



## The Alberta New Home Warranty Program

Insurance coverage provided by:

# The New Home Warranty Insurance (Canada) Corporation

| December 1 | 2015

### PRE-POSSESSION INSURANCE POLICY

|                                |                  |
|--------------------------------|------------------|
| COVERAGE COMMENCEMENT DATE:    |                  |
| POLICY NUMBER:                 |                  |
| INSURED:                       |                  |
| RESIDENTIAL BUILDER:           |                  |
| MUNICIPAL ADDRESS OF NEW HOME: |                  |
| LEGAL DESCRIPTION OF NEW HOME: | (the "New Home") |
| PREMIUM:                       |                  |

This policy is to be read and interpreted as a whole and represents the entire contract between The New Home Warranty Insurance (Canada) Corporation and the Insured.

This Policy provides both Deposit Protection Insurance and Home Completion Insurance.

***This Policy contains a clause which may limit the amount payable.***

#### Coverage Period:

**Deposit Protection Insurance:** Coverage commences upon payment of initial deposit under the Agreement and expires upon the Start of Construction.

**Home Completion Insurance:** Coverage commences upon the Start of Construction and expires upon the start of the Protection Period.

#### Maximum Coverage Limit:

**Deposit Protection Insurance:** the amount of all deposit monies received by the Residential Builder to a maximum of \$100,000, unless a greater amount has been negotiated in advance between the Warranty Provider, Residential Builder and Insured.

**Home Completion Insurance:** to a maximum of \$100,000.00.

### TERMS & CONDITIONS:

#### A. DEFINITIONS

In this Policy, the following terms have the following meanings:

- (a) "Agreement" means a Fixed Price Purchase Contract between the Residential Builder and the Insured with respect to the construction of the New Home;
- (b) "Claim" means a request for payment by the Insured under Deposit Protection Insurance or Home Completion Insurance, as applicable;
- (c) "Default" means the Residential Builder fails to fulfill its obligations under the Agreement as a result of financial circumstances including, but not limited to, insolvency, having made an assignment in bankruptcy, or an order has been made by a court of competent jurisdiction declaring the Residential Builder to be bankrupt;
- (d) "Deposit Protection Insurance" means insurance against the loss of all deposit monies paid pursuant to the Agreement, by the Insured to the Residential Builder for the construction or reconstruction of the New Home, to a maximum of \$100,000.00, unless a greater amount has been negotiated in advance between the Warranty Provider, Residential Builder and Insured;
- (e) "Fixed Price Purchase Contract" means an agreement between the Residential Builder and the Insured for the construction of the New Home for a pre-negotiated fixed price not subject to any adjustment except as set out in such Agreement and agreed to as to any additional amount prior to Default;
- (f) "Home Completion Insurance" means insurance against the Default of a Residential Builder resulting in the Residential Builder's failure to complete the construction or reconstruction of the New Home;
- (g) "New Home" means:
  - (i) a self-contained dwelling unit that can include a secondary suite;
  - (ii) any building or portion of a building that is of a class prescribed as a class of New Home to which this Act applies;
  - (iii) a building that is intended for residential occupancy and that is a reconstruction; and
  - (iv) a manufactured home;but does not include a hotel, motel, dormitory, care facility, relocatable work camp or any building exempted by the Regulations from the definition of New Home;
- (h) "Pre-Possession Insurance" means Deposit Protection Insurance and Home Completion Insurance;
- (i) "Protection Period" means:
  - (i) in the case of a New Home, other than the common property or common facilities in a building, 10 years beginning on the earlier of:
    - (A) the date the New Home is first occupied;
    - (B) the date an accredited agency, accredited municipality or accredited regional services commission grants permission to occupy the New Home; and
    - (C) the date that the transfer of title to the New Home is registered;
  - (ii) in the case of the common property or common facilities in a building, 10 years beginning when:
    - (A) title to an inhabitable unit in the building or in a building in a phase of development of a condominium is transferred from a Residential Builder to a purchaser of a unit in an arm's length transaction; and

- (B) the Residential Builder has entered into an agreement with a qualified person to have a qualified person prepare a building assessment report for the building or for the phase of development within 180 days of the transfer of title described in clause (b)(i) above as prescribed by the *New Home Buyer Protection Act* (Alberta);
- (j) "Residential Builder" means a person who engages in, arranges for or manages all or substantially all of the construction or reconstruction of a New Home, or agrees to do any of those things, and includes a general contractor, but does not include an Owner Builder;
- (k) "Start of Construction" means the date of completion of the footings for the New Home as determined by the Warranty Provider;
- (l) "Warranty Provider" means The New Home Warranty Insurance (Canada) Corporation.

