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**IN THE MATTER OF THE *HOMEOWNER PROTECTION ACT*
SBC 1998, Chapter 31**

**AND IN THE MATTER OF an appeal to the
British Columbia Safety Standards Appeal Board**

BETWEEN:

A Home Owner

Appellant

AND:

Homeowner Protection Office

Respondent

REASONS FOR DECISION

**Application for Owner Builder Authorization
Pursuant to Section 20 of the *Homeowner Protection Act***

Board Members:

Jan Kernaghan, Q.C.

Introduction

[1] This is an appeal from a decision of the Homeowner Protection Office (the Respondent) to deny the application of a homeowner (the Appellant) for an authorization as an owner builder pursuant to section 20 of the *Homeowner Protection Act* (the Act). The Appellant filed a notice of appeal with the British Columbia Safety Standards Appeal Board (the Board) on July 2, 2008. By agreement with the parties, the appeal was heard by oral hearing on July 24, 2008.

Decision

[2] The Appellant applied for an authorization as an owner builder pursuant to section 20 of the Act. This section provides as follows:

20(1) On application to the registrar, a person who intends to build, for personal use, a new home of prescribed type may be issued an authorization if the person

- (a) meets the criteria prescribed for owner builders, and
- (b) pays the prescribed fee.

[3] The Homeowner Protection Act Regulation (the Regulation) sets out the criteria for the designation as an owner builder including the provisions of section 4.1(2):

(c) if the person has previously been issued an authorization, the person must not have been issued an authorization for at least the following period of time, determined from the date of the first occupancy of the new home built under the most recent previous authorization:

- (i) 18 months, if the person has been issued only one previous authorization.

[4] In the Regulation, section 4.1(1) defines “first occupancy” as:

- (a) the date an occupancy permit with respect to the new home was first issued, or
- (b) if no occupancy permit has been issued with respect to the new home, the date the new home was first occupied.

[5] In other words, the actual date of occupancy is only relevant if the home is being built in a geographic area of the province that does not have a municipal scheme of building inspections and occupancy permits.

[6] In this case, the Building Bylaw provides as follows:

5.1 Occupancy Permit

5.2.1 The owner shall obtain an Occupancy Permit from the Building Inspector prior to:

- (a) occupancy of a building or part thereof after construction of that building or part thereof; or
- (b) change in class of occupancy of any building or part thereof.

5.2.2 The occupancy permit may be withheld until the entire building or part thereof complies with this and all applicable bylaws of the City, all applicable laws of province and any regulations made pursuant thereto, including all provisions of the Building Code.

5.3 Provisional Occupancy Permit

5.3.1 Upon the written request of the owner of a building for which a building permit has been issued, the Building Inspector may issue a provisional occupancy permit with a fixed expiry date where such provisional occupancy will not jeopardize the health or safety of the occupants of the building and where the exterior finished have been substantially completed.

5.3.2. The owner shall complete the building and obtain an occupancy permit prior to the expiry date of the provisional occupancy permit.

[7] The Appellant advised that he was living in this house by November 1, 2006 but he did not call for a building inspection until February 15, 2007. The Building Inspector attended and identified a small number of relatively minor issues that had to be addressed before the final occupancy permit could be granted. The final occupancy permit was granted on October 3, 2007.

[8] The Homeowner Protection Office staff accepted the building inspection report dated February 15, 2007 as a conditional occupancy permit for the purpose of the calculation required for section 4.1 of the Regulation.

[9] One of the most important features of the Act is the requirement that home builders provide home warranty insurance. A major exemption to this requirement is the one granted to owner builders. The intention of the legislative scheme is to separate the homes built for personal use from homes built for resale. The time limits of section 4.1(2) were added to close a loophole which allowed builders to build one house at a time, live in it for a short period, sell it, and then repeat the process. Such a practise provided an opportunity for certain professional builders to exempt themselves from the most significant protection offered by the legislation.

[10] The Appellant was very forthright in his representations to the Board. He admitted that it was always his intention to build two homes in succession. The first home was his opportunity to put everything he had learned in his years in the

construction industry, and now in the property development business, to work. He was going to build the best house he could, sell it, and then build a home for his personal use. He also admitted that if he had realized the importance of the date on the occupancy permit, he would have called for an inspection earlier than he did.

[11] The sequence of events planned by the appellant is exactly the scenario that the legislation is intended to address. The appellant is bound by the provisions of section 4 of the regulation.

[12] For the reasons given, the appeal is dismissed.