

PERFORMANCE



PROTECTION

The Alberta New Home Warranty Program (hereinafter called the "Program") undertakes to and agrees with the Purchaser(s) (hereinafter called the "Purchaser") named in the Agreement to which this Certificate is appended (hereinafter called the "Agreement") that in the event that the Builder (hereinafter called the "Builder") named in the Agreement defaults in:

1. completing the requirements of the Agreement in accordance with its terms, covenants and conditions; or
2. paying all sub-trades and suppliers (hereinafter called the "Sub-Contractors") according to law and in compliance with governing statutes;

the Program will, subject to the limits and conditions and exclusions set out below:

- a) settle as agent of the Purchaser any claims of any Sub-Contractors to the extent required of an owner under the Builders' Lien Act of Alberta R.S.A. 1980 c. B-12 to clear title of any builders' liens filed against the Home being constructed under the Agreement; and
- b) complete the construction of the Home in accordance with the Agreement and the plans and specifications pursuant to the Agreement, subject to any reasonable changes required as to the time of completion or other parts of the Agreement as might reasonably be required according to the circumstances in the sole opinion of the Program.

CONDITIONS OF BUILDER PERFORMANCE PROTECTION

1. BUILDER MEMBERSHIP

The Builder named in this protection must be a Registered Builder Member of the Program at the time the Agreement is signed with the Purchaser.

2. PURCHASER'S OBLIGATIONS

The Purchaser shall:

- (a) claim against the Program for performance of this protection by completion of the Request for Builder Performance Protection Assistance form of the Program within one (1) year from the earlier of the date the Builder defaults under the Agreement or the date the Purchaser takes possession of the Home;
- (b) comply with all of the terms, covenants and conditions of the Agreement;
- (c) conduct themselves prudently and according to law in complying with the Agreement or any extra or related agreement with the Builder and in general make use of any law, statute or trust which may exist to protect a Purchaser under a residential construction agreement by public statute or common usage or custom in the conduct of such business matters (i.e. seasonal, deficiency or lien holdbacks, title trust conditions, etc.);
- (d) agree to appoint the Program as their duly authorized agent upon its request for any reasonable purpose including the filing of a Purchaser's caveat under the Land Titles Act and dealing with Sub-Contractors;
- (e) agree to subrogate their rights in law against the Builder, Sub-Contractors or any other third party in favour of the Program relating to the Agreement or sub-agreements of any kind, and agree that the Program may carry on any court proceeding or arbitration in the name of and on behalf of the Purchaser at the sole cost and expense of the Program;
- (f) cooperate with the Program under any settlement or completion agreement after a default by the Builder including: providing a full accounting of monies paid under the Agreement; the payment to the Program of all purchase monies which are due or which are to become due to the extent of the Total Price under the Agreement; and turn over all documents relating to the Agreement;
- (g) if requested will promptly inform the Program of the name of any mortgage lender or source of funding at the time such funding is obtained or approved;
- (h) agree to any reasonable changes to the Agreement to allow for the orderly clearance of title or completion of construction including necessary extensions to the completion date after a Builder default and will sign any documents as may reasonably be required by the Program for this purpose;
- (i) agree that any dispute arising from the settlement proceedings under a Builder's default, including clearance of title and completion of the Home being constructed, shall be settled by binding arbitration under rules of arbitration adopted by the Program;
- (j) subject to reimbursement of reasonable expenses as determined in the sole opinion of the Program, cooperate in acting as a witness and providing documents or other information with respect to any court or arbitration proceedings in relation to the Builder, the Agreement or the coverage provided by this Builder Performance Protection.

