mortgage Corp. subject to a monetary penalty pursuant to:

- › Section 28.3(1)(a) of the Act (registrar may impose a monetary penalty)
- › Sections 20.1(2)(b) of the Regulations (carrying on business of a residential builder without a licence)
- › Section 20.1(2)(g) of the Regulations (sale of new home)