

[4] In a letter dated October 15, 2013, the Manager of Licensing for the HPO stated that the Appellant would be permitted to sell the home within the 12 month prohibited period, without the need for him to register as a licensed residential builder, but conditional upon the home being enrolled in a policy of home warranty insurance prior to selling or offering the home for sale.

[5] The Appellant was unable to obtain home warranty insurance due to patent deficiencies in the construction of the home.

[6] The Appellant requested a review of the Manager's decision pursuant to Section 29.1 of the *Act*. This request resulted in the Registrar for the HPO providing a decision dated March 7, 2014 which upheld the earlier decision. It is the decision of the Registrar that is the subject of this appeal.

ISSUES

[7] Has the Appellant demonstrated that he will suffer undue financial hardship if he is not permitted to sell the home within the 12 month period in which the sale of new homes built by new owner builders are prohibited?

[8] If so, should the Appellant have been required to enroll the home in a policy of home warranty insurance prior to such a sale?

ANALYSIS

[9] The relevant provisions of the *Act* applicable to this appeal state:

20.1

(1) Subject to subsection (2), an owner builder must not sell or offer to sell a new home

(a) while the new home is being constructed, or

(b) within the prescribed period of time after the new home has been built, unless the Registrar permits the sale or offer under subsection (2)

(2) on application to the Registrar, an owner builder may be permitted to sell or offer for sale a new home despite the requirements of subsection (1) if

- (a) the Registrar is satisfied that the person would suffer undue hardship if the permission is not granted, and
- (b) the person pays the prescribed fee
- (3) the Registrar may impose conditions on a permission granted under subsection (2)

[10] On the facts of this case, the Appellant is prohibited from selling the home before September 13, 2014, being 12 months from the date occupancy of the home was granted.

[11] The Appellant says that he will suffer undue financial hardship if he cannot list the home for sale at an earlier point in time. The Appeal Record discloses the following concerning the Appellant's financial circumstances:

- the Appellant says he is struggling financially to service the debt taken on in constructing the home
- the Appellant says he is financially assisting his parents with their housing needs
- the Appellant's father is on long term disability
- the Appellant's wife was on maternity leave in 2012 and receiving \$840 every two weeks
- the Appellant has debts totalling \$158,400, plus a \$450,000 mortgage and an annual total household income of \$97,290
- the land and improvements are presently assessed at \$724,000

[12] Counsel for HPO submits that the Appellant's debt service ratio, using the foregoing numbers, is only marginally above the recommended guidelines.

[13] In my view, the use of the phrase "undue financial hardship" as found in the *Act* must have been intended to deal with hardship arising from unforeseen circumstances, beyond the Appellant's control, that have conspired to create the financial hardship. The Appellant did not submit any evidence indicating that his parents' financial circumstances or his father's disability had suddenly and unexpectedly arisen while he was constructing the home. Similarly, no evidence was tendered concerning the timing or circumstances surrounding his wife's maternity leave.

[14] If the Appellant's financial situation is so precarious, and it is far from clear on the sparse debt/income information submitted that this is so, this seems to have arisen only because the Appellant failed to properly plan for the cost of servicing the debt on the home during the 12 month period following occupancy.

[15] It is noteworthy in my view, that the Appellant agreed in his application to be declared an owner builder, that he intended to reside in the home for the required 12 month period and thus he knew before he started construction that he would not be permitted to sell the home at an earlier point.

[16] In the Manager's decision issued in October, 2013, the Appellant was nonetheless given the opportunity to sell the home before the expiration of the 12 month period provided he obtain home warranty insurance on the home. The evidence discloses that the Appellant sought home warranty coverage from WBI Home Warranty but in a letter dated November 8, 2013, WBI declined to warrant the home for the following reason:

"This decision is based entirely on our opinion of poor construction practices and finishes as reported to us from our inspector."

[17] So in effect, having been granted the opportunity to sell the home, subject to obtaining warranty coverage, the Appellant now seeks relief in this appeal from the fact that he cannot obtain warranty coverage because the home is poorly constructed.

[18] In considering this appeal I am required to take into consideration the objectives of the *Act* which are, amongst other things, to strengthen consumer protection for buyers of new homes and to improve the quality of residential construction, as set out in Section 2(1) and (2) of the *Act*.

[19] Those purposes would not be met where there is some evidence to conclude that the house has been poorly constructed. To allow the Appellant to sell the home without warranty protection during the prohibited 12 month period seems entirely contrary to the *Act's* purpose.

[20] Considering all of the foregoing, I am of the view that it was reasonable for the Registrar to uphold the Manager's earlier decision which allowed the Appellant the opportunity to sell the home within the prohibited 12 month window provided however, that the home was enrolled in a

home warranty program. Accordingly, the Registrar's decision under appeal is upheld. The appeal is dismissed.

Signed;

A handwritten signature in black ink, appearing to be 'J. M. P.', written in a cursive style.