

Superintendent of Insurance

Guideline

Guideline Number:	05-2022
Title:	New Home Warranty Insurance Claims and Claims Disputes Guideline
Date:	June 2, 2022
To:	Home warranty providers licensed in Alberta

Purpose

The purpose of this Guideline is for the Superintendent of Insurance (Superintendent) to direct warranty providers (i.e. insurers) on how to adjust home warranty claims and resolve home warranty claim disputes in Alberta. This Guideline is issued by the Superintendent pursuant to section 792.1 of the [Insurance Act \(Act\)](#).

Background

Pursuant to the *New Home Buyers Protection Act*, all new homes built in Alberta require new home warranty coverage if a building permit was applied for on or after February 1, 2014. New home warranty coverage must be underwritten by a warranty provider licensed by the Superintendent to provide new home warranty insurance.

As with all licenced insurers, the Superintendent regulates the market conduct of licensed warranty providers undertaking new home warranty insurance in Alberta.

During 2020 and 2021, in collaboration with BC Financial Services Authority, the Superintendent conducted market conduct examinations of the claims adjusting and claims dispute policies, practices and procedures of selected warranty providers. The findings of these examinations, supplemented with findings from consumer complaints filed with the Superintendent, have informed the matters addressed in this Guideline.

Fair treatment of customers

Pursuant to [Bulletin 02-2019, Adoption of CCIR / CISRO Fair Treatment of Customers Guidance](#) (FTC Guidance), the Superintendent adopted the expectations in the September 2018 FTC Guidance. Sections 6.10 “Claims Handling and Settlement” and 6.11 “Complaints Handling and Dispute Resolution” of the FTC Guidance have particular relevance in respect to claims and claims disputes.

For more information, visit [insurance.alberta.ca](https://www.insurance.alberta.ca)



The FTC Guidance is applicable to all insurers licensed in Alberta and all insurance contracts issued in Alberta, including warranty providers and home warranty insurance contracts. Non-compliance with the FTC Guidance is an unfair act or practice in contravention of section 509 of the Act.

In addition to the FTC Guidance, with specific reference to home warranty insurance, in order to ensure the fair treatment of customers, warranty providers must reasonably adhere to the following:

- Ensure warrantable defects are evaluated and repaired, as required, in a timely manner;
- Provide in writing clear and comprehensive reasons why an alleged defect is declined;
- Meaningfully supervise and monitor defect repairs directed to the original builder or an alternative qualified third party contractor; and
- Provide a builder with reasonable time to effect defect repairs; however, insured homeowners are not to be disadvantaged by defect repairs taking unreasonable amounts of time to be completed. Adequate time is dependent on a number of factors, including but not limited to, availability of materials and labour, accessibility to the home, or weather.

Where a builder does not complete defect repairs within a reasonable timeframe, warranty providers must work with insured homeowners to arrange for defect repairs to be completed by an alternative qualified third party contractor rather than wait for the builder initially retained to effect the repairs.

Claim dispute handling guidelines

Complaint Resolution Procedures

In accordance with licensing requirements and with the FTC Guidance, all warranty providers have a documented complaint handling process that provides customers with information in a clear, plain language, timely, and easy to understand manner, including through the warranty provider's website and other appropriate means, including:

- How to make a complaint;
- A formal process for the escalation of complex files that require management involvement;
- A commitment to timely clear, plain language written or verbal complaint responses;
- Contact information for its internal [Complaint Liaison Officer / Ombudsperson](#);
- Complaint resolution process timelines; and
- Next steps if the complaint remains unresolved, including contacting the external [General Insurance Ombudservice \(GIO\)](#). Pursuant to section 819.1 of the Act, warranty providers are members of the GIO.

For additional information about resolving complaints between an insured and a warranty provider, see [Alberta.ca](#).

Section 519 Dispute Resolution Process (DRP)

Policy Condition 6, “In Case of Disagreement,” section 5 of the Home Warranty Insurance Regulation (Regulation) provides that *“in the event of disagreement as to whether a defect exists, the nature and extent of the repairs or replacements required, the adequacy of repairs or replacements made or the amount of loss or damage, those must be determined using the applicable dispute resolution process set out in section 519 of the Act.”*

The following examples of disagreements to which DRP apply are provided for illustrative purposes only, and should not be interpreted as a limitation on the applicability of DRP:

Example 1, Is it a defect or not?

If the insured homeowner is of the view that a basement wall crack is a defect, and the warranty provider is of the view that the same crack is usual and normal and is not a defect, the DRP is used as the formal and final determination of whether the crack is a defect or not.

Example 2, What repairs are required to correct the defect?

If the warranty provider is of the view that replacing six defective planks in the hardwood floor would be sufficient repairs, and the insured homeowner is of the view that the whole floor needs replacement, then DRP is used as a formal and final determination of which repair scope is required.

Example 3, Are the completed repairs adequate?

