

New Homeowner Protection:

A DISCUSSION PAPER

JULY 2008

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Table of Contents

1 Objective of the Review	1
2 An Overview of New Housing in Nova Scotia	2
3 The New Home Construction Process	3
3.1 Building Design Standards.....	3
3.2 Roles and Responsibilities	3
3.2.1 Owners and Developers	3
3.2.2 Architects and Engineers	4
3.2.3 Building Inspection during Construction	4
3.2.4 Lawyers and Realtors	6
3.2.5 Registrar of Condominiums	6
4 The Current Situation	7
4.1 Input from Nova Scotia Stakeholders	7
4.2 Findings from Stakeholder Interviews	7
4.3 Input from New Home Buyers	9
4.3.1 Online Survey.....	9
4.3.2 Focus Group Summary	9
4.4 Experiences in Other Jurisdictions	10
4.5 Published Studies and Reports.....	11
5 Proposals for Improving New Homeowner Protection	13
5.1 Prevention and Redress	13
5.2 Proposals for Improvement.....	14
5.3 Improving Construction Quality	15
5.3.1 Industry-Wide Factors.....	15
5.3.2 Design and Construction	16
5.4 Other Homeowner Protections	19
5.4.1 Protection of Deposits	19
5.4.2 Homebuyer Education	19
6 Delivering Homeowner Protection	21
6.1 Models of Delivery.....	21
6.2 Approaches and Alternatives	21
6.2.1 Create a New Homeowner Protection Office	21
6.2.2 Use Existing and/or Other Mechanisms	21
6.2.3 Delegate Responsibility to the Private Sector	22
7 Questions for Feedback	23
8 Appendices	24
Appendix A: An Overview of Housing Start Data	24
Appendix B: Comparison of Homeowner Protection and New Home Warranty Programs across Canada	26
Non-Profit Programs	26
For-Profit Warranty Programs.....	28
Appendix C: Licensing Requirements for Nova Scotia Construction Trades.....	30

1 Objective of the Review

On November 22, 2007, Service Nova Scotia and Municipal Relations Minister Jamie Muir announced an investigation into homeowner and industry concerns about new residential construction, including condominiums. The decision was made following complaints from home and condominium unit owners about poor workmanship, water penetration, construction deficiencies, and the perceived lack of recourse for homebuyers. As well, participants in the residential construction industry had expressed interest in finding ways to improve the overall quality of their output through more rigorous requirements for builders and contractors, such as certifications, licensing, and the creation of a self-regulatory commission for the industry.

A steering committee of provincial and municipal employees is managing the initiative. Because of the anticipated size and scope of this investigative review, the government asked an independent consultant to conduct the background research, consult with stakeholders, and prepare a review of alternatives and recommendations for consideration by the Department of Service Nova Scotia and Municipal Relations. The department is responsible for consumer protection through education, regulation, and complaint resolution.

A commitment was made to include broad consultations in the review to help identify the issues and possible solutions that balance the interests of all parties. This discussion paper is part of the first phase of these investigations. The consulting team has met with many stakeholder organizations and individuals and has developed this paper to

- summarize current perceptions and issues
- present options and alternatives for comment

Readers are invited to submit their observations and comments on the response form provided, as described in Section 7. Your comments will be reviewed and taken into consideration in the preparation of the final report and recommendations to the steering committee. Responses are requested by August 22, 2008.

2 An Overview of New Housing in Nova Scotia

Nova Scotians take pride in their homes and are among the Canadians most likely to own their dwellings, with 71.8 per cent of them owning, versus the Canadian average of 65.8 per cent. Nova Scotia is a small market, with 376,840 households (2006).¹ In the five-year period 2001–2006, the number of new dwellings grew by 4.7 per cent, with much of this growth concentrated within the boundaries of Halifax Regional Municipality (HRM). In that period there was an average of 4,890 new housing starts of all types each year.

The chart below shows new housing starts in Nova Scotia in the 10-year period 1997–2006. (See Appendix A.) Housing starts in Nova Scotia have generally followed the pattern of housing starts elsewhere in Canada, ranging from a high of 3.4 per cent of Canadian housing starts in 2000 to a low of 2.5 per cent of housing starts in Canada in 2006.

DATA FOR TABLE HOUSING STARTS IN NS

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Single-Family Dwelling	3306	2630	3679	3249	3090	3742	3724	3713	3651	3510
Rental	479	418	571	810	746	847	833	559	643	1096
Condo	0	89	0	371	256	378	530	445	481	290
Totals	3785	3137	4250	4430	4092	4967	5087	4717	4775	4896

Data Source: Canada Mortgage and Housing Corporation

Condominium construction has represented a very small proportion of housing starts in Nova Scotia, and the number of condominium units is relatively low. However, there has been a significant growth trend, which can be seen in the chart above. The highest proportion of new condominium construction starts was recorded in 2003, when they were 10.4 per cent of all new construction. By contrast, in Canada in 1997, 18.7 per cent of housing starts were condominiums; and this proportion grew to 31.7 per cent of all Canadian housing starts by 2006.

Similar to the experience across Canada, in Nova Scotia most condominiums are built in major urban centres, particularly Halifax and surrounding areas. Although considerable publicity has been given to a number of seriously troubled developments, evidence suggests that in HRM there are perhaps 12 problem buildings in the condominium market, many of which are under remediation or have now been remedied. Those problem buildings, however, represent a large financial exposure to individual unit owners, so the impact of the failures should not be minimized—they are a serious concern to those affected, as well as to the industry as a whole.

Anecdotal information also suggests that the quality of new home and condominium construction has been improving, with those in the single-family-dwelling market receiving national and international recognition for quality construction and those in the condominium market becoming better attuned to best practices in managing complex projects. There is also more emphasis on the importance of the reputation of builders and developers and the recognition that this has a great influence on success.

According to the Canada Mortgage and Housing Corporation (CMHC), the housing market in Nova Scotia is softening, with buyers now at an advantage compared to builders and developers. In other words, the market is very competitive, and this should help to drive up quality. However, this softening also leads to the risk of construction projects being left incomplete and of important participants leaving the marketplace altogether.

A home is likely the largest single purchase a consumer will ever make. Most builders and developers work hard to provide a good product, but buyers want assurances that they will receive a quality product.

1. Canada Mortgage and Housing Corporation, "Households by Type and Tenure, Nova Scotia, 1971–2006," Canadian Housing Observer, CMHC Time Series G.

3 The New Home Construction Process

This section of the discussion paper gives a brief overview of the building process and describes the responsibilities of the various groups or individuals that have regulatory authority or other roles in the design and construction process. It is intended to provide context for the comments we heard and the review, in later sections, of suggestions made by various stakeholders. The regulations and standards that apply to construction of “small” buildings are different in many respects from those that affect “large” buildings. This distinction is highlighted in the following sections.

3.1 Building Design Standards

The Province of Nova Scotia has adopted the provisions of the National Building Code of Canada 2005 (NBC), subject to relatively minor revisions, as the Nova Scotia Building Code. The code sets the standards for the construction of all buildings.

The NBC (and therefore the Nova Scotia Building Code) establishes materials, design, and construction standards for a wide variety of types of buildings. Generally speaking, relatively small buildings that can employ proven, conventional wood-frame building techniques are regulated in Part 9 of the code. It sets out prescriptive (non-discretionary) standards for materials and methods and construction details for buildings that are three storeys or less in height and have a footprint less than 600 square metres. These include all single-family housing construction, townhouses, and multi-family buildings such as the three-storey apartment buildings.

Most single-family dwellings are built from stock plans or as one of a series of similar homes constructed by an established builder. They use standard construction details governed by Part 9 of the code and well-established industry practices. Architects and engineers are rarely involved directly. Major problems with construction quality, although not unheard of, appear to be relatively rare considering the numbers of homes that are built each year.

Larger, more complex buildings are not covered by the prescriptive construction methods in Part 9 of the code. They are governed by standards set out in the other sections of the code. Architects and engineers interpret and apply the code’s performance requirements within the context of each specific design.

It is important to note that large buildings are complex custom-built structures, not production-line products. Each one employs a combination of materials and construction techniques that is a compromise between the developer’s and architect’s design vision, marketability of the product, construction durability, construction efficiency, and cost. Developers, architects, engineers, and builders will employ methods that they feel strike the right balance between these sometimes conflicting objectives, but there is no one “right way” to build a building. The building code establishes performance standards but, except in the case of smaller Part 9 buildings, leaves it to the designers to decide how the standards are to be met.

