

## **NEW HOME WARRANTY PROGRAM**

*by Daryl A. Chicoine*

*March 2009*

As a result of low interest rates and encouraging economic conditions, Manitoba has seen a large increase in the number of new homes built over the last few years. Most of these homes will be covered by the warranty offered by the New Home Warranty Program of Manitoba Inc. ("NHWPM") if homes are built by its members.

### **What Is Covered By the Warranty?**

Membership in the NHWPM is not mandatory for builders and, as such, not every new home constructed will be covered. By participating in the NHWPM a builder is warranting to the homeowner that the home will be constructed in compliance with both the Manitoba Building Code **and** the building standards required by the municipality in which the home is constructed. To the extent that the home is damaged by a failure to comply with the Manitoba Building Code or local standards, remedial costs may be covered by the warranty.

The NHWPM is not a warranty that the home is free of defects, but only that the minimum standards required by law shall be met. Accordingly, items such as nail pops in drywall or cracks in concrete that fall within normal tolerances are not covered by the warranty, nor is damage that arises from the homeowner's failure to properly maintain the home.

For disputes relating to the quality of the workmanship or materials used in the construction of a home, a claim under the NHWPM must be made within one (1) year from the date of possession by the homeowner. Where the dispute relates to alleged failures in the load-bearing portions of the home, the homeowner must notify the builder and the NHWPM of a claim within five (5) years of the date of possession.

### **What Happens if a Claim is Made?**

It is important to note that the NHWPM coverage requires a homeowner to attempt to resolve the dispute through the claims procedure before commencing litigation against a builder. Warranty coverage can be terminated for homeowners who proceed to litigation before submitting claims through the NHWPM.

Where a homeowner has made a claim under the NHWPM the builder will be notified and be given an opportunity to respond to the concerns raised. Both the builder and representatives from the NHWPM are allowed to inspect the defect(s) and any defects that have been repaired by the homeowner without prior written notice to the NHWPM will not be covered by the NHWPM.

The NHWPM will attempt to mediate a resolution to any claim or dispute between the homeowner and builder. In the event that both sides cannot agree on a satisfactory resolution, either party has the right to submit the matter to conciliation upon payment of a conciliation fee (presently \$250.00).

Where necessary, the conciliator will be selected by the NHWPM and will receive information from both the homeowner and the builder with respect to the defects alleged. In addition to receiving information from the parties, the conciliator may inspect the home if he or she is of the opinion that doing so would assist in rendering a decision. The report of the conciliator on the rights and obligations must be issued within 30 days of the completion of the conciliator's inspection of the home of the parties and is final and binding on the parties and the NHWPM.

**Other Defects**

As mentioned earlier, the NHWPM coverage is limited to compliance with the Manitoba Building Code and any additional local building standards. Depending on the builder's contract with the homeowner, additional defects or homeowner concerns may arise out of the contract itself or from additional representations or warranties made or given by the builder. Disputes relating to non-NHWPM defects that cannot be resolved informally between the parties can be the subject of litigation and are not subject to the NHWPM limitation periods.

*Note: This summary is of a general nature only and is not exhaustive of all possible legal rights or remedies. Readers should consult a legal professional for specific advice in any particular situation.*

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