

Strata Alert: HPO Residential Construction Performance Guide, March 24, 2011

Strata agents should be aware that BC Housing and the Homeowner Protection Office have recently issued the "Residential Construction Performance Guide" (the "Guide").

The purpose of the Guide is to provide owners with information as to how warranty providers (as opposed to the courts) will evaluate their warranty claims.

The Guide was developed by a task group that consisted primarily of insurance company representatives. Strata corporations and homeowners were not consulted.

Not surprisingly, the Guide contains language that attempts to limit the circumstances in which warranty coverage is available. For example, page 10 of the Guide states:

"In evaluating a building envelope claim warranty providers will require evidence of actual water penetration or evidence that the water penetration is substantially likely to occur within the 5 year period if the defect is not repaired."

This passage appears to contradict the *Homeowner Protection Act* (the "Act") and *Homeowner Protection Act Regulation* (the "Regulation") which indicate that the phrase "building envelope" includes more than just water-related defects (ex. wind, air, heat). The Act and Regulation further indicate that water penetration is likely not required within the 5 year building envelope warranty period. Tellingly, this passage also states that "warranty providers will require evidence of actual water penetration." This is different from stating that "evidence of actual water penetration is required by the Act or Regulation".

Strata agents should also be aware that BC Housing and HPO have made clear that the Guide does not necessarily represent their own views on the Act or Regulation. In addition, they have indicated that the Guide does not alter any rights or obligations existing under the Act, the Regulation or other applicable laws. In fact, as indicated above, the Guide is simply a tool designed to help homeowners understand how warranty providers evaluate claims. This is not the same as stating that the Guide will help homebuyers to understand how the courts of British Columbia will evaluate their claims.

Since the Guide was created by warranty providers while the purpose of the Act and Regulation is to protect consumers, it is our view that courts are unlikely to attach much weight to the Guide.

Another important consideration is that the Guide is designed mainly for low-rise, wood-frame construction, and contains only limited guidelines for the common property of larger multi-unit buildings. This means that if you are managing large concrete high-rise strata buildings, significant portions of the Guide are not applicable.

Despite the above concerns, warranty providers and builders are likely to rely heavily on the Guide when evaluating claims, undertaking repairs and mediating disputes. To lessen the potential negative impact of the Guide, it will be increasingly important to seek out reputable

engineers, undertake timely warranty reporting and consult legal advisors when questions arise as to the nature and scope of warranty coverage.

What We Do: Lesperance Mendes advises strata agents and licensees on matters concerning 2-5-10 warranty coverage. If you have any questions about this strata alert or about the 2-5-10 warranty regime, please contact [Sat D. Harwood](#) by phone at 605-685-3550 or by email at sdh@lmlaw.ca. To learn more about 2-5-10 Warranties, please visit our website: www.lmlaw.ca or our [Construction Defect Litigation page](#) or our [publications page](#).