3.2 Roles and Responsibilities

3.2.1 Owners and Developers

By and large, with single-family dwellings the owner deals directly with the builder. There are exceptions, of course, where community developments are undertaken by large organizations, but often in these cases the potential purchaser will deal directly with the company handling the building of each home in the community. In the case of manufactured homes, the manufacturer’s retailer may take responsibility for foundations and other features, such as decks, with the home delivered to the site by the manufacturer. In this case, the purchaser will deal with the retailer directly. Because of the fairly straightforward nature of the construction of single-family dwellings, these interactions are normally quite well understood by the homeowner.

The developer of a large building can be a company that focuses on construction of buildings that it intends to own for the long term on a rental basis or a company that intends to sell units as condominiums and take a profit relatively quickly. The usual practice for condominiums is to incorporate a separate company for each project, thereby isolating the parent company from project-specific risks. In either case, the developer might hire an experienced general contractor to construct the building on its behalf or, more commonly, organize, supervise, and manage the construction process itself through a combination of trade contractors and own-forces labour. The construction management capacity and experience of the developer have a large impact on the quality of the finished building. The relationship between the home purchaser (unit owner), the condominium corporation, and the developer is much more complex than in a single-family home situation.

3.2.2 Architects and Engineers

As noted above, most single-family houses are built from stock plans without the direct involvement of an architect or engineer. A typical building design team is led by an architect who is responsible for the overall design of the building and prepares the detailed specifications and drawings for the “architectural” components. The roof and wall assembly details that ensure that a building will be watertight fall within the architect’s area of responsibility. The architect or the developer will hire engineers to prepare the drawings and specifications for the structural, civil, electrical, and mechanical elements of the building.

The statutory definition of architects’ areas of practice is narrow enough to prevent an architect from doing the work of an engineer. However, the definition of the engineering area of practice is significantly wider, in effect allowing a licensed engineer to work within any field of engineering as well as perform the work usually assigned to an architect. This is not intended to imply that many engineers move outside of their individual areas of professional experience and expertise, but there is nothing to prevent them from doing so. We have been advised that there are instances where an owner or developer has retained an engineer to design details that are, arguably, outside of his or her area of expertise and the resulting work has not performed as well as expected.

3.2.3 Building Inspection during Construction

The municipal building authority reviews the plans of Part 9 buildings for conformance to the code before issuing a building permit and inspects them during construction in the course of periodic inspections. Municipal inspectors do not check the quality of construction and do not provide guarantees to the owner. Their role is limited to code compliance, although they will point out obvious and visible defects in workmanship where they compromise code compliance. They do not do any testing or removal of materials during the course of inspection, although they have the authority to require that this be done.

The municipal inspector cannot verify every aspect of a building under construction, even if it is readily apparent. A great deal of reliance is placed on the industry’s knowledge of materials and techniques. This general level of reliance does not seem to be seriously misplaced, as the incidence of serious problems with small buildings appears to be relatively low.

With larger, more complex non-Part 9 buildings, municipal building authorities review the designs of architects and engineers for compliance to the minimum standards of fire, life safety, and accessibility. Their inspection of these buildings is also limited to these components. An overall building design consists of both the prescriptive fundamentals of code and the anticipated performance of the materials and assembly selected by the designers. Municipal authorities therefore state, with some justification, that they do not have the resources and expertise to assess whether or not construction will perform to the expectation of design and, further, that this is the role of the designer as set out in their legal undertakings.

The Nova Scotia Building Code Regulations place the responsibility for ensuring that the design and construction of non-Part 9 buildings meet the code squarely on the architects and engineers through a mechanism that requires them to provide “letters of undertaking.” The regulations require every owner and the design professionals to provide

letters of undertaking in a prescribed form in which they state to the municipal building authority that “field reviews of construction” have been done by qualified professionals.

The purpose of these letters of undertaking is to provide assurance to the municipal building inspectors that complex buildings are being designed to the code and that appropriately qualified professionals will inspect them during construction. Reliance is placed on the professionalism of the architects and engineers. Field review of construction is defined in the Building Code Regulations as follows:

...the inspection of the construction work at intervals appropriate to the stage of construction, at the project site...that the designer in their professional discretion consider necessary to determine general compliance with the design drawings... “Field Review of Construction” does include the coordination, quality and performance of construction.

(Nova Scotia Building Code Regulations, section 1.3.1.3)

The design professionals are not on the site daily and do not see everything that is going on even when they are there. Typically, the architect or engineer is on site once a week or once every other week to inspect whether the work that is readily visible generally complies with the intent of the design, to assess progress, and to deal with issues that have arisen. They are not typically hired or paid sufficiently to monitor construction quality on a continuous basis.

For both Part 9 and non-Part 9 buildings, the developer’s or contractors’ own site inspections are an important part of the quality control process. Typically, developer/builders and general contractors will have a site supervisor to review all the work to ensure that it is done and is in accordance with the drawings and specifications. Similarly, trade contractors should have a job foreman who oversees the work of their own employees and sub-trades. The real control over quality of construction and the way in which important details are executed lies with the developer and the contractor.

There is a very active independent home inspection industry with many practitioners in Nova Scotia, although it focuses most of its efforts in the resale single-family dwelling market. Some of these independent inspectors become involved in new home construction, usually on behalf of one of the warranty program providers. Warranty programs will inspect a building during construction at three stages, but this is not a universal practice.

The independent home inspectors are rarely if ever involved in condominium unit transactions in large buildings. Even if they were to inspect a new unit on behalf of a buyer at the time of purchase, they could not detect problems with the building structure or wall assembly except in the most noticeably serious cases.

In British Columbia in the 1990s, a serious problem arose from water penetration in a large number of condominiums. This created a new industry of “building envelope inspectors” consisting of people with architectural or construction trades experience who diagnose water penetration problems and supervise and inspect both remedial and new construction to ensure that the design details are appropriate and the work is being done properly.

Building envelope inspectors provide a much higher intensity and frequency of inspection services than either the architects or the municipal inspectors provide, amounting to continuous inspection in some cases. Some of these inspectors are independent, and some are employees of the architectural firm. This type of building envelope inspection service is available in Nova Scotia, but they are few in number and focus on large commercial buildings.

3.2.4 Lawyers and Realtors

Agreements of purchase and sale for new units are prepared using standard forms. The single-family homes typically use a form based on the Real Estate Association standards, and condominiums use a more complex form prepared by the developer. The purchaser's lawyer is often not brought into the transaction until after the agreement has been signed and, even if consulted in advance, can do little except explain the rights and responsibilities that have already been agreed upon.

In the case of new large-scale single-family developments and condominium projects, the realtor sometimes acts as the primary marketing agent for the developer. As long as the purchaser agrees, the realtor can act as agent for both the purchaser and seller. In effect, many purchasers enter into agreements of purchase and sale for homes or condominium units without the benefit of independent advice or representation. Neither lawyer nor realtor is in a position to provide quality assurances.

3.2.5 Registrar of Condominiums

The Condominium Act establishes the framework for the incorporation and management of a legal entity called a condominium corporation. It describes the registration process and reporting requirements for condominium complexes, whether new construction or conversions. The Office of the Registrar of Condominiums is concerned with ensuring that the information that the act requires is provided and that the plans for the complex contain all the information required by the act. The registry staff do not assess the quality of design or construction and are not mandated by the act to protect consumers in this way.

4 The Current Situation

4.1 Input from Nova Scotia Stakeholders

As preparation for this discussion paper, numerous stakeholder groups were interviewed to gain a better understanding of the current situation, to get suggestions for improvements, and to draw from their experience. These stakeholders included

- representatives of the construction industry
- building trades organizations
- developers
- inspection organizations
- regulatory bodies
- design professionals, engineers, and architects
- warranty, insurance, and bonding companies
- the real estate industry
- the legal sector
- consumer protection groups
- homeowner associations
- other interested parties

The consultant team would like to acknowledge the considerable contribution of time and knowledge willingly provided by these stakeholder organizations. They provided valuable input from numerous well-informed perspectives.

4.2 Findings from Stakeholder Interviews

Consultation with stakeholders, as expected, provided a broad range of suggestions for improving new homeowner protection. However, the following observations stand out as a consensus of consistently held views and opinions.

a) Improving the Quality of Construction

Stakeholders emphasized repeatedly the need to prevent problems from occurring in the first place. Water penetration or building envelope failure, which is the most significant problem that has arisen in a number of large condominium projects, is extremely expensive to repair. The remedies available to the condominium corporation are highly unsatisfactory because they involve complicated and challenging legal actions that only add additional costs.

