

1, 2 and 7 Warranty

INTERPRETATION

1. In this New Home Warranty Certificate:
- "Program"** - means the New Home Warranty Program of Manitoba Inc.
- "Builder"** - means [NAME OF BUILDER], a registered builder member of the Program.
- "home"** - means [street address of home, city, province], but does not include any pool, parking facility, common recreational area, site grading and surface drainage, landscaping, shrubbery, flowers, trees, patios, driveways, garage slabs or carport slabs, sidewalks, retaining walls, wells and attached water systems, septic tanks or fields, detached garages or detached carports, or outbuildings.
- "homeowner"** - means the registered legal owner(s) of the home identified in this Warranty Certificate, and includes the original purchaser(s) named herein and persons(s) who subsequently become the registered legal owners of the home during the term of the warranty described herein
- "date of possession"** - means [DATE OF POSSESSION].

BUILDER WARRANTY

2. The Builder warrants that the home was constructed in accordance with the Manitoba Building Code and the building standards prescribed by the municipality in which the home was constructed, as in effect at the date of issuance of the building permit for construction of the home. In the event that construction of the home fails to comply with the Manitoba Building Code, or the building standards prescribed by the municipality in which the home was constructed:
- a) the Builder will repair defects in workmanship or materials in the construction of the home, and will repair or replace defective workmanship or materials supplied by the Builder where such defects become apparent within one year from the date of possession;
- b) the Builder will repair defects in workmanship or materials in the construction of the home, and will repair or replace defective workmanship or materials supplied by the Builder where such defects become apparent within two years from the date of possession, in respect of the following:
- (i) violations of the Manitoba Building Code that constitute an unreasonable health or safety risk or that result in, or are likely to result in material damage to the new home, (ii) defects in workmanship and materials that render the new home unfit to live in, (iii) defects in workmanship and materials supplied for the electrical, plumbing, heating, ventilation and air conditioning delivery and distribution systems, (iv) defects in the building envelope, including defects resulting in water penetration, (v) defects in workmanship and materials supplied for the exterior cladding, caulking, windows and doors that may lead to detachment or material damage to the new home; and
- c) the Builder will repair major structural defects in the home which become apparent within the seven year period commencing on the date of possession, all of which is subject to the provisions of this Warranty Certificate and the following definitions:
- "defects in workmanship or materials"** - means any construction covered under the terms of this Warranty Certificate and carried out by the Builder which fails to comply with the Manitoba Building Code, or the building standards of the local authority having jurisdiction, as in effect at the date of issuance of the building permit; and
- "major structural defects"** - are defects in workmanship or materials resulting in failure of the load-bearing portions of the home. Specifically excluded as major structural defects are defects in driveways, basement floors, garage floors, patios, sidewalks, retaining walls, any concrete construction which is not load bearing, or any defects not caused by the negligence of the Builder; and
- "load bearing portion"** - includes footings, pads, piles, basement walls, grade beams, teleposts, columns, beams of timber or steel, load bearing walls, floor joists, and roof trusses, provided that they constitute an integral part of the home or attached garage.
3. In no circumstances does this Warranty require the Builder to undertake or effect repairs to or in relation to:
- a) seams in sheet vinyl, carpet, drywall surfaces;
- b) reflection caused by gloss surfaces, revealing the outline of sectional material below the surface of the material;
- c) nail pops, seam lines and variations in drywall surfaces;
- d) cracks in plaster, drywall, masonry, stucco and concrete (including basement and garage floors) provided the cracks are within the normal tolerances established by the Program from time to time;
- e) shrinkage or warping of materials, provided the shrinkage or warping is within the normal tolerances established by the Program from time to time;
- f) slab heaving and cracking;
- g) soil subsidence of the land around the building or along utility lines and sewer and water trenches, including subsidence or heaving beneath the footings or piles of the home;
- h) colour variations or surface defects in workmanship or materials apparent and accepted by the homeowner at the date of possession;
- i) damage arising from the failure of the homeowner to maintain the home in accordance with maintenance schedules established by the Program, including, but not limited to:
- i. i) damage caused by or resulting from dampness or condensation due to the failure of the homeowner to maintain adequate ventilation in the home;
- ii. ii) damage arising from the failure of the homeowner to maintain adequate drainage of surface water away from foundation walls of the home and, in particular, from improper maintenance and operation of a sump pump;
- iii. iii) damage arising from the failure of the homeowner to adjust teleposts to allow for normal shrinkage of wooden structural members and movement of concrete footings or pads.
- j) defects in materials, appliances, design or workmanship supplied by the homeowner, or defects in alterations or materials supplied by the homeowner;
- k) all matters directly or indirectly arising from or related to environmentally harmful substances or hazards, deleterious substances, mold or toxic materials on, in or about the residential unit regardless of the party responsible.
4. The Builder's obligation to effect repairs pursuant to this Warranty is conditional upon the prior approval of those repairs by the Program.
5. The Builder Warranty shall not include damage to the home arising from or caused by flood, earthquakes, hail, windstorms or any other acts of God, or other causes not directly related to workmanship or materials provided or supplied by the Builder.
6. The Builder shall, to the extent permitted by manufacturers or suppliers, assign to the homeowner the benefit of any guarantee or warranty provided by any manufacturer or supplier of materials used in the construction of the home.

