

Presentation to the Barrett Commission Inquiry into the Construction of Condominiums

3 November 1999

Who We Are

British Columbia Real Estate Association (BCREA) represents 12 member boards, and more than 13,000 REALTORS in British Columbia. BCREA provides an extensive communications network, required licensing and continuing education courses, standard forms and government relations for REALTORS.

Representing BCREA

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Introduction

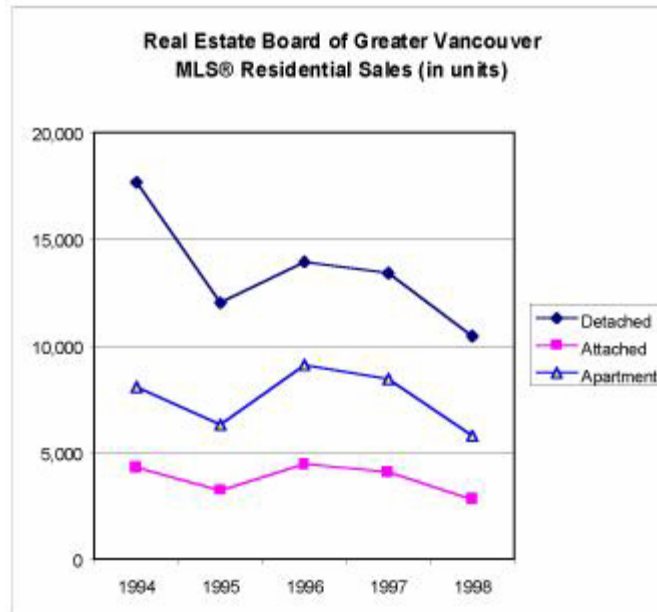
The problem of "leaky condos" as we have come to know it today began to surface about a decade ago. However, the situation did not begin to emerge as a crisis until a few years ago. A number of factors have contributed to the problem. There is no single solution so **all** contributing factors must be considered if we are to ensure that it does not continue or recur.

British Columbia Real Estate Association (BCREA) believes that the crisis of "leaky condos", or more accurately "rotting condos", will continue to detrimentally impact consumers and the real estate market unless immediate action is taken. BCREA's purpose at this Commission is to make specific recommendations to help address existing concerns and to enhance consumer protection for future homebuyers. BCREA believes that this matter requires focused attention and dedicated resources must be committed to overcome it.

Our industry data indicates that sales of condominiums continue to lag behind other types of residential sales and impacts are being felt in our economy as a whole. Consumer confidence in the purchase of condominiums is at an all time low, which is easy to understand given the problems. This has a rippling effect on the entire housing market.

The entry level (typically low equity buyer) has seen what little equity they had, disappear with the reduced value of their condominium. In addition, any savings they may have had, is being allocated to "special assessments" to repair their buildings. In the past, this type of owner was able to build their equity position gradually over a few years by retiring some of their mortgage debt and look forward to moving up from an apartment to a townhouse or small-detached house. This move has all but been eliminated as they now find themselves in the position of having no cash. They have become prisoners in their own homes.

This has already resulted in a reducing value for the townhouse and detached housing market.



Market Reaction

The residential housing market, including construction and sales, has long been a key economic indicator in British Columbia, a measure of economic growth, employment, and income.

In 1992, provincial MLS® residential real estate sales peaked for the decade at 93,385 units. That year 14,269 condominiums sold in the Real Estate Board of Greater Vancouver area.

By 1998, total BC provincial MLS® sales had fallen to 52,910 units, a drop of 47 per cent. At the same time condominium sales in the Real Estate Board of Greater Vancouver fell to 8,578 units, a drop of 40 per cent.

There has been a modest increase in the number of sales of apartment units this year but they are lagging the rest of the housing market by about 50 per cent.¹ BCREA believes this lag is tied to the recent crisis of condominiums with water damage problems. The leaky condo situation clearly continues to impact consumer sensitivity, consumer confidence and consumer activity. More important, leaky condos continue to negatively impact economic growth.