It is perceived that many of the more serious defects are due to builders' failure to follow what could be regarded as current best practice in construction techniques, particularly as they relate to the building envelope. To raise the bar and improve professionalism, mandatory licensing or registration of builders and/or developers, tied to training programs, has been advocated by industry groups. It is suggested that existing builders be exempt from this regulation, in order not to adversely affect those already in the business. Advocates acknowledge that improvements will take time, and so this is seen as a long-term solution to improving the quality of construction.

Others have commented that often the "guy pounding the nail" isn't the problem, but that supervision of the trades either by their foreman or the developer/builder's site manager is inadequate. Improvements in project management and site supervision are needed. Still others have commented that building materials and techniques have changed significantly during the past decades, and builders may lack the necessary knowledge and expertise or may not understand how new products interact or should be installed.

b) Inspection during the Building Process

Some stakeholders have said that inspections during the building process should be more rigorous, and that reliance on architects' and engineers' letters of undertaking or municipal inspectors' review of Part 9 buildings has not proven to be sufficient. Suggestions have included mandatory third-party inspections of large multi-storey buildings, especially during the critical "building envelope" phase and specific inspection for protections from water penetration. Also recommended is more inspection by the design professionals and a strengthened role for municipal building officials, including inspection of non-Part 9 (large multi-storey) buildings.

c) Registration, Licensing of Developers and/or Builders

The potential for registration and licensing of developers and/or builders has been raised as a vehicle to increase their commitment to and acceptance of responsibility for the finished product. Registration allows an authority to "police" builders and developers and, where other mandatory provisions apply, revoke registration if there is non-compliance. Registration might also allow authorities to record and publish builders' and developers' historic performance, to assist buyers in their choices.

d) Warranty Programs

Many stakeholders have argued that warranty programs should be mandatory; however, they have also said that current warranty programs are inadequate and don't provide the protections that are needed. Where warranty programs exist, they typically only cover structural defects affecting the load-bearing portion of the structure. They rarely protect homeowners from the type of envelope failure that leads to water penetration, a problem that has had such serious consequences for some condominium owners in Nova Scotia. There is also a perception that warranty programs are not sufficiently "arm's length" from the building industry and, therefore, act more in the interests of builders and developers than consumers.

Others expressed the concern that making warranties mandatory and expanding their scope could have an adverse impact on the market, and some believe that additional costs will not be accepted. For a comparison, in British Columbia a condominium warranty that includes water penetration protection adds between \$1,000 and \$2,000 to the selling price of a unit (for single-family dwellings the costs are less). This must, of course, be put in the perspective of experiences encountered in Nova Scotia: some condominium owners, with no building envelope or water penetration warranty, have incurred costs of tens of thousands of dollars in remediation expenses per unit, many times more than the cost of a protective warranty had one been offered or available.

Many warranty organizations, particularly in jurisdictions where warranty is mandatory, require a performance bond from developers/builders and frequently have experience rating systems of their own. The purpose of such rating systems is to reward developers/builders that achieve higher quality standards (and thus have fewer claims) with lower rates and less stringent bonding demands and to penalize those with less satisfactory performance by assessing more severe demands and higher rates.

The comment was also made that a mandatory warranty environment requires more administration. "Policing" mechanisms, such as that in British Columbia where building permits will not be issued by municipalities until proof of warranty and builder or developer registration is provided, would have to be considered.

e) Deposits in Trust

While for single-family dwellings, buyers' deposits are normally held in trust, this is not often the case for purchasers of condominiums. When these deposits are not held in trust, developers can, and do, use them to fund the building project. There is a risk that if the project fails the deposits could be lost. Many jurisdictions insist that all deposits must be held in trust and that developers who wish to have access to these funds must do so by insuring them or raising an appropriate bond where the buyer is protected

f) Consumer Education

Buyer education and awareness are seen by many organizations that were interviewed as being an important requirement. Consumers need to better understand their purchase and particularly understand the redress options available to them and how they operate. It was reported by many stakeholders that purchasers are often unaware of what is expected of them, do not pay attention to or understand warranty offerings and what is contained in them, and do not understand the role of the regulatory organizations.

As a consequence, buyers may have inappropriate expectations; they may believe that they have protections that are, in fact, not there; they may not explore all options available to protect them; and they may not take timely and appropriate action so that remediation of problems can be made.

Many organizations and jurisdictions have worked diligently to improve homebuyer education. Buying a home can be stressful, and the times of purchase and occupation may not be “learning moments.” Buyer education programs need to be sensitive to this; yet it remains an important part of the overall homeowner protection process.

4.3 Input from New Home Buyers

4.3.1 Online Survey

In addition to the stakeholder interviews outlined above, at an early stage of this review there was an online survey followed by new homeowner focus group interviews. The survey and focus groups sought information from those who had purchased new homes or condominium units since 2000. There were 131 completed responses to the survey, with 80 per cent of these from condominium owners, 20 per cent from newly constructed house (freehold) owners and 3 not identified. Five per cent of respondents bought in 2000, 24 per cent bought in 2004, and 9 per cent bought in 2007.

Respondents indicated that at the time of purchase only 38 per cent had been provided with information on the process for resolution of any construction-related problems if they occurred, while 62 per cent indicated that were provided with information detailing any construction warranties or guarantees that applied to their property.

When asked if they had experienced any construction- or warranty-related difficulties, 90 per cent said yes. This indicates that the survey attracted individuals with a complaint or problem. Of those with a warranty (71 per cent) only 9 per cent indicated that the warranty program had responded satisfactorily to the issue. Only 23 per cent of those who dealt directly with the developer reported that the experience was satisfactory.

There were complaints about many types of unresolved problems, but by far the most common issues revolved around water penetration. Respondents noted many other issues, such as poor workmanship, problems with plumbing, problems with windows, cracks in walls and ceilings, and incorrect use of materials that resulted in later failure of the building envelope.

A number noted that their dealings with their home warranty provider were less than satisfactory, often because of disputed claims or because of faults, such as with finished flooring, that the warranty program does not cover. Others noted that the builder’s attention was very inconsistent in dealing with defects or problems noted in the first year after construction, with some problems being rectified quickly while others never received adequate attention.

4.3.2 Focus Group Summary

Three focus groups were conducted with individuals who responded to the online survey. The views of these volunteers can not be considered in any way representative of homeowner opinions, but their perceptions of the issues/problems they have been dealing with reinforced the information we had gathered from other sources: namely, that there are some serious problems and issues connected with the building and ownership of condominiums, but fewer issues for single-family-home ownership.

For the condominium owner, concerns centred on the issue of independence, or lack of it, in the relationships among the realtor, the developer, the architects and engineers responsible for the inspection process, and the property manager. Also, the lack of clarity and ownership of financial responsibility for future problems with a completed building was a serious concern. Again, water penetration was at the centre of many of the complaints discussed.

For single-family-dwelling owners, the problem was much more about building a better understanding of the construction and then warranty process. Issues and problems for single-family-dwelling owners focused more on difficulties in getting satisfaction from home warranty providers, often the result of poor construction practices. In both cases, there were many misperceptions and plain incorrect understandings of the current rules and processes. A number of participants said they believed that a better process of consumer education was needed to help address this issue.

4.4 Experiences in Other Jurisdictions

As part of our study for this discussion paper, we interviewed Nova Scotia’s regulatory counterparts as well as warranty providers in many other Canadian jurisdictions. Several provinces have recently undertaken or are undertaking reviews of new homeowner protection. Some provinces have made significant changes to the legislated requirements both for prevention and for redress. Other jurisdictions have made more gradual enhancements to their programs; while the remaining provinces continue to operate with homeowner protection similar to that currently available in Nova Scotia.

The table below outlines some of the highlights of homeowner protection and new home warranty programs across Canada and some of the more important changes that have been made, together with their relevance to the situation in Nova Scotia. A detailed comparison of these programs is provided in Appendix B.

Province	Program Highlights	Relevance/Contrasts to Nova Scotia
British Columbia	<ul style="list-style-type: none"> • mandatory registration of developers and builders • mandatory warranty provided by third-party insurers • water penetration included in warranty • warranty programs conduct their own mandatory inspections 	<p>Water penetration was a major issue driving change and program reform.</p> <p>In Nova Scotia, the most serious complaints relate to water penetration.</p>
Alberta	<ul style="list-style-type: none"> • voluntary warranty program with a high level of enrolment • reform under way to distance the management of the warranty program from construction industry • strong focus on builder and consumer education 	<p>Warranty program is voluntary as currently in Nova Scotia.</p> <p>Alberta has a larger and more active development marketplace.</p> <p>Soil and substrate conditions are a major issue in Alberta, but are rarely cited as so in Nova Scotia.</p>
Saskatchewan	<ul style="list-style-type: none"> • protections and voluntary home warranty similar to Nova Scotia 	<p>Demographics are comparable to Nova Scotia’s.</p> <p>Climatic conditions are very different from conditions in Nova Scotia.</p>

continued on next page...