#### **B. DETERMINATION OF WHICH COVERAGE OR CLASS OF INSURANCE APPLIES**

Notwithstanding the type of coverage the Insured elects to Claim under, the Warranty Provider reserves the right to assess and determine which type of Pre-Possession Insurance coverage is most suited to the Claim and to process the Claim under such type of Pre-Possession Insurance coverage. The Warranty Provider shall, within 15 business days of receipt of the Claim from the Insured, give notice in writing confirming the Warranty Provider's determination to proceed with the Claim for Pre-Possession Insurance coverage. This notice period is subject to extension where circumstances reasonably require it, in the Warranty Provider's discretion, to a maximum of 60 days.

#### **C. WARRANTY PROVIDER OBLIGATIONS**

##### **(a) Deposit Protection Insurance**

Any amounts paid under this coverage shall be the lesser of the deposits received by the Residential Builder from the Insured and the Maximum Coverage Limit.

In the event of Default, the Warranty Provider agrees to indemnify the Insured, subject to the terms, conditions, and exclusions of this Policy, and the Insured may submit a Claim only for those deposit payments made by the Insured to the Residential Builder pursuant to the Agreement.

Upon receiving the documentation required under section D., and subject to sections E. and F. the Warranty Provider will review and assess the Claim and determine the amount payable, if any, to the Insured. If the Warranty Provider determines that payment will be made pursuant to a Claim, the Warranty Provider shall provide payment to the Insured in the amount the Warranty Provider has determined payable for the Claim.

The Warranty Provider shall advise the Insured of its determination of the Claim in writing within 60 days of its receipt of all necessary documents required to assess the Claim.

In the event that the Warranty Provider has determined that payment will be made, the Insured will complete and execute a release in favour of the Warranty Provider in a form provided by, or to the satisfaction of, the Warranty Provider. The Warranty Provider will issue payment to the Insured upon receipt of such release executed by the Insured in favour of the Warranty Provider.

If:

- (i) any amount of the Maximum Coverage Limit remains available after payment of the Claim; and
- (j) the Insured incurs reasonable legal fees directly related to the Claim as determined by the Warranty Provider;

then the Warranty Provider shall indemnify the Insured in respect of such fees up to a maximum of \$5,000.

(b) **Home Completion Insurance**

In the event of Default, the Warranty Provider agrees to indemnify the Insured, subject to the terms, conditions, and exclusions of this Policy, up to a maximum amount equal to the Maximum Coverage Limit of \$100,000, subject to section F.

Upon receiving the documentation required under section D, and subject to sections E. and F. the Warranty Provider will review and assess the Claim and determine the amount payable, if any, to the Insured. If the Warranty Provider determines that payment will be made pursuant to a Claim, the Warranty Provider shall either provide payment to the Insured or undertake to complete the construction of the New Home up to a maximum amount equal to the amount the Warranty Provider has determined payable for the Claim.

Upon receipt of a Claim, the Warranty Provider shall, as soon as reasonable, make attempt to contact the Insured to arrange for an investigation and/or evaluation of the Claim.

If following evaluation of the Claim, the Warranty Provider determines there is no coverage, the Warranty Provider shall notify the Insured in writing, setting out the reasons for the decision.

In the event the Warranty Provider is obligated to complete construction of the New Home, the Warranty Provider shall determine the reasonable costs associated with completion. Notwithstanding the foregoing, the Warranty Provider in their sole discretion, may elect to provide financial compensation to the Insured, up to the Policy limit, in an amount equal to the cost of completion less any mitigation expenses, costs of any investigation, engineering and design required for the completion, and costs of adjusting and supervision (including professional review) paid by the Warranty Provider in lieu of actual home completion.

In the event financial compensation is provided to the Insured in lieu of home completion, the Warranty Provider will have no further liability for which financial compensation was paid.

No claim can be commenced under this Policy unless the full amount of the Fixed Price Purchase Contract has been paid. The Warranty Provider shall be under no obligation under this Policy in the event the Insured is withholding any monies due to the Residential Builder in relation to any Defects claimed pursuant to this Policy. In the event the Insured is withholding any such monies, those monies shall be unconditionally paid at the direction and request of the Warranty Provider before the Warranty Provider will be required to undertake any of its obligations set out in this Policy.

The Warranty Provider shall advise the Insured of its determination of the Claim in writing within 60 days of its receipt of all necessary documents required to assess the Claim.

In the event the Warranty Provider has determined that payment will be made, the Insured will complete and execute a release in favour of the Warranty Provider in a form provided by, or to the satisfaction of, the Warranty Provider. The Warranty Provider will issue payment to the Insured upon receipt of such release executed by the Insured in favour of the Warranty Provider.

