

# Compliance Case Studies: No. 2

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## Renovation Project Becomes New Home

### Overview

Home renovations are always a challenge, but Paul and Mary Roberts found out first-hand how refusing to comply with the law can add significantly to the costs and headaches.

This case study looks at a home reconstruction project that the Roberts misclassified as a home renovation — and ultimately paid far more in penalties than it would have cost to comply with the Homeowner Protection Act and its Regulations.

### Background

When the Roberts applied for a building permit, they told their municipality that more than 25 percent of the original structure above the foundation would remain, and that no more than 75 percent of the overall structure (including the foundation) would be new.

Anything beyond this qualifies as substantial reconstruction, which triggers certain requirements under the Act.

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

About a month after the building permit was issued in late September, the city informed BC Housing that more than 75 percent of the home's original structure had been removed.

A BC Housing compliance investigator visited the property the next day and learned that a new foundation had been added, only some of the pre-existing framing remained at or below the main floor level, and the project included the replacement of all services, including plumbing, electrical and heating, and possibly structural reinforcement. He determined the home was being substantially reconstructed.

The compliance investigator met with Paul Roberts at the property the following day to inform him of the Act's requirements. When Roberts indicated he had arranged for or managed almost all of the construction, and that the home was intended for personal use, Roberts was told that he may apply for an Owner Builder Authorization and submit his application online.

## Results

After no action by the Roberts for several weeks, BC Housing issued written notice requesting that they either provide proof of home warranty insurance or obtain an Owner Builder Authorization if they intended to complete the work as an owner builder. The compliance investigator delivered the notice to the property, now at the roofing stage.

More than a month later, the Roberts applied online for an Owner Builder Authorization but did not submit the \$425 fee, so the application stalled. The compliance investigator visited the property several times, emailed and left voicemails. In one instance, Roberts promised to comply, but never did, and construction continued on the home.

The Roberts moved back in the home when it was nearing completion. Roberts told the compliance investigator by phone that the project had gone over budget and they would not be submitting the Owner Builder Authorization payment or complying with the Act. He demanded that the compliance investigator not call again.

BC Housing immediately issued a compliance order, directing the Roberts to either become a licensed residential builder and enrol the new home with home warranty insurance, or provide proof of home warranty insurance, or obtain an Owner Builder Authorization. A four-week deadline was set. Upon the Roberts' request, the Registrar reviewed the compliance order but found no grounds to cancel it.

BC Housing issued an amended compliance order following the Registrar's decision upholding the compliance order, giving the Roberts a new compliance date. The Roberts failed to comply with the amended compliance order by the requested compliance date.

As a result, BC Housing issued a monetary penalty notice with a penalty of \$240 for each day the Roberts did not comply. The daily monetary penalty was suspended after four days, accumulating \$960 in penalties, after Roberts submitted the \$425 fee and completed his Owner Builder Authorization application.

Roberts was approved for an Owner Builder Authorization and obtained a New Home Registration Form for his new home, and paid the penalty the following month.

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## Lessons learned

The Roberts could have avoided the extra stress and costs by complying with the Act when first approached by BC Housing. You can learn more about the Act on the [Homeowner Protection Act and Regulations](#) page of our website.

## Relevant legislation

The following sections of the Act apply to this case.

### **Under Section 1 of the Act:**

...“new home” means a building, or portion of a building, that is newly constructed or being constructed and is intended for residential occupancy, and includes:

- a) a self-contained dwelling unit that is
  - i. detached or
  - ii. attached to one or more other self-contained dwelling units

- b) a building having two or more self-contained dwelling units under one ownership
- c) common property, common facilities and other assets of a strata corporation
- d) any building or portion of a building of a class prescribed by the Regulations as a new home to which this Act applies
- e) a home that is or is being substantially reconstructed (emphasis added), but does not include a manufactured home unless otherwise prescribed

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

**Section 22(1) of the Act** states: “A person must not build a new home unless the new home is registered for coverage by home warranty insurance provided by a warranty provider.”

**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 20(1) of the Act** states:

- 1) On application to the registrar, a person who intends to build, for personal use, a new home of a prescribed type may be issued an authorization if the person
  - i. meets the criteria prescribed for owner builders, and
  - ii. pays the prescribed fee.
- 2) The registrar may issue an authorization under subsection (1) to a person who does not meet the criteria referred to in subsection (1) (a) if the registrar is satisfied that special circumstances justify doing so.
- 3) An owner builder, with respect to the new home for which the owner builder’s authorization is issued, is not required
  - a. to obtain home warranty insurance, or
  - b. to be licensed under this Act.

Contravention of Sections 14 and 22 made the Roberts subject to a monetary penalty pursuant to section 28.3(1)(a) of the Act, and sections 20.1(2)(b) and 20.1(2)(f) of the Regulations.