Province	Program Highlights	Relevance/Contrasts to Nova Scotia
Manitoba	<ul style="list-style-type: none"> • currently offers protections and warranty similar to Nova Scotia's • is undertaking program review related only to condominiums, with interest in insurance companies providing warranty coverage 	<p>Review is based on concerns in the condominium sector.</p> <p>Demographics are comparable to Nova Scotia's.</p>
Ontario	<ul style="list-style-type: none"> • mandatory builder/developer registration • mandatory warranty • a single organization, Tarion, is the regulator, provides warranty, oversees and also conducts inspections, is the adjudicator, and provides consumer education 	<p>The development sector is many times the size of the sector in Nova Scotia.</p>
Quebec	<ul style="list-style-type: none"> • mandatory builder/developer registration • mandatory warranty (except larger condominiums) provided by three private insurers • mandatory pre-delivery inspection by homeowner 	<p>The program is strongly regulated by the Quebec government.</p>
Atlantic Provinces	<p>All currently have voluntary warranty programs and do not have builder or developer registration.</p>	

The above summary shows clearly that the situation in Nova Scotia is by no means unique; many other provinces have been faced with the need to review and enhance protections offered to new homeowners, in some cases for reasons very similar to those prevailing here. This can be seen as encouraging. It means that there is a range of proven options and choices that can be implemented if desired and appropriate in Nova Scotia. It also means that Nova Scotia can benefit from several years of experience gained elsewhere and can make informed choices, with a clearer understanding of both the merits and the implications of the available alternatives and options.

4.5 Published Studies and Reports

Numerous reports have been prepared by many organizations, especially those undergoing change to their programs and those evaluating consumer choices and protections. Readers may wish to investigate further some or all of the following:

- *The Renewal of Trust in Residential Construction: Commission of Inquiry into the Quality of Condominium Construction In British Columbia* [The Barrett Report]. Government of British Columbia, June 1998. www.qp.gov.bc.ca/condo/
- *Gaps in New Home Warranty Coverage Across Canada*. The Consumers Council of Canada, 2007. www.consumerscouncil.com/index.cfm?pid=15284.
- *Housing & Home Warranty Programs: World Research*. Organization for Housing Warranty, Japan, 2005. www.ihhwc.jp/sessions/World_Research.pdf.

It can be broadly stated that published reports would generally agree with the findings from stakeholders that are noted above, particularly with regard to strengthened construction standards, inspection, and warranty provisions. Canadian

studies and reports have frequently recommended that provinces should endeavour to coordinate their new homeowner protection programs with common approaches, standards, and regulations wherever possible. The reasons given for this are as follow:

- People move between jurisdictions, and when they move they often buy new homes. To avoid confusion and misunderstanding, it would be helpful if their expectations for homeowner protection could be met through means that are as similar as possible .
- All sectors of the industry, including construction, warranty, and financing, are more likely to be in compliance if they are aware of similar rules, regulations, and expectations.
- Warranty, insurance, and bonding companies are more likely to want to do business in Nova Scotia if they know that the risks that they are expected to bear are similar to the risks that they have experienced elsewhere.

5 Proposals for Improving New Homeowner Protection

5.1 Prevention and Redress

Consumer protection for new home purchases is based on two main concepts:

- **prevention** of problems as far as this is possible
- **redress** to correct problems when they do occur

Making improvements to prevention means improving the system of regulations, methods, standards, and oversight intended to provide assurance that the home that is purchased is completed as specified and is as free from defects as current best practice in the construction industry is able to achieve. Construction is not an exact science; building materials and methods are by no means perfect; some defects are always likely to occur. An important purpose of prevention is to contain these to a reasonable minimum and to ensure that the purchaser is not exposed to major failure of important building systems. Some elements of such prevention programs include:

- construction standards and their application, such as the building code
- building product certification and standards
- prescribed installation building techniques provided by product suppliers
- visible records of the builder's or developer's historic performance
- trades licensing and training
- registration and/or licensing of developers and/or builders
- supervision and oversight of the building process
- inspections of work under way for compliance with designs and the building code

A second aspect of prevention is ensuring that purchasers' deposits are guarded from misuse and returned if construction is not complete. One further prevention measure is assurance to the purchaser that what is actually built is, in fact, what was proposed and understood to be part of the sale agreement.

Redress is the set of options and channels available to the purchaser when something does go wrong. Defects can vary from the minor, often around interior fit and finish, to the major, up to significant structural failure. Defects can be apparent at occupancy, or they can remain latent for several years. Latent defects have frequently included "envelope failure"—failure of the external structural components that protect the integrity of the building from ingress of rain and groundwater. Elements to be considered as part of options for redress include

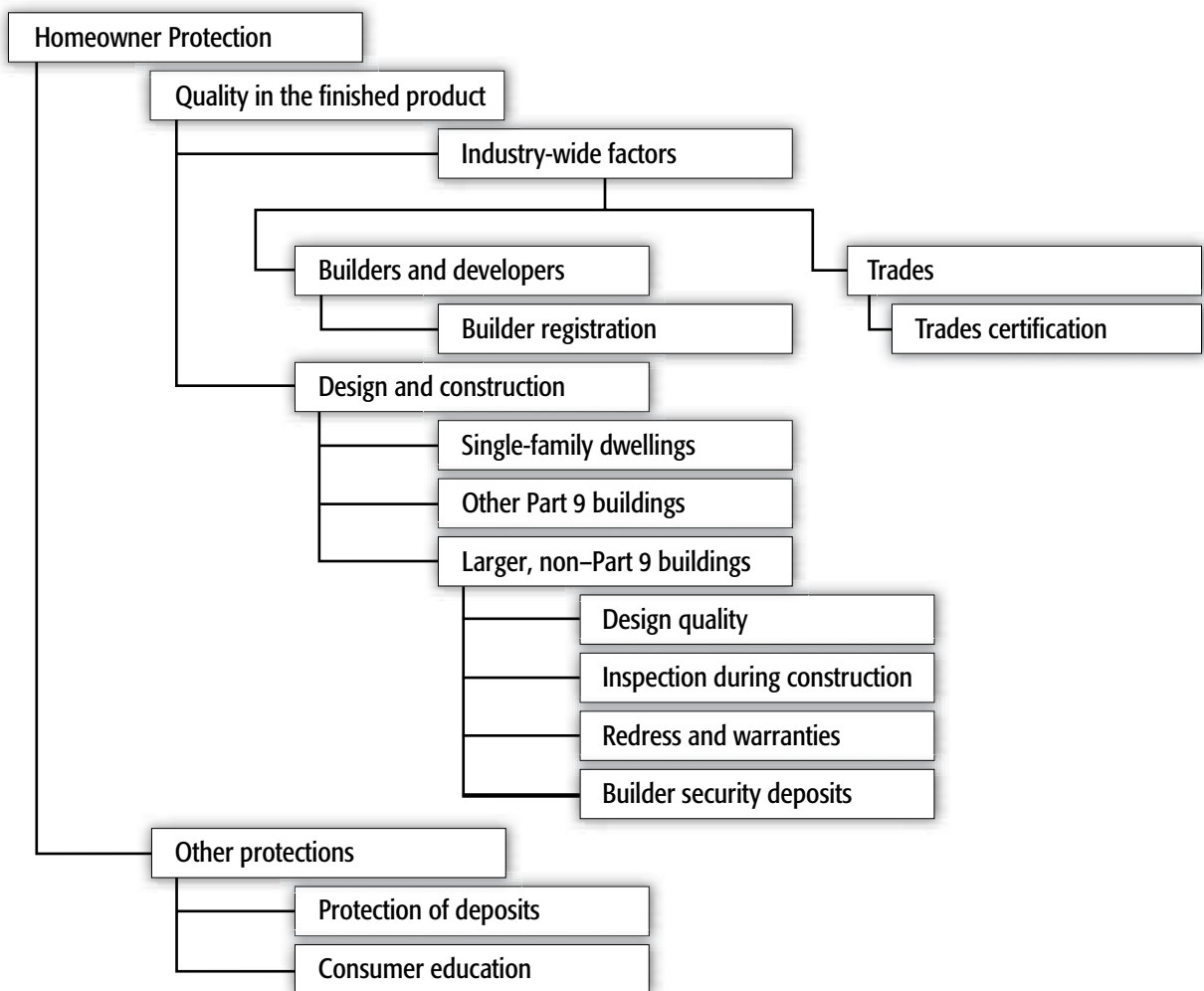
- builder's warranty, normally valid for one year
- buyer holdbacks at closing of the purchase transaction
- third-party warranties
- arbitration procedures
- bonding and funds held in trust
- legal remedies

Another sometimes-neglected element of redress is the builder's and/or developer's demonstrated goodwill and market commitment. Builders/developers with a reputation to maintain will frequently help to remedy latent defects to an extent that is above and beyond their contractual obligations. Unfortunately, this cannot be relied upon in all cases. However, it does suggest that buyer prudence and diligence in selecting a builder or developer will often be rewarded with a more satisfactory ownership experience.