If condominium apartment sales were to have kept pace with the market, about 400 more apartments would have been sold in the first nine months of 1999. What does this mean for the provincial economy? The spin-off economic activity generated from the sale of these 400 apartment condominiums would have been as much as:

- 80 person years of employment,
- \$11,500,000 on marketing, financial services, the purchase of household good, renovations and moving; and

- 1.7 million in provincial tax revenue.²

What about the future need for this type of housing? BC is forecast to be the fastest growing area in North America over the next 25 years. The population of metropolitan Vancouver will increase by 58 per cent to 3.3 million or 48,500 people per year. Most of the growth will be in the aged 45 and older population. As this population ages, lower maintenance, high-density homes that range from attached ground-oriented townhouses to high-rise apartments, will become popular.³ This is another important reason why we must be diligent to find the solution to eradicate this crisis and rebuild consumer and investor confidence.

BCREA's Actions to Date

REALTORS reported problems of water damage during the resale of a small number of condominiums in the early 1990's, however there were no indications of a systemic problem. With the dramatic increase in the number of condominium sales, BCREA and member real estate boards initiated measures such as: developing and making mandatory (on MLS®) Property Disclosure Statements, including one specific to strata properties; developing and running continuing professional education courses related to condominiums; and participating in the provincial government Task Force on Condominium Construction.

BCREA made a submission at the 1998 Barrett Commission of Inquiry. Since this Commission's 1998 *Report*, BCREA and the local real estate boards have:

- written to both the provincial and federal government urging additional assistance to homeowners suffering from the impact of the problem;
- continued to inform REALTORS about the issue through publication of news items and articles on websites and in a variety of print newsletters;
- developed and still run continuing professional education courses such as *Legal Update* and the *Strata Property Law for REALTORS*;
- discussed with UBC changes to the Real Estate Council's pre-licensing real estate course to include information on this issue for new REALTORS;
- begun the process of updating BCREA's post-licensing real estate course to include relevant information; and
- worked with the Homeowner Protection Office to amend industry Property Disclosure Statements to include information related to warranties and owner-builder declarations.

Guidelines for REALTORS

REALTORS have been conscientious in their efforts regarding leaky condominiums. Guidelines for listing strata properties are in place. BCREA and the local boards have encouraged REALTORS to ensure buyers conduct a cautious, thorough and educated investigation of a property before any purchasing decision is made by such means as:

- obtaining at least 12 months of strata council minutes (if applicable), most recent annual general meeting minutes, disclosures (new strata)

by-laws, financial statements and any engineering reports that may be in process or previously done;

- ensuring the *Contract for Purchase and Sale* contains the appropriate clauses and phrases to protect parties in relation to special assessments, including the Property Disclosure Statements as part of the contract;
- ensuring the seller completes the Property Disclosure Statements for strata properties;
- consulting an accredited professional to inspect the building before a purchasing decision is made;
- investigating the warranty program (if applicable) and the limits and responsibilities of the homeowner;
- investigating the background of the developers and/or builders; and
- obtaining specialized advice from other professionals.

REALTORS and buyers are at times frustrated in their efforts to obtain complete information in a timely and cost effective manner. We are hopeful that some of these barriers will be eliminated with the implementation of the new *Strata Property Act*.

Recommendations

Maintaining stability in the housing market is critical to the provincial economy. BC residents cannot afford, financially and emotionally, to allow the problem of leaky condominiums to persist. BCREA does not wish to point fingers or argue about the various causes of this problem and there are many causes. Instead BCREA seeks to offer specific recommendations that will enhance consumer protection for homeowners, safety and durability of homes and consumer and investor confidence in the housing market.

BCREA has limited its recommendations to five areas, namely: assisting condominium owners, warranties, inspectors, Building Standards Branch and the Building Code.

Assisting Condominium Owners

First and foremost in need of immediate assistance are existing homeowners facing water damage repair bills of \$20,000 on average. Continued and concerted efforts at both the provincial and federal level are essential.

BCREA recommends increased and ongoing financial assistance in the form of:

- income tax credits at both the federal and provincial level for repair costs;
- use of RRSPs for repair costs without penalties;
- property tax relief for a specified number of years;

- GST relief for repair costs; and
- relaxed eligibility requirements for no interest loans.

Warranties

BC is in a period of transition with respect to home warranties given the collapse of the New Home Warranty Program and the introduction of mandatory and statutory warranties under the *Homeowner Protection Act*. The Homeowner Protection Office, REALTORS and warranty providers are informing and educating the public. Nevertheless, there needs to be a clearer understanding by consumers and builders of the warranty coverage that is being provided.