PROGRAM WARRANTY

7. In the event that:
- a) the Builder fails to repair or replace defects in workmanship or materials which become apparent within one or two years from the date of possession as prescribed within sections 2. a) and b); or
- b) if the Builder fails to repair any major structural defects which become apparent within seven years from the date of possession.
- The Program will undertake the necessary repairs or replacement, subject to the limits of liability set out herein, it being understood that the obligations of the Program hereunder shall not exceed the obligations of the Builder under the Builder Warranty, and all of which is subject to notice being given to the Program in the form and within the time frames set out in this Warranty Certificate.
8. The total liability of the Program pursuant to this Warranty Certificate shall not exceed:
- a) \$100,000 with respect to fulfillment of the Builder Warranty; and
- b) in the event that repairs to remedy defects in workmanship or materials, or major structural defects, have previously been effected to the home by or on behalf of the Builder, the potential liability of the Program under this Warranty Certificate shall be reduced by the value of those repairs; and
- c) an allowance of up to \$200.00 per day, with the total allowance not to exceed a maximum of \$3,000, may be paid by the Program for the reasonable living expenses of a homeowner, if the homeowner is required to vacate the home in order for the repair of a major structural defect to be carried out, subject to the Program providing written approval of the living expenses to the homeowner, prior to the living expenses being incurred.
9. The warranty obligations of the Program as set out in this Warranty Certificate do not take effect until the date of possession.

10. The obligations of the Program under this Warranty Certificate shall not have any force and effect in the event that the homeowner is withholding any monies due to the Builder in relation to any workmanship or materials claimed by the homeowner to be defective pursuant to the terms of this Warranty Certificate. In the event that the homeowner is withholding any such monies, those monies shall be paid unconditionally at the request and direction of the Program before the Program will be required to undertake any of its obligations under this Warranty Certificate.
11. There are no warranties or guarantees given by the Builder that are binding upon the Program except as set out in this Warranty Certificate.

LIMITATIONS OF WARRANTY

12. The warranties described in this Warranty Certificate are limited to the repair of defects in workmanship or materials, and damage caused to the home by those defects. Neither the Builder nor the Program shall have any liability other than to repair the said defects and damage caused by those defects. In particular, the Builder and the Program shall not in any way, directly or indirectly, be liable for any physical injury or damage to a person or persons, or to property other than the home.
13. The Builder and the Program are not responsible for moving or removing any chattels or personal property of the homeowner in order to allow repairs to be carried out to the home under the terms of this Warranty Certificate.
14. The warranties contained herein shall not apply to or include defects in or damage to materials, construction or workmanship supplied or carried out by the homeowner, or to any defects or damage resulting from or caused by materials, construction or workmanship supplied or carried out by the homeowner.
15. In the event the homeowner ceases to occupy the home as a principal residence and allows the home to be used for rental purposes, the warranty described in paragraphs 2(a) and (b) shall terminate and become null and void, provided however that such event shall not invalidate or terminate the major structural defect warranty described in paragraph 2(c).

TRANSFER OF WARRANTY

16. In the event the original homeowner sells the home and transfers this Warranty Certificate to a subsequent homeowner, all the obligations of the original homeowner and the terms of this Warranty Certificate shall be binding upon any subsequent homeowner. Any prior acts, omissions, defaults or waivers of the original homeowner shall be binding upon the subsequent homeowner. In the event the home is sold further, this clause shall apply to any subsequent homeowners without limitation as if the homeowner from whom the home was purchased was the original homeowner.