Prevention and redress have each an important contribution to make to any effective protection program. They also have strong interactions and interdependencies, which are also very significant. Improved homeowner protection should combine both. As examples: Builders that know that they are liable for the consequences of defective workmanship and for redress to correct it are more likely to pay attention to construction quality, thus preventing the problem from arising in the first place. Astute warranty companies are likely to protect their risk by careful verification of builders' capabilities and histories and by performing their own inspections to prevent defects.

5.2 Proposals for Improvement

This illustration below summarizes the key elements of homeowner protection requiring improvement, including measures of both prevention and redress. In the following sections, for each element we have described the major issues, a proposal for how they can be addressed, and the rationale for the particular proposal.



When we consider improvements needed to protect purchasers of new homes and condominiums, most of the proposals for improvement relate to improving construction quality in the finished product. However, there are some important considerations that do not directly relate to construction quality, yet still are significant in protecting the new homeowner. These will be discussed at the end of the section

After each of the proposals, we have included questions inviting feedback on the issue from readers. For convenience these same questions can be found in the response booklet referred to in Section 7 of this discussion paper. Your responses will help us to evaluate approaches and alternatives.

5.3 Improving Construction Quality

In our findings from Nova Scotians who are purchasers of new homes and from stakeholders involved in the development, design, construction, sale, or regulation of new home construction and purchase, most of the problems encountered related to quality of construction and changes that were needed in one of

- **industry-wide factors:** changes that affect the developers, builders, and construction trades who are doing the work
- **design and construction:** the types of buildings and how they are designed, constructed, inspected, completed, and purchased

The proposals suggested for improvements in construction quality are grouped under these two general areas, together with more specific descriptions of the underlying issues.

5.3.1 Industry-Wide Factors

Industry-wide factors include all of those that affect the people involved in the building trades and business and how the industry is regulated.

Proposed changes to improve the construction industry include registration and licensing of construction trades and registration and licensing of builders and developers.

INDUSTRY-WIDE FACTORS: LICENSING OF CONSTRUCTION TRADES

A number of proposals for the licensing of construction trades have been submitted to government. Although many trades (e.g., electricians, plumbers) do currently require licensing, others, including carpenters, do not. This follows the pattern of other Canadian provinces. The licensing requirements for construction trades in Nova Scotia are summarized in Appendix C. The Province of British Columbia is currently investigating the need for improved trades licensing, and others can be expected to follow.

While there is almost certainly merit in improving the quality and licensing of trades, there is little evidence that this will bring a significant improvement in quality in the major areas where problems are currently being encountered. It is also a complex change that will require alignment of responsibilities among the training, certification, and licensing authorities. The certification requirements of specialist sub-trades within a trade will also need to be clarified.

Proposal #1: For the long term, the province should, as a separate initiative, continue to evaluate improvements to the licensing of trades and bring them into alignment with the certification standards being issued for the various training programs that the industry uses.

Rationale: There may well be valuable long-term benefits from such changes, which should be made and coordinated with care. However, these are unlikely to yield a significant immediate improvement to homeowner protection and should be seen as an incremental increase in standards over time.

Question: *Would mandatory trades certification and licensing result in improved building quality? Why or why not?*

INDUSTRY-WIDE FACTORS: REGISTRATION OF BUILDERS AND DEVELOPERS

With respect to builders and developers, many jurisdictions have implemented a requirement for registration. Registration can apply both to the builder or developer and to individual residential development projects. The purpose of registration

is to allow for enforcement and better control, if necessary, through withdrawal or de-listing of a registered development, as part of a quality compliance program.

This is of greater significance for builders and developers involved in large, non-Part 9 condominium developments, but could be applicable to all types of residential construction. Registration does not imply an assessment of the builder's or developer's capability, but it could allow for a record of historical performance and complaint patterns to be made available to prospective purchasers through information access to such a registration system.

Proposal #2: There should be a requirement for registration of builders and/or developers and for registration of their residential development projects, particularly where these involve large non-Part 9 buildings. This must be coordinated with the municipal issuers of building and occupancy permits so that the permits cannot be issued if the registration is in default.

Rationale: Any quality improvement program that is to have "teeth" must have a vehicle to include registration, eligibility criteria, and delisting criteria; otherwise enforcement will be problematic. Most other provinces that have implemented improved new home ownership protection have included some form of registration as part of the enforcement process.

Question: *Is mandatory registration of builders and/or developers needed in Nova Scotia? Why or why not?*

5.3.2 Design and Construction

Design and construction factors are those that relate to how buildings are designed and constructed, how the construction process is regulated, and how defects are detected and remedied.

In the home-building industry there are three major forms of new home construction: single-family dwellings, other (Part 9) homes such as townhouses and similar homes, and large (non-Part 9) buildings such as condominiums over three storeys.

DESIGN AND CONSTRUCTION: SINGLE-FAMILY DWELLINGS

Our research and findings from homeowner organizations, industry and trade groups, and homeowners themselves suggest that for single-family dwellings and townhouses there is no dramatic need for improvements in current regulations, outside of the changes to protect deposits and homeowner education referred to in later sections.

That is, the responses we received and the evidence we found suggest that, for the most part, the current regulations, provincial and municipal programs, and industry practices are effective. Although, inevitably, a small number of complaints are made and defects recorded, these appear to be in line with industry averages and standards. The industry can and should continue to aim for higher quality standards wherever it can. We also note that improvements to new home warranties suggested in the section below relate to the condominium sector, and the possible requirement that this should be mandatory for all new homes could also be of significant benefit to prospective owners of single-family dwellings.

Proposal #3: Generally, protections for purchasers of single-family dwellings and townhouses are adequate, and it should be left to the industry and marketplace to implement incremental improvements.

Rationale: Single-family dwellings form a large proportion of new home construction in Nova Scotia. There is limited evidence that fundamental improvements are desired or needed in this sector. However, the value of stronger warranty provisions in the observations in the section below related to condominiums should be noted; there may be sound reasons for applying these changes to single-family dwellings also.

Question: *Do you consider that the current processes for new single-family home construction adequately protect the homeowner?*

DESIGN AND CONSTRUCTION: NON–PART 9 (CONDOMINIUM) BUILDINGS

It is in the area of large, non–Part 9 buildings, typically condominiums, that the most serious problems occur. The reasons for these are elaborated in earlier sections of this report: such buildings are more complex in design, and failures can be complex and costly to correct. By far the most common and most serious reported problem is envelope failure leading to water penetration. Focus on improvements in this area will likely yield the most significant improvement in protection to new owners.

To address these improvements, there are opportunities both in the areas of prevention and in the areas of redress. Improvements in design quality and in the inspection process can help ensure that problems during construction are detected and corrected at source.

NON–PART 9 (CONDOMINIUM) BUILDINGS: DESIGN QUALITY

Design quality is to a major extent the responsibility of the professions—architects and engineers—who have an obligation through their letters of undertaking to ensure that the design is both adequate and implemented properly. Many, including representatives of the professions, have expressed concern that in some cases these obligations, through the letters of undertaking, are not being met. More rigorous attention to these obligations can help not only to improve building quality, but also to clarify the professional’s role in ensuring that construction takes place according to the design.

Proposal #4: The architectural and engineering professions should review their obligations under letters of undertaking and apply more stringent monitoring. They should also be required to report compliance failures with the relevant provincial and municipal authorities. In addition, it is suggested that the provincial building code authority should review the structure and contents of letters of understanding.

Rationale: Although this can be expected to deliver improvements only in the long term, the importance of the professional’s role is well defined in building regulations for large, non–Part 9 buildings. The profession’s monitoring and strengthening of these undertakings is a necessary part of improving protection for new homeowners.

