

Condominium Common Elements Warranty A Guide for Residential Condominium Corporations

Protecting Your Most Important Investment

Your new condominium must meet or surpass the structural and health and safety standards set out in the Ontario Building Code. Like every new home in Ontario, it is protected by mandatory warranties provided by your vendor/builder and backed by Tarion Warranty Corporation (Tarion). The warranties include your condominium's common element areas—which are described in the condominium corporation's Declaration and Description and include the areas shared by all residents (for example, hallways, parking facilities, amenities such as swimming pools or squash courts, and in some cases electrical and mechanical facilities that operate as part of the condominium's infrastructure, or the building's exterior envelope).

In accordance with the Ontario New Home Warranties Plan Act (–the *Act*”), the condominium corporation is considered to be the owner of the common elements. It is therefore important that condominium corporations are aware of and understand their rights and responsibilities under the *Act*.

What is Tarion?

Tarion is a non-profit, private corporation established in 1976 to protect new home buyers by administering the *Act*. Not only does the *Act* require vendors to provide warranty coverage for all new homes built in Ontario, but Tarion must also underwrite Vendors and Builders, and enrol every new home or condominium project prior to the start of construction. In addition, the *Act* requires Tarion to manage a guarantee fund to compensate owners when vendors fail to honour the required warranties.

Warranty Coverage

The warranty is provided by one, two and seven year coverage periods where condominium corporations can apply to Tarion and their vendor to address problems that may arise after the condominium corporation has been registered. Warranty coverage on common elements begins on the date the condominium corporation's Declaration and Description is registered.

The total amount payable out of the guarantee fund for common elements claims for a condominium project entered prior to February 1, 2021, is the lesser of \$2.5 million, or an amount equal to \$50,000 multiplied by the number of condominium dwelling units.

In the case of a home sold under a purchase agreement where the first purchase in the condominium project was entered into on or after February 1, 2021, is the lesser of \$3.5 million, or an amount equal to \$100,000 multiplied by the number of condominium dwelling units.

The maximum amount payable out of the guarantee fund to a condominium corporation for claims related to environmentally harmful substances or hazards, deleterious substances, mould or any other fungal or bacteria contamination, is the lesser of, \$100,000 or an amount equal to \$2,000 multiplied by the number of condominium dwelling units.

The *One Year Warranty* requires that the home be:

- Constructed in a workmanlike manner and free from defects in material.
- Fit for habitation.
- Constructed in accordance with the Ontario Building Code.

The *Second Year Warranty* covers:

- Water penetration through the basement or foundation walls.
- Defects in materials, including windows, doors and caulking, or defects in work that result in water penetration into the building envelope.
- Defects in work and materials in the electrical, plumbing and heating delivery and distribution systems.
- Defects in work or materials which result in the detachment, displacement, or deterioration of exterior cladding (such as brickwork, aluminum, or vinyl siding, EIFS).
- Violations of the Ontario Building Code affecting health and safety, including, but not limited to, violations relating to fire safety and the structural adequacy of the home).

The *Seven Year Warranty* covers:

- Major structural defects (MSD)

A major structural defect is defined in the *Act* as any defect in work or materials that results in the failure of a load-bearing part of the home's structure or materially and adversely affects its load-bearing function; or any defect in work or materials that materially and adversely affects the use of the building as a home.

The MSD warranty includes significant damage due to soil movement, major cracks in basement walls, collapse or serious distortion of joints or roof structure and chemical failure of materials. In addition to general exclusions such as damage/defect due to homeowner action, normal wear and tear, third-party damage, secondary/consequential damage or supplementary warranties/agreements, the MSD warranty specifically excludes: dampness not arising from failure of a load-bearing portion of the building; damage to drains or services; and damage to finishes.

Design and Field Reporting for Condominium Projects

Under Registrar Bulletin 19—the major component of Tarion's Risk Management Strategy for Condominiums—vendor must provide required reports at specific times for all Designated Condominiums enrolled under the *Act*.

Designated Condominiums are those described as Type C (includes both Part 9 and Part 3 OBC construction requirements) and Type D (includes only Part 3 OBC construction requirements) in Tarion Registrar Bulletin 11-L and Registrar Bulletin 11-H.

All reports and documents (included in this information package) must be submitted to the condominium corporation at the turnover meeting. A copy of the Final Report should also be provided to the performance auditor.

All Tarion Registrar Bulletins can be accessed on www.tarion.com.

Claims Process

Tarion is responsible for ensuring that vendors provide the warranty coverage that condominium corporations are entitled to under the *Act*, and for ensuring that they follow minimum customer service standards to repair or otherwise resolve warranted items. Under the *Act*, Tarion becomes involved in a claim at the condominium corporation's request when a Statutory Warranty Form is submitted to Tarion.

In addition, residential condominium corporations are required to submit a Performance Audit in compliance with the *Condominium Act* between 6 – 10 months following the registration of the condominium corporation's Declaration and Description. Tarion reviews this document and requests that the builder response to all issues identified. Once the vendor has set out its response on the tracking summary, Tarion will arrange a common element meeting with all parties to discuss the issues and schedule periodic updates.

The intent of the meeting is to try and determine what issues remain unresolved and outstanding. When the vendor and the condominium corporation cannot agree on any of these issues, the condominium corporation may request a conciliation inspection. At the conciliation, a Tarion representative will inspect each disputed item and issue a report with detailed findings as to whether an item is warranted. A copy of the warranty assessment report will be provided to both the vendor and the condominium corporation. The vendor will be given a deadline to resolve all issues covered under the warranty. Refer to Registrar Bulletin 02 at www.tarion.com for more details.

Emergency assistance may be requested any time. Refer to the Emergency Form in this package for more information.

After Conciliation Inspection

A decision letter is issued to the condominium corporation for all items that are assessed as Not Warranted during the Conciliation Inspection. Condominium corporations have the right to appeal decisions made by Tarion to the Ontario Licence Appeal Tribunal (LAT), an independent tribunal created by the Ontario government to provide an impartial appeals process for consumers.

If the builder does not agree with the conciliation report, it can be disputed through the Builder Arbitration Forum (BAF). In this case, Tarion will resolve all warranted claims on behalf of the builder. If the builder is identified as unwilling or unable to honour its warranty obligations, Tarion will settle the claims on the builder's behalf directly with the condominium corporation.