

Compliance Case Studies: No.1

October 2018



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Owner-Built Home Sold Illegally

Overview

John and Jill Lee were excited about building a home in Vancouver. But when they sold their new home within a few months of completion, they found themselves dealing with the compliance team at BC Housing.

In this case study, we learn what offence the Lees committed under the Homeowner Protection Act and its Regulations and what they did to address their non-compliance.

Background

The Lees applied for an Owner Builder Authorization and received a New Home Registration Form for their new home from BC Housing.

Anyone building their own home for personal use in British Columbia must apply for an Owner Builder Authorization if they do not wish to use a licensed residential builder or obtain home warranty insurance for the home.

Some of the requirements for owner builders include: living in the home for at least one year from first occupancy before selling it, and giving any prospective purchaser a BC Housing-issued disclosure notice stating whether or not the home is covered by home warranty insurance.

On the strength of the New Home Registration Form, the Lees obtained a building permit from the City of Vancouver and constructed their new home. They moved in on New Year's Day, and within two weeks — before they had obtained final building permit approval and their occupancy permit from the city — they listed their home for sale with a real estate professional from a well-known Vancouver firm.

The home was on the market for about two months before it sold. BC Housing learned about the sale when Form A Transfer papers were filed at the British Columbia Land Title Office, and within two days, a BC Housing compliance investigator was on the phone with John Lee.

The compliance investigator met with Lee and explained that the Lees had contravened the Act for two reasons:

- › They had sold a home that wasn't covered by home warranty insurance.
- › They had offered for sale, and sold, an owner-built home within 12 months of completion.

Lee had also not provided the required disclosure notice to the buyer of his home.

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Results

The compliance investigator told Lee that in order to rectify the non-compliance he must become a BC Housing licensed residential builder and obtain new home warranty insurance for the home. Lee indicated he would have to wait until after he returned from a two-week trip, for which he was leaving the next day.

Starting about a week after Lee's scheduled return, BC Housing took the following steps:

- › Sent a letter regarding the illegal sale of the new home to Lee's real estate professional and the managing broker at the real estate firm
- › Cancelled the original Owner Builder Authorization issued for the new home
- › Sent a letter to the new owner, informing him how the non-compliance would affect his ability to legally offer the new home for sale or sell it in future
- › Issued a compliance order directing Lee to become a licensed residential builder and obtain home warranty insurance for the new home by a set date

Although the deadline was not met, ultimately Lee cooperated with BC Housing and rectified the non-compliance. He was approved as an licensed residential builder for the sole purpose of registering the new home for home warranty coverage, and enrolled the new home with a policy of home warranty insurance by early fall.

Lessons learned

Although Lee was ultimately responsible for complying with the Act, this problem could have been avoided if the real estate professional involved had confirmed if the home complied with the Act. This should be one of a real estate professional's first actions after being asked to list a new home.

Search the [New Homes Registry](#) or call BC Housing to find out if a property complies with the Homeowner Protection Act. [Our website](#) is also a good source of information about owner builders and the Act.

Relevant legislation

The following sections of the Act apply to this case:

Section 20.1 of the Act states:

(1) Subject to subsection (2), an owner builder must not sell or offer to sell a new home

a) while the new home is being constructed, or

b) within the prescribed period of time after the new home has been built, unless the registrar permits the sale or offer under subsection (2).

- (2) On application to the registrar, an owner builder may be permitted to sell or offer for sale a new home despite the requirements of subsection (1) if
 - a) the registrar is satisfied that the person would suffer undue hardship if the permission is not granted, and
 - b) the person pays the prescribed fee.
- (3) The registrar may impose conditions on a permission granted under subsection (2).
 - › Section 4.1 (4) of the Regulations states “The period of time prescribed for the purposes of Section 20.1 (1) (b) is 12 months.”

Section 21 of the Act states:

- (1) In this section, “purchase period” means
 - a) the period during which home warranty insurance for a new home is in effect, or
 - b) if home warranty insurance for a new home has not been obtained, the period during which home warranty insurance would have been in effect had it been obtained.
- (2) An owner builder, and any subsequent purchaser of a new home built by an owner builder, before selling his or her new home during the purchase period, must provide to a prospective purchaser of the new home
 - a) a disclosure notice in a form satisfactory to the registrar stating whether or not the home is covered by home warranty insurance, and
 - b) if required by the Regulations, another form of security instead of home warranty insurance.