Question: *Do letters of undertaking for the architectural and engineering professions do the job they are intended to do?*

NON–PART 9 (CONDOMINIUM) BUILDINGS: INSPECTIONS

Inspection during the construction process is a critical element of quality control. In the case of non–Part 9 buildings, these inspections (other than for safety-related matters) are a shared responsibility between the municipal building inspectors and the professional designers—the architects and engineers. The building code stipulates that the owner of the building (or their agent) must notify the municipality at intervals deemed necessary by the municipality based on the complexity of the building, as well as when the owner intends to cover work ordered to be inspected by the municipality. Current requirements do not specify that the professional architects and engineers must be at arm’s length from the developer, other than meeting the obligation of letters of undertaking. Nor is there a specific requirement for inspections for risk of water penetration, the most important aspect of envelope failure in Nova Scotia’s climatic conditions.

Proposal #5: There should be a mandatory inspection of the building envelope by a suitably qualified specialist (professional engineer or other designation as appropriate) working at arm’s length from the developer, to include assessment of the adequacy of protection from water penetration. This should take place during the early critical phases of the construction process and could be managed through a separate letter of undertaking. Enforcement should be through an improved municipal inspection regime under the municipal permit issuance process.

Rationale: The building code already requires inspections where mandated by the municipality. Amendments to the building code could clarify the expectation for inspections and address such issues. Prevention is widely recognized as the preferred measure to avoid the subsequent, often very serious, consequences of envelope failure. It is noted that in other provinces where water penetration is a major concern, such inspections have gone a long way to improve building

quality. The cost is not expected to be excessively high, and many good-quality builders already engage independent professionals to undertake such inspections as a matter of course.

Question: *Should mandatory third-party building envelope inspection be required in the case of non-Part 9 buildings including all condominiums?*

CONDOMINIUM BUILDINGS: REDRESS AND WARRANTY

The other measures for improvement to homeowner protection for purchasers of all types of condominium buildings are in the areas of redress. These are particularly important to condominium owners because of the complexity of the buildings, systems, and ownership that have been described previously. Where problems do occur, there should be reasonable and effective mechanisms to enable homeowners to take corrective action without excessive financial exposure. These mechanisms potentially include financial collateral from the builder and warranty on the building. In either case, the intention is to have a reserve, or funding source, should costly repairs be needed. Whichever method is used, latent defects including those that lead to water penetration would need to be included.

Requiring financial collateral would mean that the builder or developer would have to pay a security deposit into trust, a letter of credit, or some other means, from which the cost of repairs resulting from defects in construction could be drawn, should these occur within a specified period of time. Although it is possible that a surety bond could be used to provide this type of protection, most bonding companies would consider the required term to be unusual, if they would offer it at all. Some system of claims adjudication would have to be established to manage claims and to authorize any draw upon the deposit or financial collateral. It should be noted that this form of protection deals with the builder, not the building; the complexity of identifying who is at fault continues to exist.

A more common means of protection is a third-party warranty on the building for a period of time, typically 5 to 10 years, including an initial first year where the builder is under primary obligation. In Nova Scotia such warranties are available and are widely used for some types of new home ownership. However, they are not universally available, and some offer limited coverage. Few offer water penetration protection, although this is available in other provinces where water penetration is an issue. We were advised that homeowners rarely avail themselves of additional optional protections when offered, even where these would provide good-quality protection; therefore, a warranty should be as inclusive as reasonably possible. As warranty applies to the building, not the builder, the homeowner is protected from the considerable problem of identifying who is at fault should there be a claim; it is up to the warranty company to pursue the builder, developer, or others if they wish.

Proposal #6: There should be mandatory warranty, at least for all condominium buildings. This warranty should include water penetration protection for a period of at least five years. The warranty should be provided by companies at arm's length from the building industry and by companies with sound financial reserves.

Rationale: Mandatory warranty will be more effective than other means, and strong warranty companies can be expected to put in place additional programs, such as further inspections, rating of builders/developers, and consumer education, as they have in other jurisdictions where warranty is mandated. It would also give warranty companies the right to withdraw the warranty if they are not satisfied with the construction process, thus leading to de-listing and potential cancellation of building and occupancy permits. This can add considerably to the oversight of quality in the construction process.

Question: *What is your view on a mandatory five-year warranty being required in the case of all condominium buildings?*

As an alternative to mandatory warranty, developers could be required to provide financial collateral, in the form of a deposit of funds, letters of credit, or a surety bond, with a value sufficient to cover major structural and envelope failure.

The amount deposited would need to be held for a minimum of five years. This method could be used in the event that mandatory warranty coverage is not available or possibly by the developer's choice as an option.

Financial collateral has the disadvantage that, unlike a warranty, there is no independent company with the resources to intervene during the construction process to ensure that their risk is protected and so provide an important control on building quality. It is also likely to be much more costly than warranty, a cost that will inevitably be passed on to the homebuyer. A claims adjudication body or authority would have to be established to identify cause and to authorize and manage any payments that result from structural or envelope failure of a building that is protected in this way.

As noted earlier, the proposal for mandatory warranty could also be considered for single-family dwellings and townhouses. Although a less-urgent issue than that of large non-Part 9 condominium buildings, there are some sound reasons to consider mandatory warranty for all new homes:

- Although the demand for improved protection for single-family dwellings is less severe, it still exists.
- Recognizing that the Nova Scotia's new home marketplace is relatively small compared with the remainder of Canada, good-quality warranty companies are more likely to choose to participate if there is universal coverage rather than coverage limited to some sectors.
- It would avoid any deliberate market fracturing or redesignating of buildings by unethical developers/builders in order to avoid the need for warranty provisions.

Questions: *Should the same mandatory warranty apply to all forms of new home construction?*

What are your views on requiring financial collateral from a developer/builder for a minimum period of five years instead of a warranty?

5.4 Other Homeowner Protections

There are other important protections for purchasers of new homes that are not directly related to construction and the quality of the finished product. These include protection of monies paid on deposit and improved buyer knowledge and awareness through consumer education.

5.4.1 Protection of Deposits

In many instances, such as when a purchase is made through a licensed realtor, deposits are placed in trust and protected. However, this does not always apply, especially for condominium purchases. In many cases, developers use these funds to finance construction, and the purchaser has no protection if the developer fails to complete the project due to insolvency or for any other reason.

Proposal #7: Regulations should require that deposits for new home purchases of any type are secured, through deposits in trust or other equivalent means, to protect the purchaser from failure to complete.

Rationale: This has been accepted as a required change by many consumer groups and organizations and has been implemented in other Canadian jurisdictions as an essential form of protection.

Question: *Should all deposits be secured?*

5.4.2 Homebuyer Education

Another non-construction-related change to improve homeowner protection is an increase in consumer education. Consumers are often not aware of the protections that are available to them. Purchasers can lose their protection under warranty agreements due to lack of understanding of their obligations. Homeowners often do not have, or do not take, the opportunity to scrutinize the historical performance of a builder or developer. Too often, the industry has promoted a "we'll take care of you" attitude, rather than encouraging purchasers to take their own precautions.

Proposal #8: There should be a coordinated program of material available to inform the new homeowner of protections available. This should be straightforward, informative, and widely disseminated, and it should be separated from marketing and sales promotion materials. It should also include a checklist to be a component of the final sales process.

Rationale: New home purchase is a major event and can be a stressful time. Organizations responsible for preparing homebuyer educational materials must recognize this in presenting accurate information and ensuring that it is understood at a time when the purchaser is in a position to make informed decisions. This can go a long way to ensuring that purchasers make use of protections that are available and has proved to be effective in other provinces.

Question: *Should increased homeowner education about homeowner protection be a priority?*

6 Delivering Homeowner Protection

6.1 Models of Delivery

There are various structural approaches across Canada to achieve quality outcomes in the new home construction sector. These are described more fully in Appendix B. They range in scope from the British Columbia model where the government has established a large Homeowner Protection Office and, through legislated authority, manages the registration, licensing, education, and training of builders; oversees the home warranty program; and polices the home construction industry. Ontario has established a similar model, but through an arm's-length not-for-profit corporation. Both of these jurisdictions have very large markets of both home builders and buyers, so that funding such an approach is feasible.

Other jurisdictions, such as Alberta, rely on market forces to ensure quality outcomes. The voluntary home warranty program invests resources in builder education and training, thereby improving the quality of the industry. Buy-in by the industry has been positive.