BCREA recommends: A plain language home warranty contract or addendum which states exactly what items of construction are covered and for how long.

Properties may transfer ownership several times over the ten years of the new warranty programs. Information related to third party warranties and owner-builder declarations could get lost or become incomplete as the property is passed from one owner to another. Information on Property Disclosure Statements is helpful but not all homes are sold by REALTORS. Although there may be some administrative difficulties, a more secure way to ensure consumer protection is registration of the information in the Land Titles Office.

BCREA recommends: Third party warranties and owner-builder declarations be registered on the property title in the Land Title Office.

BCREA is similarly concerned about consumer protection with respect to the renovations that are being conducted. If the government proceeds to require licensing of renovators and mandatory warranties for repairs, BCREA would recommend that those warranties also be registered on title in the Land Title Office.

Inspectors

Many leaky condo problems are examples of latent defects in that the buyer on a reasonable inspection of the property may not notice the problem. There are a variety of "inspectors" in the housing industry and although this Commission endeavoured to clarify inspectors' roles in the 1998 *Report*, consumers are still confused as to the roles and responsibilities of inspectors and have been lulled into a false sense of security.

There are at least three types of inspectors. The role of municipal inspectors is to ensure new and significantly renovated homes comply with the provincial Building Code and municipal by-laws and yet there have been numerous reports of Building Code violations. The role of home inspectors is to inspect resale homes' major systems and components, including evidence of water penetration or harmful condensation. The number of Building Envelope Professionals has grown substantially and their role is to be experts on wall systems yet there is no consistency of advice or standards of practice.

Municipal inspectors may belong to the Building Officials Association, home inspectors may belong to the Canadian or West Coast Association of Home Inspectors and Building Envelope Professionals may belong to the Association of

Professional Engineers. However, there are no mandatory requirements and limited accountability.

BCREA believes that each of these classes of "inspectors" should be required to meet some form of licensing and uniform education standards to ensure consumer protection and accountability. Proper and uniform inspections will ensure higher standards of construction and maintenance and assist in renewing consumer confidence.

BCREA recommends: Licensing and uniform education standards for individuals involved in inspections of residential properties.

Building Standards Branch

Cut backs and downsizing within the provincial government have played a role in allowing this crisis to occur. BCREA agrees with the Commission's view that the regulation of residential construction has received too low a priority in the allocation of resources. The Commission itself has stated that, "For the past 20 years, there has been a significant reduction in provincial spending on issues related to residential construction."⁴

BCREA commends the government for recently consolidating housing issues into one ministry. It is allowing synergies and starting to create efficiencies for everyone involved in the housing industry. We urge the government and this Commission to continue this process. BCREA also commends this Commission for recognizing the value and necessity of the Building Standards Branch functions.

The Homeowner Protection Office (HPO) is an essential resource for owners of leaky condominiums. BCREA believes the HPO must focus its attention on the immediate needs of condominium owners, on the licensing of builders and renovators, on warranty issues and the communications related to these issues. With such a mandate and stress on resources, the HPO cannot be expected to give the Building Code issues the attention they need.

BCREA feels very strongly that the Building Code needs to be a priority focus. BCREA believes condominium homeowners face a crisis, which requires: focused attention to the issues; dedicated resources in addition to the experts already in the Building Policy Branch; and extensive cooperation with federal government experts.

Another significant issue is interpretation of the Building Code. The 1998 *Report* states that, "There has been an erosion in the responsibility of ensuring residential building standards are monitored and the general application of the Building Code is monitored."⁵ Each lower mainland municipality interprets the Building Code in a different way. There are about 20 different jurisdictions in the lower mainland. This means that if a contractor operates in the lower mainland and works in a variety of different communities, he would have to make himself aware of the different interpretations of the Building Code in each location. BCREA does not believe that the authors of the Building Code meant for the Code to be applied in an inconsistent manner, but in reality, this is what occurs.

BCREA recommends: The transfer of responsibilities related to building standards from the Homeowner Protection Office to the Building Policy Branch to reestablish a Building Standards Branch. Additional resources to focus expertise and attention to Building Code issues,

including expert advice on interpretation.