HOMEOWNER OBLIGATIONS RE POSSESSION CERTIFICATE

17. The homeowner shall sign a possession certificate prior to taking possession of the home, or when so required by the Program. In the event the homeowner fails or refuses to sign a possession certificate, the Program may fix a date of possession which shall be deemed binding on the homeowner, the Builder and the Program.

CLAIMS PROCEDURE

18. The homeowner shall notify the Builder and the Program in writing, no later than one year from the date of possession pursuant to section 2 (a) or two years from the date of possession pursuant to section 2 (b), of any defect in workmanship or materials of the construction of the home which the homeowner believes the Builder has warranted under this Warranty Certificate.
19. The homeowner shall immediately notify the Builder and the Program in writing, and in any event no later than thirty days after the homeowner becomes aware, of any alleged major structural defect. Without limiting the generality of the foregoing, the Program must receive written notice of alleged major structural defects no later than seven years from the date of possession.
20. No repairs or alterations to any alleged defects shall be commenced by the homeowner without prior written notice of the alleged defect to the Builder and the Program as required herein, or without the homeowner first having given reasonable opportunity to:
- a) allow the Builder and the Program to inspect the alleged defect; and
- b) permit the Builder to provide its position with respect to the repair of the alleged defect.
21. The Builder, the Program, conciliators appointed by the Program, or their representatives shall be entitled to complete access to the home during normal business hours for the purposes of carrying out inspections or effecting repairs.
22. The homeowner shall refer any dispute with the Builder concerning the fulfillment of warranty obligations as set out in paragraph 2(a) or 2 (b) above to conciliation in accordance with the conciliation procedure described herein before pursuing any other recourse or effecting any repairs to remedy any alleged defects.
23. The homeowner shall refer any other dispute with the Builder concerning the fulfillment of warranty obligations to the Program in accordance with the procedure described herein before pursuing any other recourse or effecting any repairs to remedy any alleged defects. The dispute shall be referred to the Program in writing not later than thirty days following the seventh anniversary of the date of possession. The Program will thereafter provide its decision as to responsibility for the repair of the alleged defects, which decision shall be final and binding on the Builder and the homeowner.

CONCILIATION

24. In the event of a dispute between the Builder and the homeowner concerning the fulfillment of warranty obligations as set out in clause 2(a) or 2 (b) above, either the Builder or the Homeowner may refer the dispute to the Program for conciliation by submitting a written request for conciliation to the Program, together with the approved conciliation application fee as determined by the Program from time to time. A written request for conciliation must be received by the Program not later than:
- a) sixty days following the first anniversary of the date of possession if the conciliation refers to the fulfillment of warranty obligations as set out in clause 2 (a), or
- b) sixty days following the second anniversary of the date of possession if the conciliation refers to the fulfillment of warranty obligations as set out in clause 2 (b).
25. Upon receipt of a written request for conciliation together with the approved conciliation application fee, the Program shall appoint a conciliator. The conciliator shall make such inspections of the home and receive information from the homeowner and the Builder as, in the opinion of the conciliator, may be necessary to enable the conciliator to render a decision as to the rights and obligations of the Builder or the homeowner pursuant to this Warranty Certificate.
26. Within thirty days of the completion of the inspection process by the conciliator, the Program shall cause the conciliator to provide the homeowner and the Builder with a written decision as to the rights and obligations of the Builder or the homeowner. The decision of the conciliator will set out the remedial work, if any, required to settle the dispute in accordance with the terms of the warranties herein provided.
27. The decision of the conciliator shall be final and binding on the Builder, the Program and the homeowner.

TERMINATION OF WARRANTY

28. The Program Warranty shall, at the sole election of the Program, terminate and become null and void if:
- a) the homeowner does not maintain the new home in accordance with the Program Maintenance Schedule in effect during the term of the warranties described herein; or
- b) if the homeowner fails to maintain adequate positive drainage of surface water away from the foundation walls of the home; or
- c) the home is not used as a principal residence by the homeowner or lessee of the homeowner; or
- d) the home is moved to a new location; or
- e) the homeowner is in default of the Homeowner Obligations set out in paragraph 17 above; or
- f) the homeowner fails to comply with the Claims and Conciliation Procedures set out above.

IMPORTANT NOTICE TO HOMEOWNERS: In accordance with paragraphs 22, 23 and 28(f) of this Warranty Certificate, the Program Warranty described herein may be terminated and become null and void at the sole election of the Program in the event that a homeowner commences litigation against the Builder or the Program without first pursuing the recourse made available under the terms of this Warranty Certificate.