In Manitoba, the home warranty program is voluntary and covers single-family dwellings only. However, there is recognition by the government that condominium entities present unique problems. More inspection, surety bonding, and stronger oversight by professionals were seen as appropriate; however, their stakeholders commented that even though the problems are either caused by poor design or poor construction it is often difficult to sort out which. Rather than put the consumer in the "middle," they are considering mandating warranty coverage to be provided by reputable insurers.

The British Columbia and Ontario structural models are all-encompassing, requiring a relatively high level of investment of resources and needing a very large population base for support. The Manitoba model is more suited to a smaller jurisdiction and takes an incremental and fairly efficient approach.

6.2 Approaches and Alternatives

Nova Scotia can consider a range of approaches, depending on the changes that are recommended. Examples include the following.

6.2.1 Create a New Homeowner Protection Office

The role of this office would potentially include

- managing a developer or builder registry (necessary should mandatory warranty be required)
- monitoring the sector through liaison with warranty providers, professional bodies, authorities having jurisdiction, and industry and consumer groups
- coordinating and communicating with other government programs involved in regulating the home-building industry or providing services to the homebuyer
- developing and disseminating consumer education materials

6.2.2 Use Existing and/or Other Mechanisms

As an alternative, a more decentralized approach using existing mechanisms, processes, and regulations could be enhanced and developed. This could include, for example,

- mandating building envelope and/or enhanced municipal inspection through the Nova Scotia Building Code
- establishing in legislation or regulations the minimum warranty coverage acceptable
- amending legislation to require developers to provide evidence of a warranty program that covers water penetration

6.2.3 Delegate Responsibility to the Private Sector

Another option is to leverage market forces and the private sector to a greater extent. For example:

- Leave licensing and registration to the private sector, through a self-governing body whose objective is to achieve quality outcomes in the construction industry.
- Negotiate with existing insurers who provide warranty coverage in other jurisdictions, such as British Columbia, to enter the Nova Scotia market for the express purpose of providing warranty coverage for condominium projects.
- Rely on warranty providers to perform building envelope inspections in order to protect their risk.

The responsibilities and actions listed in each of these three models are not necessarily tied to the model. Nova Scotia can choose elements of any of these structural approaches, and they are not mutually exclusive. The objective is to find the most efficient and economical way to help to ensure that purchasers of new homes receive a good quality product and have reasonable means of recourse in the event that failure of the finished products does occur.

7 Questions for Feedback

As stated at the beginning of this document, the Government of Nova Scotia is seeking to identify possible solutions that could lead to the introduction of new measures for the new home and condominium unit construction industry. Your feedback on the observations and issues raised here will be a valuable contribution towards the introduction of these new measures.

We have provided a response booklet, and we encourage you to use it. However commentary and suggestions in any form to any part of this discussion paper will be appreciated and will assist the team in developing the final recommendations.

Please send any comments that you have by letter, or fax to:

Consumer and Business Policy
Maritime Center, 8 South
1505 Barrington Street
P.O. Box 1003
Halifax, Nova Scotia B3J 2X1

Fax: (902) 424-7434

Response by August 22, 2008 will be much appreciated.

8 Appendices

Appendix A: An Overview of Housing Start Data

In the 10-year period 1997–2006, new housing starts in Nova Scotia generally followed the pattern of those elsewhere in Canada, as illustrated in tables 1 and 2. Housing starts in Nova Scotia have been as high as 3.4 per cent of Canadian housing starts in 2000 and as low as 2.5 per cent of housing starts in Canada in 2006.

TABLE 1 HOUSING STARTS IN CANADA BY INTENDED MARKET, 1997–2006²

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Homeownership	88,009	82,892	89,189	92,283	95,125	123,106	121,890	124,678	114,008	113,743
Rental	7,559	6,531	9,276	10,155	14,681	18,841	19,939	20,343	17,210	18,518
Condo	27,471	27,351	28,434	28,319	31,986	36,798	49,212	58,852	60,251	61,817
Other	182	19	204	295	488	379	870	516	2,002	946
Total	123,221	116,793	127,103	131,052	142,280	179,124	191,911	204,389	193,471	195,024

TABLE 2 HOUSING STARTS IN NOVA SCOTIA BY INTENDED MARKET, 1997–2006³

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Homeownership	2,225	1,664	2,263	1,867	1,765	2,493	2,219	2,310	2,133	1,941
Rental	479	418	571	810	746	847	833	559	643	1,096
Condo	0	89	0	371	256	378	530	445	481	290
Other	28	0	0	2	0	3	9	0	0	0
Rural Centres	1081	966	1416	1382	1325	1249	1505	1403	1518	1569
Total	3,813	3,137	4,250	4,432	4,092	4,970	5,096	4,717	4,775	4,896

Condominium construction in Nova Scotia has represented a very small proportion of housing starts, with the highest proportion of new condominium construction starts recorded in 2003 when they were 10.4 per cent of all new construction starts. By contrast, in Canada in 1997, 18.7 per cent of housing starts were condominiums, and this proportion grew to 31.7 per cent of all Canadian housing starts by 2006.

The number of new condominium corporation registrations in Nova Scotia grew steadily from 1998 to 2007, but then declined in 2007–2008 as indicated in Table 3

TABLE 3 CONDOMINIUM CORPORATION REGISTRATION IN NOVA SCOTIA 1998–2008⁴

Fiscal Year	1998–99	1999–00	2000–01	2001–02	2002–03	2003–04	2004–05	2005–06	2006–07	2007–08	Totals
Number of Registrations	4	7	6	9	13	14	13	18	25	19	128
Number of Units	78	85	148	303	642	391	499	540	745	306	3737

2. Canada Mortgage and Housing Corporation, Housing Market Indicators, Canada, 1997–2006.

3. CMHC reports intended market only for communities with a population of 10,000 or larger. To make the table for Nova Scotia comparable with the table for Canada, we have added the data for rural centres.

4. Information provided by the Registrar of Condominiums, Nova Scotia Department of Service Nova Scotia and Municipal Relations.

As the previous tables indicate, the volume of new home construction activity in Nova Scotia is relatively low. Not surprisingly, the number of recorded complaints is also relatively low. For example, in HRM, anecdotal evidence suggests there are perhaps 12 problem buildings in the condominium market, many of which are under remediation or have now been remedied. Those problem buildings, however, represent a large financial exposure to individual unit holders, so the impact of the failures should not be minimized—they are a serious concern to those affected, as well as to the industry as a whole.

Anecdotal information also suggests that the quality of construction has been improving, with those in the single-family-dwelling market receiving national and international recognition for quality construction and those in the condominium market becoming better attuned to best practices in managing complex projects. There is also more emphasis on the importance of the reputation of builders and developers and the recognition that this has a great influence on success.

According to CMHC, the housing market in Nova Scotia is softening, with buyers now at an advantage compared to builders and developers. In other words, the market is very competitive and this helps to drive up quality. However, this softening also leads to the risk of construction projects being left incomplete and of important participants leaving the marketplace altogether.

Nevertheless, a home is likely the largest single purchase a consumer will ever make. Most builders and developers work hard to provide a good product, but the quality of some newly built homes (both houses and condominiums) remains a concern for buyers.

Appendix B: Comparison of Homeowner Protection and New Home Warranty Programs across Canada

