

**This guide is to be used for general information purposes only. Succession planning and corporate transactions are complex. Each situation may involve factors not accounted for in this guide. For specific information about your situation, please contact the Underwriting Department at 416-229-3844 ext. 3001 or 1-877-982-7466 ext. 3001 or [underwriting@tarion.com](mailto:underwriting@tarion.com).**

The Vendor and Builder Agreements require that licensed vendors and builders meet ongoing disclosure obligations to communicate to Tarion any circumstance or information that may have an adverse affect on the licensee's ability to build or sell homes or carry out its warranty obligations. In that regard, a licensee who contemplates a succession or corporate transaction must contact the Underwriting Department well in advance of the succession or transaction.

## Overview

Succession planning and corporate transactions include any situation where there is a change in ownership, corporate structure and/or of the Directors and Officers of a company. It includes the transfer of the company to a family member or other person, and other transactions such as the acquisition, merger, or amalgamation of the company. Where this document refers to the "new company", this includes situations where the corporate entity stays the same but has new ownership, or is controlled by new principals, directors, officers, or "interested persons" as defined below (collectively, "PDOs").

The Home Construction Regulatory Authority (HCRA) assumed Tarion's previous role of licensing vendors and builders on February 1, 2021. Tarion will maintain its role of underwriting specific construction plans proposed by registrants and administering the statutory warranty program. The HCRA's licensing policies related to succession planning and corporate transactions (i.e. their effect on maintaining a licence) are not dealt with in this guide. Licensees contemplating a succession or corporate transaction are encouraged to contact the HCRA to discuss licensing implications. This guide relates to how Tarion generally considers succession planning and corporate transactions from an underwriting perspective.

## Tarion's Underwriting Considerations

### General

There are a variety of underwriting considerations when it comes to successions and corporate transactions, and assessing the relevance of technical skill, tenure, guarantors, as well as their impact on the overall health of the company. When there is a material change to these factors, Tarion conducts a revised risk assessment as per Registrar Bulletin 11 (previously known as Builder Bulletin 28). The risk assessment considers risk indicators including experience, tenure, and financials.

### Maintaining a HCRA Licence

It is expected that the new company maintain a valid HCRA licence to sell and/or build homes at the time of entering into an agreement of purchase and sale, entering into a construction contract with an owner of land to build a contract home, or commencing construction of a home. If a succession or corporate transaction results in HCRA revoking the new company's licence to

sell or build, the new company will not be able to enter into purchase agreements, construction contracts, or to commence construction of homes – even if Tarion previously authorized the company’s plans to sell or build the homes. To do so is a prosecutable offence under the *Ontario New Home Warranties Plan Act*.

### **Tenure**

Tarion’s assessment of the experience and risk associated with a licensee is based in part on the tenure and experience of its PDOs. A change in PDOs may impact the risk assessment if the new PDOs do not possess the same experience or competencies as the previous PDOs. Factors considered by Tarion may include but are not limited to the following and are dependent on situation-specific criteria: If the new PDOs have been involved in the company prior to the transaction for a number of years, Tarion may consider the tenure to be similar. This depends on factors such as the new PDOs’ roles with the company over the years, and their role in the new company. Tarion will also consider the customer service record of the company.

If the PDOs have been involved in another licensed registrants’ operations, Tarion may consider their tenure with that registration. Tarion will also consider the customer service record of the company.

If the PDOs are new, but there is consistency with the previous employees, management, trades, and suppliers, Tarion will include their experience in the tenure review.

### **Interested Persons**

As part of Tarion’s risk assessment for the new company, Tarion may consider the past or present financial position and conduct of any “interested persons” in respect of the new company. “Interested persons” is a defined term under the *Ontario New Home Warranties Plan Act* administered by Tarion, and the *New Home Construction Licensing Act* administered by the HCRA. Both pieces of legislation use the same definition of “interested persons”. For more information about who qualifies as an “interested person”, please see the guide on HCRA’s website under the “HCRA Directives and Advisories” section. Generally, an “interested person” in respect of a vendor/builder is a person:

- With a beneficial interest in the business of the applicant/vendor/builder;
- Who control the applicant/ vendor/builder directly or indirectly;
- Who have or may contribute financially to the business of the applicant/vendor/builder;
- Who have a relationship with the applicant/vendor/builder (such as family members, business partners);
- Who were previously licensed.

### **Risk Review**

The new PDOs, if they are a Vendor, Builder or Guarantor must provide their financial information for review which will be part of the risk assessment of the company. The risk assessment will impact the number of homes permitted to be built and corresponding security requirements.

For example, if the new PDOs have only half the financial strength of the original PDOs, this will impact the underwriting going forward.

Tarion's review is not limited to only financials but will also include other factors, such as construction experience and after-sale service history.

### **Guarantors**

Tarion will review the guarantors of the new company on a case by case basis, which will impact the risk assessment in terms of the number of homes permitted to be sold/built and corresponding security requirements.

If the corporate transaction contemplates that some or all of the existing guarantors may be released from their obligations, you must contact Tarion to consider whether to grant an early release. Tarion may request new guarantors for the new company.

### **Security and other Conditions**

There is no guarantee that the security amounts or other terms and conditions of registration will remain the same after the succession or transaction. As noted in the paragraphs above, the educational requirements, technical competencies, financial standing, guarantors, and tenure will all impact securities and other conditions imposed by Tarion. For more information about how Tarion may adjust security requirements for the new company in recognition of the tenure of its PDOs, refer to Registrar Bulletin 11 (Appendix "C" of the Freehold and Condominium versions of the Bulletin, or Appendix "A" of the Contract Home version).

### **Considerations for the Parties to a Corporate Transaction**

Tarion encourages all parties to a proposed corporate transaction to have their legal counsel consider the following non-exhaustive list of issues that may be relevant to the transaction:

1. Licensing and Underwriting considerations:
  - Contact the HCRA to discuss any issues surrounding the impact that the succession or transaction may have on licencing, including expiry, renewal, and any licence terms and conditions.
2. Warranty considerations:
  - Existing warranty obligations for up to 7 years;
  - Future warranty obligations (E.g. purchase agreements that have not closed); and
  - Transfer of all relevant Tarion documentation, deadlines, and contacts relevant to warranty obligations (E.g. trades, engineers).
3. Underwriting considerations:
  - Terms and conditions to obtain authorizations from Tarion to sell and build specific homes (conditions of Qualification for Enrolment and Enrolment of homes);
  - Obligations under the Vendor Agreement and Builder Agreement;
  - Statutory requirements under the *Ontario New Home Warranties Plan Act*;

- Security;
- Guarantees;
- Outstanding debts to Tarion;
- Transfer of all relevant Tarion documentation and contacts relevant to licensing; and
- Technical experience relevant to the risk proposed.