If:

- (i) any amount of the Maximum Coverage Limit remains available after payment of the Claim; and
- (ii) the Insured incurs reasonable legal fees directly related to the Claim as determined by the Warranty Provider;

then the Warranty Provider shall indemnify the Insured in respect of such fees up to a maximum of \$5,000.

**D. INSURED OBLIGATIONS**

(a) **Deposit Protection Insurance**

When making a Claim under Deposit Protection Insurance, the Insured must submit the following to the Warranty Provider:

- (i) the Agreement;
- (ii) proof of deposit payment(s) made to the Residential Builder by the Insured with respect to the Agreement;
- (iii) a duly completed Claim form to be provided by the Warranty Provider to the Insured; and
- (iv) any additional documentation as required by the Warranty Provider from time to time.

All of the foregoing Claim documentation must be received by the Warranty Provider before the expiry of the Deposit Protection Insurance Period. The obligations of the Warranty Provider cease upon expiry of the Coverage Period, unless proper notice is given to the Warranty Provider by the Insured prior to the expiry.

(b) **Home Completion Insurance**

When making a Claim under Home Completion Insurance, the Insured must submit the following to the Warranty Provider:

- (i) the Agreement and any other documentation relating to the construction of the New Home as required by the Warranty Provider from time to time;
- (ii) proof of all payment(s) made to the Residential Builder by the Insured directly related to the construction of the New Home and the Agreement;
- (iii) a duly completed Claim form to be provided by the Warranty Provider to the Insured; and
- (iv) any additional documentation as required by the Warranty Provider from time to time.

All of the foregoing Claim documentation must be received by the Warranty Provider before the start of the Protection Period. The obligations of the Warranty Provider cease upon the start of the Protection Period, unless proper notice is given to the Warranty Provider by the Insured prior to the expiry.

**E. General**

The Insured shall:

- (a) adhere to all timelines outlined in this Policy;
- (b) provide to the Warranty Provider information and documentation that the Insured has available or has the ability to access, that the Warranty Provider requests, in order to investigate a Claim;
- (c) the Insured will not undertake any unilateral action or remedy regarding Home Completion without the specific prior written consent of the Warranty Provider, with the exception of immediate repairs required that are life threatening or are required to prevent further damage. Unilateral actions or remedies undertaken by the Insured without consent may be excluded and may result in non-coverage under this Policy; and
- (d) when necessary, allow the Warranty Provider or their accredited representatives immediate access to the New Home for the purpose of investigating and assessing the remaining construction of the New Home.

All notices of a Claim under this Policy must be delivered to the Warranty Provider, in writing, prior to the expiry of the applicable insurance coverage and comply with the requirements set out in this section.

The Warranty Provider shall be subrogated, with respect to any payment made under Policy coverage, to all the rights of recovery of the Insured against any person who may be responsible for a Default and may bring action in the name of the Insured to enforce those rights. The Insured shall cooperate with the Warranty Provider and do whatever is necessary to secure and exercise those rights.

#### **F. LIMITS AND EXCLUSIONS**

Only one Claim will be paid under this Policy, after which this Policy is of no force or effect. The amounts of coverage under this policy are not cumulative. If a Deposit Protection Insurance Claim is paid under this Policy, no Claim shall be made under Home Completion Insurance and following payment, this Policy is of no force or effect.

Other than payment to the Insured under the coverage as set out in section C, the Warranty Provider is not liable for any damages, losses, costs, or expenses otherwise suffered by the Insured due to or in connection with Default, howsoever caused.

Coverage under Home Completion Insurance is **only** available to the Insured where the Residential Builder and the Insured have entered into a Fixed Price Purchase Contract.

Coverage under Deposit Protection Insurance or Home Completion Insurance does not provide indemnity for non-monetary consideration provided by the Insured to the Residential Builder.

Claims arising out of a contractual dispute between the Insured and Residential Builder are not covered by this Policy.

#### **G. COVERAGE EXCLUSIONS**

The following are excluded from the Home Completion Insurance:

- (a) any non-residential use area and any renovation associated with a non-residential use area;
- (b) site grading and surface drainage except as required by a building code, and not including subsidence beneath footings of a home or under driveways or walkways;
- (c) utility services;
- (d) septic tanks and septic or absorption fields, unless constructed or otherwise provided by the Residential Builder;
- (e) home appliances, including but not limited to, refrigerators, stoves, ovens, garbage disposal units, dishwashers, microwaves, clothing washers, clothing dryers and freezers;
- (f) water wells, except equipment installed for the operation of the water well where the equipment is part of a delivery and distribution system;
- (g) the quality or quantity of water from a municipal water supply, a water well or any other source;
- (h) any component of a Registered Historic Resource or Provincial Historic Resource that is being converted from commercial to residential use, where that component has been exempted from the application of any provision contained in any building code pursuant to Section 51 of the *Historical Resources Act*; and
- (i) damage not caused by or services not provided by the Residential Builder are excluded from coverage.

