

REGISTRAR INTERPRETATION BULLETIN

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DELIVERY AND DISTRIBUTION SYSTEMS

ISSUE

Industry has requested further clarification on the intent of the exclusion in section 1(2)(b) of the New Home Buyer Protection (General) Regulation.

Section 1(2)(b) of the New Home Buyer Protection (General) Regulation excludes fixtures and appliances that are attached to a delivery and distribution system and that are subject to a manufacturer's warranty. These types of fixtures and appliances are not subject to the required home warranty coverage under section 3(6)(b) of the *New Home Buyer Protection Act*.

DISCUSSION

The overall intent of the *NHBPA* is to provide adequate and affordable consumer protection for new home construction as well as to protect the interests of home builders, and new home warranty providers. Section 3(6)(b) of the *NHBPA* requires that home warranty insurance contracts provide coverage for defects in materials and labour related to delivery and distribution systems for a period of at least two years starting on the date on which the coverage begins.

As an outcome of discussions and consultations with industry in relation to the required home warranty coverage for delivery and distribution systems, the intent of the exclusion in section 1(2)(b) of the New Home Buyer Protection (General) Regulation is to ensure that appropriate home warranty coverage is available for defects in materials and labour related specifically to all of the components that are part of the delivery and distribution systems, which include, but are not limited to service water heaters, furnaces, ventilators and boiler systems.

It is not the intent of the *NHBPA* or its Regulations to require home warranty coverage for fixtures such as toilets, faucets, bathtubs, showers and light bulbs. Fixtures and appliances that are permitted to be excluded from home warranty coverage are outlined in section 6(e) of the Home Warranty Insurance Regulation.

Section 6(e) of the Home Warranty Insurance Regulation states,

“A warranty provider may exclude the following from coverage under a home warranty insurance policy...home appliances, including but not limited to refrigerators, stoves, ovens, garbage disposal units, dishwashers, microwaves, clothes washers and dryers, and freezers.”

DEFINED TERMS

The words and terms in italics in this Bulletin have the following meanings that are specific to this Bulletin only.

delivery and distribution systems include electrical, gas, plumbing, heating, ventilation and air-conditioning systems to which the *Safety Codes Act* applies and any other systems prescribed as delivery and distribution systems as defined under section 1(1)(m) of the NHBPA. For further clarification, a delivery and distribution system includes all components of a system that are integral to the operation of electrical, gas, plumbing, heating, ventilation and air-conditioning systems.

point of utilization means the stage at which a fixture or appliance is not an integral component to the operation of a delivery and distribution system.

For the purposes of section 1(1)(m) of the statute, section 1(2) of the New Home Buyer General Regulation prescribes the following as delivery and distribution systems:

- (a) private sewage disposal systems that
 - (i) serve a single property,
 - (ii) are designed to receive not more than 25 m³ of sewage each day, and
 - (iii) are designed to dispose of sewage either on the property that the system serves or in a holding tank;
- (b) all components of a delivery and distribution system in a new home that are
 - (i) present on the date that coverage in respect of a new home commences under a home warranty insurance contract, and
 - (ii) installed during construction by the builder of the new home, excluding any fixtures and appliances that are attached to a delivery and distribution system and that are subject to a manufacturer's warranty.

1A. Home warranty implications for Delivery and Distribution systems

Home warranty insurance contracts with third party warranty providers must provide coverage for defects in materials and labour related to delivery and distribution systems for at least two years starting on the date on which the coverage begins.

The required home warranty coverage also extends to defects in materials and labour, including the installation of all components that are an integral part of a delivery and distribution system; which can include, but are not limited to, service water heaters, furnaces, ventilators, and boiler systems, that are subject to section 1(2)(b) of the New Home Buyer Protection (General) Regulation.

Although service water heaters, furnaces, ventilators and boilers may be subject to manufacturer's warranties, when a delivery and distribution system or any of its components are not meeting the acceptable performance conditions, the two year home warranty coverage for defects in materials and labour for delivery and distribution systems is applicable.

1B. Point of Utilization

If it can be demonstrated that a fixture or appliance is a component of a delivery and distribution system that is defined under section 1(1)(m) of the NHBPA or section 1(2) of the New Home Buyer Protection (General) Regulation, and that the component is integral to the operation of the delivery and distribution system, the required home warranty coverage for defects in materials and labour related to delivery and distribution systems would be applicable.

Example A:

A house furnace is an appliance that utilizes both electricity and gas to operate but is not considered an integral component of either the electrical or gas delivery and distribution system under the NHBPA. However, the same furnace is an integral component and part of the heating and ventilation delivery and distribution system under the NHBPA. In this case, the furnace would be considered an integral component and part of that delivery and distribution system (point of utilization) and would be subject to the required home warranty coverage under section 3(6)(b) of the NHBPA.

Example B:

A service water heater that was present on the date that home warranty coverage commenced and was installed during the construction by the builder of a new home, begins to malfunction 10 months after warranty commencement.

Even though a service water heater may have a 6 year manufacturer's warranty, the service water heater is an integral component and part of a water delivery and distribution system and is covered under the 24 month coverage for defects in materials and labour related to the delivery and distribution systems as defined under section 3(6)(b) of the NHBPA.

The *Workmanship & Materials Performance Guide for Residential Construction in Alberta* provides further examples on fixtures and appliances that are included or excluded from the required home warranty coverage for defects in materials and labour related to delivery and distribution systems.

2. Permitted exclusions

Section 6 of the Home Warranty Insurance Regulation allows for permitted coverage exclusions.

Specifically under section 6(e) of the Home Warranty Insurance Regulation, a warranty provider may exclude home appliances, including but not limited to refrigerators, stoves, ovens, garbage disposal units, dishwashers, microwaves, clothing washers, clothing dryers and freezers from coverage under a home warranty insurance policy.

Issue of this Registrar's Interpretation Bulletin is authorized by the Registrar.



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Date