

# Registrar Bulletin - No. 07

## Temporary Relocation Warranty

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### What This Guideline is All About

This Bulletin explains how the recently enacted Temporary Relocation Warranty framework operates.

In some instances, owners of newly constructed homes must temporarily leave their new home after having taken possession because a warranted item has caused a condition or requires a repair that makes their home uninhabitable for health and safety reasons. While out of their home, such owners may incur expenses for temporary accommodation, food, and storage costs. This Temporary Relocation Warranty is intended to encourage the owner and the builder to communicate and work together on a reasonable basis to address any temporary relocation arrangements.

If suitable arrangements cannot be arranged by the owner and builder, then Tarion may be called upon to make determinations as to whether the home is indeed uninhabitable and for how long.

Compensation may then be available to the owner in a warranted situation of \$150 per day (up to a maximum aggregate amount of \$15,000) to help defray any such expenses that may be incurred by the owner. As with other claims paid out by Tarion, builders are required to reimburse Tarion for these amounts.

**Please Note:** This warranty is separate and distinct from delay compensation. A summary of delay compensation rights can be found [here](#).

The word “builder” when used in this Bulletin includes both a vendor and a builder, as applicable. Capitalized terms in this Bulletin if not otherwise defined have the meanings given to them in *Ontario New Home Warranties Plan Act* (ONHWPA).

#### **Please Note**

If there is any conflict or inconsistency between the terms of this Bulletin and the provisions of the ONHWP Act or regulations, then the provisions of the ONHWP Act and regulations shall prevail.

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## Overview of the Temporary Relocation Warranty

Owners should take the steps they judge appropriate to safeguard the health and safety of inhabitants. The Temporary Relocation Warranty is not intended to delay any such necessary emergency action. The Temporary Relocation Warranty is governed by the *ONHWP Act* – specifically Regulation 8-23, a copy of which is available on the Tarion website. The obligations of builders are set out in the regulation and supplemented by this Bulletin.

The Temporary Relocation Warranty is intended to provide a measure of protection to new home owners from the impact of situations where because of a warranted defect/condition in the home it is rendered uninhabitable (see definition below).

Key elements of the Temporary Relocation Warranty are as follows:

- Every builder of a new home warrants to the owner that if, on or after the date of possession, the home or material portion of the home is uninhabitable because of a condition that is covered by a warranty, the builder shall pay the owner the sum of \$150 per day for the period that the home or a material portion of the home is uninhabitable, up to a maximum of \$15,000 per home. The \$150 per day is intended to be a contribution to relocation costs and may not be full reimbursement for all the relocation costs that may be incurred by the owner. Any compensation available is payable to the owner.
- In lieu of the compensation noted above, the builder may, at its expense, provide reasonable alternative accommodation for the displaced inhabitants.

- The warranty described above applies if the home is made uninhabitable due to a condition in common elements covered by the construction warranties in the *ONHWP Act*.

This Temporary Relocation Warranty is intended to encourage owners and their builder to communicate and work together on a reasonable basis to address any temporary relocation arrangements. Where relocation is needed, and if suitable arrangements cannot be arranged by the owner and builder, then Tarion may be called upon to make determinations as to whether the situation is eligible for compensation.

The Temporary Relocation Warranty is available following the date of possession and during the seven-year period thereafter. However, it applies only to claims made within one year following the date on which the home became uninhabitable. For greater certainty, owners may be compensated on more than one occasion for eligible relocation circumstances subject to the \$15,000 per home maximum which amounts are counted towards the overall maximum liability coverage for a home.

The Temporary Relocation Warranty is available in respect of new homes where the purchase agreement (for land and home including a condominium unit) or construction contract (for home constructed on owner's land) was entered into on or after July 1, 2023.

The determination of whether a home is uninhabitable is based upon an objective assessment of the warranted condition, the nature of the repair and mitigation measures, and impacts upon inhabitants, without regard to special health or conditions of a particular individual, e.g. allergies.

For additional guidance, a home may be determined to be uninhabitable if, for example, the warranted item or the repair or remediation of that item has the following impact for more than one day (i.e., 24 hour period):

- renders the kitchen unusable;
- renders all toilets and/or all bathtubs/showers unusable;
- renders the staircase to the upper floor unusable or unsafe;
- adversely affects the structural integrity of the home; or
- involves remediation of mould or another harmful substance.

## Definitions

In this Bulletin, the following terms have the meanings described below:

### Uninhabitable

Uninhabitable means generally the home or a material portion of the home is (or will be in connection with a proposed repair, despite industry standard mitigation measures) objectively unfit or unsafe for the inhabitants as a result of a

condition of or in the home which exists because of a breach of statutory warranty by the builder (e.g., supply of work or materials by the builder that is missing or defective). It will include circumstances where the condition caused by the warranted defect or the repair work proposed for a warranted defect:

- a) Creates an environment where it is objectively unsafe or unhealthy for inhabitants to stay in the home;
- b) Renders a material portion of the home unlivable or unusable;
- c) Renders a critical element of the home that is needed for occupancy unusable (e.g., furnace in winter, domestic water, domestic sewage disposal, all electricity); or
- d) Creates the real risk of a health hazard throughout the home which cannot be adequately mitigated.