BCREA supports the existing Provincial Advisory Council on homeowner protection. It can provide invaluable advice to government and it should continue but work on the Building Code with the new Building Standards Branch rather than the HPO.

Building Code

BCREA recognizes that the Building Code is a complex document and BCREA acknowledges that it is not an expert on the Building Code. Debating whether or not Building Code provisions or deficiencies or interpretations of the Code contributed to problems condominium owners now face is not where we should focus energy. If changes to the Code will prevent similar problems, then they must be seriously considered and quickly implemented. Our own Minister of Economic and Social Development, who has championed this Commission, has indicated that the Building Code may be a contributor to this problem we are facing.⁶

BCREA agrees with the Commission that the Building Code is intended to represent minimum standards regarding life, safety, health and structural sufficiency of buildings.⁷ BCREA is not recommending that the intent of the Building Code needs to be changed, however, the health and safety of individuals living in leaky condos are being affected. It is essential that the coastal climate area issues be addressed immediately to ensure proper repairs are being effected to buildings.

The 1998 *Report* stated, "The Building Code and the Vancouver By-law never explicitly stated that because of the lower mainland's special weather conditions, it may be advisable to take extra care in determining the methods of wall construction. They could have done so and more clearly identified the unique building envelope needs of BC's coastal climate."⁸ The Building Code was adopted without appropriate recognition and communication of the implications of the wet coastal climate.

BCREA recommends: The Building Code and the Vancouver Building By-law be amended to explicitly state that because of the coastal climate area's special weather conditions, it is advisable to take extra care in determining the methods of wall construction and to identify the unique building envelope needs.

At the same time that BC experienced a boom in condominium construction, particularly since Expo 86, changes to the Building Code permitted a new, face-seal type of building envelope design. The Commission's 1998 *Report* included a quote from the CMHC *Survey of Building Envelope Failures in the Coastal Climate of BC* which stated: "Based on the results of the study it was concluded that in the coastal climate area, face-sealed wall assemblies are very sensitive to design and construction variables and it therefore may not be possible to achieve acceptable performance with face-sealed systems."⁹

BCREA recommends: Focused scientific research on the appropriate use of face-seal type technology in the coastal climate area and requisite amendments to the Building Code.

As indicated earlier, the Building Code is intended to represent minimum standards regarding life, safety, health and structural sufficiency of buildings. In

the 1970s, the Federal Government, in an effort to promote energy conservation, seems to have added "energy efficiency" to this list. The National Research Council was charged with the duty of establishing methods of accomplishing this goal.

One of the first federal programs was the Canadian Home Insulation Program (CHIP) that assisted homeowners who wished to improve the insulation in their houses. One of the methods of insulating an existing structure, of which many were stucco, was to fill the wall cavity with some type of insulation that could be blown in through a hole drilled from the exterior of the wall. The ceilings were typically filled with either a blown in, or batt-type insulation. The ceiling was being sealed from the interior heated spaces so the contractor had to cut in new ventilation in the roof to allow the attic to breathe. Prior to this work being done, the cold and warm air would flow between the interior heated space and the cooler attic, or vice versa in the summer months.

This program was deemed to be very successful, as many homeowners took advantage of the CHIP grants, until it was discovered that one of the federally approved insulating products, being urea formaldehyde foam insulation (UFFI), which was being used to fill wall cavities may have been a health hazard. After much public and industry outcry, the federal government agreed to be held accountable for their recommendation and paid for the remediation work required to remove UFFI from these houses.

The next solution for the federal government was to promote the R2000 house. The basic idea was to seal up a house so tightly, and double the insulation, so Canada would be a world leader in constructing houses that used very little energy. After discovering how much moisture was generated by day-to-day living, it soon became apparent that the cost of exchanging air so that the inhabitants could live without health concerns was prohibitive and this initiative was dropped.

It appears that building policy has been developed not by doing effective laboratory research but by field testing with consumers' homes and when it fails, abandoning one method and taking up another. BCREA suspects that the National Research Council may have adopted this strategy with one of their recommendations without taking regional weather conditions into consideration.