#### **H. TRANSFER OF PRE-POSSESSION INSURANCE COVERAGE AND ASSIGNMENT**

This Pre-Possession Policy is transferable in accordance with section M.

The remaining coverage under this Policy shall be automatically transferred to the subsequent owner, subject to the terms and conditions of this Policy, at which point such subsequent owner shall be considered the Insured and shall be bound to comply with all obligations of the Insured and be subject to all provisions of this Policy.

Whether or not it is disclosed to a subsequent Insured by the Insured and notwithstanding any other provision of this Policy, prior actions or obligations of the Insured shall be binding upon any subsequent Insured and, in particular, any previous acts, omissions, defaults, or agreements of any kind made by the Insured with the Residential Builder or the Warranty Provider shall be binding upon any subsequent Insured.

This Policy may be assigned by the Warranty Provider.

#### **I. POLICY TERMINATION**

The Warranty Provider may only terminate this Policy before the start of the Protection Period by giving both the Residential Builder and the Insured 15 days' written notice by registered mail or 5 days' written notice personally delivered. Notwithstanding anything contained herein, the 15 day period starts to run on the day the notice is sent by mail or notification of it is delivered to both the Residential Builder's and Insured's recorded addresses.

#### **J. CLAIM ASSESSMENT, DEDUCTIBLE AND DISPUTES**

In the event the Insured considers a Default exists, the Insured must complete and submit a Request for Assistance (the "Claim") through the Homeowner Portal or in writing to the Warranty Provider either electronically or by mail.

The Claim together with the deductible fee must be received by the Warranty Provider no later than the expiry of the Home Completion Insurance.

The amount of the deductible fee payable by the Insured shall be \$50, not including applicable taxes.

Upon receipt of the Claim and the deductible fee, the Warranty Provider shall arrange within a reasonable period of time to have an inspection completed by the Warranty Provider or its accredited representatives.

The Warranty Provider will issue a Claim Assessment Report within 60 days of the inspection setting out its assessment decision identified in the Claim.

Every action or proceeding against the Warranty Provider for the recovery of insurance money payable under the contract is absolutely barred unless commenced within the time set out in the *Insurance Act*.

If it is determined that Home Completion construction is required, the construction will be completed by the Warranty Provider's accredited representatives.

The Warranty Provider or its accredited representatives may conduct inspections of the New Home until any and all work has been completed to the Warranty Provider's and Insured's satisfaction.

In the event the Insured desires to have the decision in the Claim Assessment Report reviewed, the Insured may elect to proceed with the dispute resolution process set out in section L.

#### **K. NOTICE**

Unless indicated otherwise in this Policy, any notice which may be or is required to be given under this Policy must be given in writing and may be delivered in person, sent by mail postage prepaid or by courier, or delivered electronically either by electronic communication or to the Homeowner Portal and shall be addressed:

If to the Insured:

Attention: Homeowner  
Email:  
Facsimile:

If to the Warranty Provider: The New Home Warranty Insurance (Canada) Corporation  
c/o The Alberta New Home Warranty Program  
301, 30 Springborough Boulevard SW  
Calgary, Alberta, T3H 0N9  
Attention: Contact Centre  
Email: [contactcentre@anhwp.com](mailto:contactcentre@anhwp.com)  
Facsimile: (403) 253-5062  
Homeowner Portal Address: [www.anhwp.com/homeowner](http://www.anhwp.com/homeowner)

Any notice shall be conclusively deemed to have been given or made on the day upon which such notice is delivered, or if mailed, then on the third business day following the date of the mailing as the case may be, provided that in the case of interruption in the ordinary postal service, any notice given hereunder shall be delivered and not mailed. The parties shall give notice in writing of any change of municipal address or email address, and from and after the giving of such notice, the municipal address or email address therein specified shall be deemed to be the municipal address or email address of the parties for the giving of notices hereunder.

**L. IN CASE OF DISAGREEMENT**

In the event of disagreement as to whether Default exists, the nature and extent of the home construction required, the adequacy of home completion made or the amount of loss or damage, those questions must be determined using the applicable dispute resolution process set out in section 519 of the *Insurance Act* whether or not the insured's right to recover under this Pre-Possession Insurance Policy is disputed, and independently of all other questions.

There is no right to a dispute resolution process under this condition until:

- (a) a specific demand is made for it in writing; and
- (b) the proof of loss has been delivered to the Warranty Provider.

**M. TRANSFER OF TITLE**

If title to the New Home is transferred at any time during the warranty period, the Pre-Possession Insurance Policy is transferred to the new owner and the new owner is deemed to have given good and valuable consideration to the Warranty Provider under the Pre-Possession Insurance Policy.