#### **Please Note**

Lack of habitability caused by a situation other than a builder's breach of warranty (e.g., act of God or actions by the owner) are not covered by this warranty.

#### **Material Portion of the Home**

Material portion of the home means a portion required to provide the home with at least one reasonable access and egress, living/sitting area, kitchen for cooking and eating, one or more bathrooms which collectively have at least one accessible sink, toilet and shower/bath, bedrooms for inhabitants, home office space (if part of the existing home arrangement).

#### **Inhabitants**

Inhabitants means those persons ordinarily resident at the home and not, for example, possible house guests or pets.

### **Illustrative Situations and Examples**

#### **Situations in which the warranty may apply:**

In each case, the issue is affecting a material portion of the home and resulting from a warranted condition caused by the vendor and, for example:

- If a governmental authority will not issue an occupancy permit;
- If a governmental authority issues an order to vacate;
- Mould, or other environmental contaminant where the levels have been duly tested and shown to be unsafe, and where reasonable mitigation during the repair is not possible or effective;
- Sanding and re-staining hardwood floor throughout the home;
- Total loss of heat to material portions of the home within the heating season (Sept 15 - May 15);
- Total lack of A/C between May 15 and Sept 15 and accompanied with a declared heat alert for the geographical area where the home is located;

- Air or water contamination that reasonably poses a health risk;
- An essential service system serving a material portion of the home, such as plumbing; sewage disposal, HVAC or electrical, fails to function because of a warranted defect;
- Active and continuous water penetration into a material portion of the home causing a health risk;
- A structural issue with the home's interior or exterior that may reasonably pose a safety risk;
- Loss of use of the kitchen for usual meal preparation and consumption;
- Loss of use of all bathrooms for more than a temporary period; or
- Loss of use of the upper floor because of repairs to stairs or floors.

### Situations where coverage may not apply:

These would be cases where the new warranty coverage would not apply:

- If usual spaces within the home can be used during the repair;
- If remedial work can be partitioned off from the rest of the home, mitigating the impact, and the remainder of the home has necessary elements available for reasonable habitation (bathrooms, kitchen, water, heat, sleeping and living space); or
- Malfunctioning of individual pumping fixtures will not engage warranty as long as there are reasonable other operational sinks, toilets and showers available to the occupants.

### Illustrative Examples:

- An unacceptable level of mould is in the basement. The repair requires the basement to be sealed (including HVAC inputs and returns) while the mould remediation is taking place. The basement is accessed through the garage. Once sealed there is no risk of mould going to the rest of the home. Home can be lived in. **Warranty would likely not apply.**
- An unacceptable level of mould is in the basement. Furnace is in the basement. In order to remediate, the furnace needs to be shut down so there will be no heat in the home. The repair is occurring in the winter. Even though the basement can be sealed off during the repairs, it's not reasonable for the owners to live in a home without heat. **Warranty would likely apply.**
- A significant amount of dust will be created by drywall work in a bedroom. The home has a guest bedroom where repair work will not be required. The Builder repair proposal will ensure that dust exposure is mitigated – room will be sealed, vacuum sanders will be used. The owner can sleep in the alternative room. **The Warranty would likely not apply.**
- The same situation as above, however the owner has an asthma condition and is afraid of taking risk that dust mitigation fails. The warranty assessment is an objective test. If the proposed mitigation steps are reasonable industry standard - acceptable in the normal course – the owner's condition will not trigger the warranty. **The warranty would likely not apply.**

- The floor and drywall in entire first floor must be redone. This will cause significant dust issues. All vents sealed / furnace off / access to first floor will be cut-off. Access to upper floors will inevitably require breach of any mitigation measures and probably loss of access to the kitchen and eating area. **Warranty will likely apply.**
- The repair will involve noise during working hours but not overnight. **The warranty would likely not apply.**

## How an Owner Makes a Claim

### A) Where the Home is Uninhabitable

An owner who believes their home is uninhabitable should contact the builder first. (The owner should also consider whether this circumstance also constitutes an “emergency situation” triggering the **Emergency Procedures** found [here](#).)

Owners should take the steps they judge appropriate to safeguard the health and safety of inhabitants. The Temporary Relocation Warranty is not intended to delay any such necessary emergency action.

The builder and owner are expected to agree upon appropriate arrangements to address any such health and safety circumstances. If temporary relocation from the home is necessary, the builder, in lieu of paying compensation, may at its expense provide reasonable alternative accommodation for the displaced inhabitants.

If the parties cannot agree upon mutually acceptable arrangements to address the owner’s concern, or if the builder maintains that the home is not uninhabitable, then the owner may contact Tarion and submit a Temporary Relocation Form.