The National Research Council helps to develop the National Building Code and each province chooses whether to adopt their recommendations. When it came to the section of the Building Code that referred to Air and Vapour Barriers, it appears that the BC Building Code adopted the National Code, without doing specific or sufficient research on the impacts of their use in the coastal climate area. There is a group of experts that has brought into question the effect that this policy has on buildings in the lower mainland.¹⁰

BCREA does not profess to be building technologists or engineers but we cannot ignore what we have read, both in this Commission's *Report* and opinions of experts and senior government officials, who are saying that this sealing up of buildings is contributing to the failure of building envelopes.

BCREA recommends: Focused scientific research on whether the air and vapour barriers are contributing to the failure of building envelopes and appropriate amendments to the Building Code.

The urgency of considering these Building Code issues is that they are still being used in repairs and in new construction and therefore may be perpetuating the crisis we are now facing.

Conclusion

This Commission did a commendable job through its 1998 *Report*. About half of the recommendations were accepted and implemented by the government. We trust that this hearing will generate additional helpful recommendations and we hope that the government will implement them.

BCREA believes the recommendations we have presented, if implemented, will alleviate some of the financial and emotional stress facing existing leaky condo owners and will assist in re-establishing trust in the condominium market. It is our hope that in turn it will lead to positive changes in housing demand and long-term economic health for the province.

Footnotes

¹ The first nine months of 1999 however, indicate a market turnaround. Sales of detached units, including new and resales in the Real Estate Board of Greater Vancouver increased 20 per cent over the same period in 1998, to 9,712 units from 8,073 units. Attached unit sales increased 28 per cent, to 2,732 units from 2,138. But apartment sales grew just 12 per cent, to 4,927 units from 4,414 units, clearly lagging the market.



² When 100 homes are sold, the activity generates:

- 20 person years of employment;
- \$2,918,000 on marketing, financial services, the purchase of household goods, renovations and moving;
- provincial tax revenue of \$425,000.

Clayton Research Associates Limited, *Economic Impacts of Housing Sales and Purchases*, Ottawa: Canadian Real Estate Association, October 1994; Credit Union Central of British Columbia, Economics Department, 1999.

³ Baxter, David. *Homes in Metropolitan Vancouver's Future: Housing Demand by Structure Type: 1996 - 2021*.

⁴ Barrett, Dave. *The Renewal of Trust in Residential Construction: Commission of Inquiry into the Quality of Condominium Construction in British Columbia*. June 1998. p.16.

⁵ *Ibid.* p.16.

⁶ Economic and Social Services Minister Moe Sihota recently stated the federal government through CMHC conducted research that made it well aware of building code deficiencies that contributed to the construction of leaky condos. "Sihota Turns Up Pressure on Ottawa." *Vancouver Sun*. 07 October 1999. p. B6.

⁷ *Op cit.* p.18.

⁸ *Ibid.* p.23.

⁹ *Ibid.* p.24.

¹⁰ *Ibid.* p.10 H.A. Leach (Engineer); p.38 Joe Lstiburek (Engineer); Currie, J. (former Director, BC Building Standards Branch) Letters dated December 1, 1987, December 12, 1991 and May 25, 1999; Spearing, David (Architect). Letter dated December 23, 1991.

Summary of Recommendations

BCREA recommends:

- Increased and ongoing financial assistance in the form of:
 - income tax credits at both the federal and provincial level for repair costs;
 - use of RRSPs for repair costs without penalties;
 - property tax relief for a specified number of years;
 - GST relief for repair costs; and
 - relaxed eligibility requirements for no interest loans.
- A plain language home warranty contract or addendum which states exactly what items of construction are covered and for how long.
- Third party warranties and owner-builder declarations be registered on the property title in the Land Title Office.
- Licensing and uniform education standards for individuals involved in inspections of residential properties.
- The transfer of responsibilities related to building standards from the Homeowner Protection Office to the Building Policy Branch to re-establish a building standards branch. Additional resources to focus expertise and attention to Building Code issues, including expert advice on interpretation.
- The Building Code and the Vancouver Building By-law be amended to explicitly state that because of the coastal climate area's special weather

conditions, it is advisable to take extra care in determining the methods of wall construction and to identify the unique building envelope needs.

- Focused scientific research on the appropriate use of face-seal type technology in the coastal climate area and requisite amendments to the Building Code.
- Focused scientific research on whether the air and vapour barriers are contributing to the failure of building envelopes and appropriate amendments to the Building Code.

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