NON-PROFIT PROGRAMS

Province and Approach	Participation	Warranty Provider	Protections Offered/Other Issues	Costs
<p>British Columbia Homeowner Protection Office, a provincial Crown corporation www.hpo.bc.ca</p> <ul style="list-style-type: none"> establishes regulatory framework sponsors builder education programs provides consumer education materials 	<p>Mandatory registration and third-party home warranty insurance for builders and building envelope renovators</p> <p>Owner/builders must obtain authorization but are not required to be licensed or obtain third-party home warranty coverage.</p>	<p>Companies authorized by FICOM:</p> <ul style="list-style-type: none"> Lombard General Insurance Co Royal and Sun Alliance (represented by National Home Warranty Programs) Travelers Guarantee Co. 	<p>New Home</p> <ul style="list-style-type: none"> 1 year – defects in materials, design, and labour 2 years – defects in materials and labour for MandE systems and exterior cladding, etc. 5 years – defects in building envelope permitting water penetration 10 years – failures in load-bearing part of home <p>Other Issues</p> <ul style="list-style-type: none"> system to develop minimum qualifications for licences in development builder cannot obtain a building permit from a municipality without proof of licence and warranty Ministry of Public Safety and Solicitor General are considering proposals for a regulatory framework for home inspectors 	<p>Licensing</p> <ul style="list-style-type: none"> \$600 + \$40/unit when constructed annual renewal fees – \$500 + \$40/unit \$750/unit reconstruction fee to finance leaky condos in coastal climate zone <p>Home Warranty Insurance</p> <p>Premiums established based on risk assessment</p>
<p>Alberta Non-profit corporation formed by building industry</p> <p>Governance reform under way to develop more arm’s-length approach from industry</p>	<p>Voluntary</p> <ul style="list-style-type: none"> once enrolled, there are mandatory requirements cover 85% of new homes and 50–60% of multi-family projects in Alberta 	<p>Alberta New Home Warranty Program (ANHWP) www.anhwp.com</p>	<p>Builders must provide personal guarantees, letters of credit, and other security instruments. Warranties include</p> <ul style="list-style-type: none"> -deposit protection to a max of \$60,000 -builder performance protection up to \$30,000 -materials and workmanship up to \$60,000 during first year -structural integrity, unused portion of \$60,000 for five years -additional living expenses up to \$60,000 while warranty work is under way <p>Other Issues</p> <p>Service Alberta has started a consultation process on licensing home inspectors</p>	<ul style="list-style-type: none"> builder registration – \$1000 home enrolment fees – \$90 to \$885 based on purchase price and builder rating (average fee in 2005, \$316) <p>ANHWP has a strong focus on builder education and consumer awareness and satisfaction</p>

Province and Approach	Participation	Warranty Provider	Protections Offered/Other Issues	Costs
Saskatchewan Non-profit corporation formed by the building industry	Voluntary Does not cover condominium complexes of over four storeys	New Home Warranty Program of Saskatchewan www.nhwp.org	<ul style="list-style-type: none"> • deposit protection up to \$25,000 • 1 year – workmanship and materials • 2 years – water leak protection • 5 years – major structural defects • total combined limit – \$75,000 Condo projects have an overall maximum coverage of \$500,000 between Jan 1/98 and Dec 31/07. All condo projects enrolled on or after Jan 1/08, have a maximum coverage of \$750,000.	<ul style="list-style-type: none"> • builder registration – \$525 • annual renewal – \$280 • letter of credit required as security for warranty – minimum \$16,000 • home enrolment – \$661–\$871 per unit

Province and Approach	Participation	Warranty Provider	Protections Offered/Other Issues	Costs
Manitoba Non-profit organization formed by building industry	Voluntary Does not cover condo complexes of over three storeys	Manitoba New Home Warranty Program www.mbnhwp.com	Five-year warranty <ul style="list-style-type: none"> • Year 1 – materials and workmanship up to \$30,000/unit • Years 1–5 – major structural defects affecting load bearing portion up to \$30,000/unit; relocation expense up to \$3000 • Deposit coverage up to \$10000 • claims must be made within one year of taking possession of the home. Other Issues Manitoba government is undertaking a review of options for protection of condo owners; considering the BC approach where insurers offer the warranty coverage; cost of the warranty could be in the \$1000/unit range	<ul style="list-style-type: none"> • Builder registration – \$500; renewal – \$175 • Home enrolment – \$150–\$460

Province and Approach	Participation	Warranty Provider	Protections Offered/Other Issues	Costs
Ontario Private non-profit corporation created by government to administer the Ontario New Home Warranties Plan Act	Mandatory Builder registration is mandatory as well; Tarion will cover homes where builder failed to register	Tarion Warranty Corp Three roles: <ul style="list-style-type: none"> • regulator • surety • conciliator/adjudicator www.tarion.com	Limit on coverage – \$300,000 <ul style="list-style-type: none"> • 1 year – free from defects in work and materials; fit to live in and constructed in accordance with building code • 2 years – building envelope including water penetration • 7 years – major structural defects • no substitution of materials without consent • delayed closing and occupancy without adequate notice – maximum \$5000 • deposit protection – to \$40,000 	<ul style="list-style-type: none"> • registration fee – \$600 • home enrolment fee – \$325–\$750 (based on value of home)

Province and Approach	Participation	Warranty Provider	Protections Offered/Other Issues	Costs
Quebec Three private providers supervised by Régie du bâtiment du Québec, which administers the provincially legislated guarantee plan	Mandatory Not covered: condos of over four storeys constructed of non-combustible material	<ul style="list-style-type: none"> • La Garantie des maisons neuves de l'apchq • Qualité habitation • La garantie des maîtres bâtisseurs www.gomaison.com	Deposit protection – \$30,000 Delayed closing and occupancy – \$5000 1 year – existing but not apparent defects 3 years – hidden defects 5 years – faulty design, construction or production, and foundation problems	Builder registration – \$375; renewal – \$325 Home enrolment – \$800–\$1100 Mandatory pre-delivery inspection by purchaser

Province and Approach	Participation	Warranty Provider	Protections Offered/Other Issues	Costs
Atlantic Non-profit organization started by building industry	Voluntary Largely covers single-family dwellings but will provide warranties for condominium projects	Atlantic Home Warranty Program www.ahwp.org	For homes purchased after 2007: <ul style="list-style-type: none"> • deposit protection to \$20,000 • 1 year – defects in workmanship or materials • 7 years – major structural defect, including soil movement that results in actual physical damage to, and failure of, a load-bearing portion of the home • limit: \$50,000 For homes purchased before 2007: <ul style="list-style-type: none"> • Platinum – as above • Ultimate – 10 years on structural defect • Ultimate plus – additional \$3000 for specified items 	<ul style="list-style-type: none"> • builder registration – \$600; renewal – \$200 • home enrolment – \$330–\$510 Condominiums <ul style="list-style-type: none"> • unit fee – \$600–\$1200 + security of \$100,000 (through performance bond, line of credit or cash)

FOR-PROFIT WARRANTY PROGRAMS

Province	Warranty Provider	Protections Offered/Other Issues
Atlantic	Lux Residential Warranty Program www.luxrwp.com	New Homes <ul style="list-style-type: none"> • 1 year – materials and workmanship up to \$35,000 • 1–8 years – major structural up to \$3,5000 • total together cannot exceed \$35,000 • \$3500 available for relocation expenses • foundation water penetration limited warranty (if prescribed materials are used) Condominiums <ul style="list-style-type: none"> • 1 year – materials and labour • 5 years – structural defects • \$35,000 structural defects per unit • \$3,500 additional living expenses coverage • common property limit of up to \$500,000 • deposit protection maximum \$30,000

Province	Warranty Provider	Protections Offered/Other Issues
British Columbia, Alberta, Manitoba, Saskatchewan	National Home Warranty Programs Ltd. (backed by Royal and Sun Insurance Co) www.nationalhomewarranty.com	Coverage varies according to province. New homes and condominiums are eligible for coverage.

Province	Warranty Provider	Protections Offered/Other Issues
British Columbia, Alberta, Manitoba, Saskatchewan, Atlantic Provinces	Pacific Home Warranty Solutions, Inc. (BC) and Progressive Home Warranty Solutions, Inc. (remainder); backed by Echelon General Insurance www.progwar.com	<p>New Homes</p> <ul style="list-style-type: none"> • 1 year – materials and labour • 2 years – mechanical systems • 5 years – foundation water penetration • 10 years – structural defect • \$25,000 deposit security • \$6,000 additional living expense coverage • \$100,000 total warranty limit <p>Manufactured Homes</p> <ul style="list-style-type: none"> • 1 year – materials and labour • 2 years – mechanical system • 10 years – structural defects • \$25,000 deposit security • \$30,000 total warranty limit <p>Condominiums</p> <ul style="list-style-type: none"> • 1 year – material and labour • 2 years – mechanical systems • 5 years – foundation water penetration • 10 years – \$60,000 structural defects • \$25,000 deposit security • \$5,000 additional living expenses coverage • \$500,000 per building limit

Appendix C: Licensing Requirements for Nova Scotia Construction Trades

A designated trade is one that is regulated by the Nova Scotia Apprenticeship and Trades Qualifications Act and General Regulations. This act provides for formal training and the issuance of Certificates of Qualification for trades that have been designated. Certification in a designated trade demonstrates proof of a person's qualifications to work in a specific trade to a provincial or a national standard.

Of the 61 apprenticeable trades administered by the Nova Scotia Department of Labour and Workforce Development, there are 9 that are called "compulsory." That means that one must have a Certificate of Qualification (often called a "licence") in order to legally work in this field in Nova Scotia. The 9 compulsory occupations include 6 that work in the construction industry:

- bricklayer
- construction electrician
- plumber
- refrigeration and air conditioning mechanic
- oil burner mechanic
- sprinkler system installer