Upon receipt of the Temporary Relocation Form, Tarion will as soon as practicable investigate and determine whether the circumstances are eligible for temporary relocation compensation and will so notify the owner and builder in writing. The number of days of eligibility will be determined by Tarion in due course based upon actions taken or not taken.

#### Please Note

The Temporary Relocation Form is separate and apart from the Claim Form for the underlying warranted condition/defect.

As part of the investigation and conciliation Tarion may be called upon to assess:

- if the underlying physical condition/defect is warranted;
- whether the warranted condition/defect will or did render the home uninhabitable;
- the number of days it is expected to be or was rendered uninhabitable; and
- if applicable, whether the alternative accommodation offered by the builder was reasonable.

If the builder does not pay the Temporary Relocation compensation amounts which Tarion determines are owing to the owner within 30 days of Tarion’s written confirmation of the amounts owing then:

- Tarion will resolve the claim directly with the owner and pay compensation to the owner from the guarantee fund;
- the builder will be invoiced for the amount of the compensation paid plus an administration fee of 15 per cent and any applicable taxes; and
- the conciliation represented by Tarion's involvement will be assessed as a Chargeable Conciliation unless any exceptions under [Registrar Bulletin 04](#) apply.

## **B) Where a Proposed repair will render a Home Uninhabitable (Builder Does Repair)**

An owner who believes their home will be rendered uninhabitable by a proposed repair or remediation of a warranted defect or condition should contact the builder first.

The builder and owner are expected to try to agree upon appropriate arrangements to address any such health and safety circumstances. If temporary relocation from the home is necessary, the builder, in lieu of paying compensation, may at its expense provide reasonable alternative accommodation for the displaced inhabitants.

If the parties cannot agree upon mutually acceptable arrangements to address the owner's concern, or if the builder maintains that the home will not be rendered uninhabitable, or if the builder is unresponsive, then the owner may contact Tarion and submit a Temporary Relocation Form. An owner should not undertake a repair without involving Tarion as self-help may negate eligibility for warranty protection both for the warranted condition and for temporary relocation compensation.

As part of the investigation and conciliation Tarion may be called upon to assess;

- if the underlying physical condition/defect is warranted;
- whether the proposed repair will render the home uninhabitable;
- the number of days the home is expected to be rendered uninhabitable; and
- if applicable, whether the alternative accommodation offered by the builder was reasonable.

Upon receipt of the Temporary Relocation Form Tarion will investigate as soon as practicable and determine whether the circumstances are eligible for temporary relocation compensation and will so notify the owner and builder in writing. Tarion will determine the number of days of eligibility in due course based upon actions taken or not taken.

If the builder does not pay the Temporary Relocation compensation amounts determined by Tarion to be owing to the owner within 30 days of Tarion's written confirmation of the amounts owing then:

- Tarion will resolve the claim directly with the owner and pay compensation to the owner from the guarantee fund.
- The builder will be invoiced for the amount of the compensation paid plus an administration fee of 15 per cent and any applicable taxes; and
- the conciliation represented by Tarion's involvement will be assessed as a Chargeable Conciliation unless any exceptions under Registrar Bulletin 04 apply.

### **C) Where a Proposed repair will render a Home Uninhabitable (Tarion Resolves the Warranty Claim)**

If in connection with a construction warranty claim, Tarion has conducted a conciliation (and/or an Investigative Inspection) and determines that a defect is warranted and the builder is unresponsive, refuses to resolve the claim or is declared unwilling and unable, Tarion may, if it determines that the warranted defect and/or related repair or remediation will render the home uninhabitable make an assessment regarding temporary relocation costs and process that claim at the same time as the construction warranty claim.

As part of the investigation and conciliation Tarion may be called upon to assess;

- if the underlying physical condition/defect is warranted;
- whether the proposed repair will render the home uninhabitable;
- the number of days the home is expected to be rendered uninhabitable; and
- if applicable, whether the alternative accommodation offered by the builder was reasonable.

Tarion will investigate and determine whether the circumstances are eligible for temporary relocation compensation and will notify the owner and builder in writing. Tarion will determine the number of days of eligibility in due course based upon actions taken or not taken.

The builder will be invoiced for the amount of the compensation paid by Tarion, plus an administration fee of 15 per cent and any applicable taxes. The conciliation will be assessed as a Chargeable Conciliation, unless any exceptions under [\*\*Registrar Bulletin 04\*\*](#) apply.

### **Challenging Tarion's Assessment**

In each of the circumstances referred in A), B), and C) above,

- If an owner does not agree with a Temporary Relocation Warranty assessment, he or she may request a Decision Letter and will have the right to appeal to the Licence Appeal Tribunal
- A builder who disputes a Temporary Relocation Warranty assessment and/or the chargeability of the conciliation may request an arbitration according to the rules and criteria of BAF. Whether the claim is suitable for the BAF forum is in Tarion's discretion.

Registrar

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