3. BUILDER DEFAULT

Builder default under the Agreement, giving rise to a claim for Builder Performance Protection by the Program, occurs;

- (a) if after a payment by the Purchaser the Builder, in the sole arbitrary opinion of the Program, becomes insolvent or in any way incapable of completing its obligations to the Purchaser, the Program or others in a proper or timely manner;
- (b) if after the making of a payment to the Builder, the Builder commits any act of fraud or a judgment of a court of competent jurisdiction makes a finding of fraud (civil or criminal) against the Builder;
- (c) if the Builder commits any act of bankruptcy or becomes bankrupt;
- (d) if the Builder fails to pay its Sub-Contractors promptly when due or permits builders' liens arising under the Builder to be filed against the Home under construction for a period exceeding 30 days;
- (e) if any final judgments or executions are obtained or taken against the Builder which are not settled, deferred or satisfied within any appeal period applicable to such judgments;
- (f) if a receiver or receiver/manager is appointed by any creditor or court of competent jurisdiction to operate, manage, oversee or administer the business of the Builder;

- (g) if the Builder makes any arrangement, compromise or settlement with its creditors deferring, altering or extending the time or amount of payment due to them;
- (h) if the Builder abandons the construction or defaults under any of its other covenants in the Agreement without just cause.

4. LIMITS AND EXCLUSIONS

- (a) No claim may be made under this protection where the Purchaser has defaulted or is in breach of any of their obligations pursuant to the Agreement or the requirements for mortgage financing for the Home.
- (b) No claim may be made by the Purchaser under this protection where the Purchaser has received a refund of any payment in whole or in part under the Program's Deposit Protection.
- (c) No claim may be made by the Purchaser under this protection against the Program after the expiration of a period of one (1) year following the earlier of: the date of the default by the Builder or the date of possession of the Home by the Purchaser.
- (d) The coverage granted under this protection by the Program is limited to clearance of builders' liens and completion of construction. The Program is not liable for any other damages, costs or expenses whatsoever to the Purchaser arising from a default by the Builder.
- (e) The limit of liability of the Program for the clearance of builders' liens and the completion of the Home under construction (including reasonable excess legal costs of the Purchaser as approved by the Program to a maximum of \$3,000.00) is Fifty Thousand (\$50,000.00) Dollars.
- (f) If in the sole opinion of the Program there has been minimal initial construction of the Home pursuant to the Agreement, then the Program reserves the right to terminate this Builder Performance Protection and provide only the required payment to the Purchaser under the Program's Deposit Protection.
- (g) No claim may be made by the Purchaser under this protection with respect to: completion of the purchase of any real or personal property, such as a house, mobile home or otherwise taken in trade pursuant to the Agreement; the guaranteed purchase or sale of the Purchaser's real or personal property such as a house, mobile home or otherwise; mortgage buy-downs; real estate commission, referral fees; mortgage insurance fees (CMHC or otherwise); landscape deposit or any other deposits required by the developer of the lands for the Home; all of which are specifically excluded from this protection.
- (h) The Total Price required to be paid under the Agreement by the Purchaser must be paid in Canadian dollars and any trades or purchases of real or personal property between the Purchaser and the Builder or others are excluded.

5. TERMINATION

The protection shall be voided automatically if:

- (a) the Purchaser is in default of any of their obligations set out in this protection or in the Agreement or in any obligation to the financial institution providing mortgage financing for the Home; or
- (b) the Purchaser or the Builder amend or alter in any way this protection; or
- (c) after termination of the membership of the Builder in the Program the Purchaser elects to continue with the Builder for the construction of the Home; or
- (d) the Purchaser knowingly enters the Agreement or any other agreement with the Builder which is misleading, untrue, or fraudulent resulting in damage, loss or excess cost to the Program or to a mortgage lender.

6. NO ASSIGNMENT

This Builder Performance Protection cannot be assigned by the Purchaser without the written consent of the Program which consent may be denied in the absolute discretion of the Program.

7. ARBITRATION

If any dispute arises with respect to any matter in relation to this protection, the dispute shall be settled by binding arbitration by a single arbitrator in accordance with arbitration rules adopted by the Program.

It is expressly agreed that the arbitration shall be final and binding on all parties.

The costs of the arbitration, including the arbitrator's fee, shall be borne by the parties to the arbitration but a final award of costs shall be in the discretion of the arbitrator.