If the insured homeowner considers warranty roof flashing repairs to be inadequate, and the warranty provider is of the view the repairs are adequate, then DRP is used as the formal and final determination of whether the repairs are adequate.

Example 4, What is the amount of loss or damage?

If a warranty provider is of the view that the cost claimed by the insured homeowner to complete defect repairs is unreasonable, the DRP is used as the formal and final determination of what is the reasonable cost.

The DRP is not applicable to disagreements such as whether a defect is covered by the policy, or whether a defect was reported in time. Instead, these sorts of disagreements, if they remain unresolved, would ultimately be issues for the courts. Additional guidance on reporting time is available later in this Guideline.

The following are the Superintendent’s guidelines for the use of the DRP on home warranty claims:

1. The warranty provider, within 60 days of receipt of a new defect report, and with cooperation of the insured homeowner, completes its inspection and communicates its decision to the insured homeowner. This timeframe may be

extended in extraordinary circumstances, such as an ‘attic rain’ event following a lengthy cold snap where the warranty provider receives significantly more claim reports compared to usual, or where a complex claim requires extensive investigation.

2. Pursuant to section 519(4) of the Act, after proof of loss has been delivered to the warranty provider and if the insured homeowner is in disagreement with the warranty provider’s decision about a matter to which the DRP applies, either the insured homeowner or the warranty provider may demand in writing the other’s participation in the DRP pursuant to section 519 of the Act. It is appropriate for the warranty provider to offer the insured homeowner its internal complaint resolution or mediation process as an alternative to the statutory DRP; however, if either party demands, DRP must proceed.
3. An insured homeowner participating in a warranty provider’s internal complaint resolution or mediation process may still invoke the DRP.

Defects reported to warranty provider outside the coverage period

Policy Condition 1(1), “Requirements After Discovery of Defect,” section 5 of the *Home Warranty Insurance Regulation* (Regulation) requires that “*Within a reasonable time after the discovery of a defect in a new home, the insured must, if the defect is covered by the policy, give notice of the defect in reasonable detail to the warranty provider.*” In most cases, both the discovery of a defect and its report to the warranty provider will fall within the coverage period for that defect.

All new home warranty defects arise out of the construction of the home. However, defects may not be discovered, or latent defects may not manifest themselves, until later in the coverage period. Pursuant to authority provided in section 792.1 of the Act, the Superintendent interprets “within a reasonable time” in Policy Condition 1(1), when the insured homeowner discovers a defect late in the coverage period, and reports such defect to the warranty provider within a period of 30 days from the expiry of the coverage period for a particular defect. For added clarity, this 30 day period is not an extension of the coverage period; instead, it represents the Superintendent’s interpretation of what is a reasonable timeframe for reporting defects discovered late in the coverage period.

The Superintendent recommends that homeowners report all defect claims to both their builder and their warranty provider; however, in order to manage their home warranty insurance costs, many residential builders have procedures in place to resolve defects directly with homeowners without involving the warranty provider. This benefits the warranty provider because it has fewer claims to manage and pay for. Some builders address problems in the first year of possession under a separate builder warranty in addition to the home warranty insurance policy mandated under the *New Home Buyer*

Protection Act. This can result in homeowners dealing directly with their builders rather than reporting claims in time to the warranty provider, and can leave homeowners unprotected if warranty providers consider this non-compliant with Policy Condition 1(1) of the Regulation.

It is the Superintendent's position that warranty providers receive claims cost savings when builders deal directly with insured homeowners to repair defects. In such circumstances, it is also the Superintendent's position that for a warranty provider to derive such a benefit and then deny an insured homeowner coverage for non-compliance with Policy Condition 1(1) of the Regulation is an unfair act or practice in contravention of section 509 of the Act.

Where an insured homeowner discovers the defect and then reports it to their builder within the coverage period, and is not compliant with Policy Condition 1(1) of the Regulation as the result of the insured homeowner dealing directly with the builder, warranty providers must review each claim submission on a case-by-case basis and consider the reason the insured homeowner has not complied with Policy Condition 1(1) of the Regulation in its decision whether to deny a claim for being reported too late. This expectation does not apply to defects that are both discovered and reported outside of the coverage period.

Penalties for non-compliance

Where the Superintendent is of the opinion that a warranty provider has contravened a prescribed provision of the Act or its regulations the Superintendent may require that warranty provider to pay an administrative penalty of up to \$25,000 for each contravention.

Alternatively, in place of an administrative penalty, and pursuant to section 780 of the Act, a warranty provider that contravenes section 509 of the Act is guilty of an offence and may be prosecuted. If convicted, a warranty provider is subject to a fine of up to \$200,000 under section 786 of the Act (and if the warranty provider's conduct is of a continuing nature, each day or part of a day constitutes a separate offence).

If you have any questions regarding this Guideline, please contact my office at (780) 643-2237 or tbfi.insurance@gov.ab.ca.

[ORIGINAL SIGNED]

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