

Discussion Guide

Proposed Changes to Deposit Policy to Ensure Coverage for Current and Future Purchasers

Tarion is seeking public feedback on proposed changes to Tarion's deposit coverage framework to help combat illegal vending of new homes and ensure coverage for current and future new home purchasers.

Specifically, Tarion is consulting on the following proposed changes:

1. Requiring purchasers of new freehold homes (including freehold homes on parcels-of-tied-land) to provide notice and information to Tarion about their new home purchase within a specific period of time after entering into an agreement of purchase and sale with a vendor/builder to qualify for the maximum entitlement to deposit coverage.
 - a. The notice to Tarion would include information about the purchaser, builder, and deposit paid.
2. Introduce a variable compensation limit for freehold home deposit coverage depending upon whether the purchaser provides notice to Tarion that they have entered into a new home purchase agreement as would be required. Purchasers that do not provide notice to Tarion would continue to be eligible for deposit coverage at the variable limit.

In all cases, consumers will continue to receive the full warranty coverage and protections of the construction warranty against defects in their new home.

Additionally, Tarion is seeking public input on changing how Tarion collects fees; namely to charge a portion of the enrolment fee to vendors/builders earlier before purchase agreements are signed to better cover the deposit protection risk.

Providing notice to Tarion of the new home purchase agreement will involve minimal effort for purchasers and would be online, free, and easy to do – and gives Tarion the ability to provide information about the warranty program directly to the purchaser. This change would be supported by a continued, large public awareness campaign to educate potential purchasers, realtors, legal professionals, and mortgage professionals.

When consumers notify Tarion that they have entered into an agreement to purchase a new home, this will allow Tarion to verify that the builder has complied with licensing requirements, is authorized to sell, and take proactive actions to mitigate deposit and warranty claim losses and combat illegal vending with the Home Construction Regulatory Authority (HCRA). For example – action may be taken where a purchaser provides notice of entering an agreement with a builder that does not match Tarion's records relating to the builder's license and enrolments. The changes are meant to increase consumer engagement in relation to the deposit warranty process.

These proposed changes are necessary to ensure that purchasers continue to benefit from deposit coverage for new freehold home purchasers. Without a change to the program, deposit coverage exposure for freehold homes is impossible for Tarion to assess and fundamentally threatens the viability of the warranty program, impacting Tarion's ability to provide deposit coverage and leaving consumers at risk.

Please review the consultation questions found in this document and submit any feedback on the proposed changes to submissions@tarion.com by November 25, 2024.

While this consultation focusses on specific proposed changes and questions, if you have additional comments, please send them to submissions@tarion.com. Please title these with the subject “Additional Submissions”.

Tarion recognizes that not every topic will be relevant to each individual or organization. Please provide comments on the topics that are relevant to you or your organization.

Background on Tarion

Tarion is a consumer protection organization authorized by the provincial government to administer the Ontario New Home Warranties Plan Act (ONHWPA).

A key component of the organization’s mandate is managing the guarantee fund (the “Fund”) that provides compensation to consumers for warranty claims where a builder has failed to fulfill its warranty obligations. The Fund also provides a shield to protect consumers against a significant claims event which causes catastrophic losses – for example, widespread failure of building materials or building techniques – that have bankrupted other warranty programs in Canada and abroad.

Tarion’s revenue to sustain operations and support the Fund comes from enrolment fees paid by builders and vendors, which in some cases can be passed on to home buyers as a price adjustment at closing. Tarion does not receive funding from the government or the public and relies exclusively upon industry fees and investment income earned on the Fund.

The amount of the enrolment fee varies according to home sale price and is set out in [Registrar Bulletin 15](#).

The current fees range from \$585 (for homes with a purchase price up to \$300,000) to \$6,000 (for homes with purchase price of \$4 million or more), and the average enrolment fee (considering volume of homes in each band) is approximately \$1,750. This single fee is paid by the vendor/builder when the home is enrolled in the warranty program and provides pre-possession coverage and seven years of warranty coverage, which amounts to about \$250/year if it were charged as an annual amount.

To ensure the sufficiency of the Fund, Tarion follows the Own Risk and Solvency Assessment (ORSA) guideline for federally regulated insurers (established by the Office of the Superintendent of Financial Institutions (OSFI) to maintain financial reporting transparency, strong risk assessment and management.

Current State of Deposit Coverage

Through ONHWPA, Ontario is the only Canadian jurisdiction that requires builders to provide mandatory deposit coverage to all purchasers of new freehold homes¹, backstopped by a compensation fund. Currently, all new home purchasers are eligible for deposit protection – regardless of whether or not the builder was acting lawfully.

Deposit coverage for new freehold homes² depends on the purchase price of the home. If the sale price is \$600,000 or less, there is deposit coverage up to \$60,000. For sale prices over \$600,000, the deposit coverage amount is 10% of the purchase price (to a maximum of \$100,000). This was last updated in 2018.

It is illegal to sell a new home without (a) having a licence issued by the Home Construction Regulatory Authority (HCRA), and (b) having a Confirmation of Qualification for Enrolment (QFE) issued by Tarion for the home being sold.

The deposit coverage for a homeowner arises when they sign the agreement of purchase and sale (purchase agreement). That is also when the risk to the Fund arises. Under the current fee structure, enrolment fees must be paid only before the start of construction of the home. This means that the deposit protection risk is not funded in advance by any fees. In most cases, for example, where a builder goes bankrupt and Tarion pays deposit claims, no enrolment fees will have been paid in respect of the cancelled purchase agreements due to the timing of when enrolment fees are currently collected.

For freehold homes that have received the required approvals from Tarion, Tarion has had the opportunity to mitigate the deposit compensation risk. For example, Tarion can vet builders and vendors, limit the number of homes approved, and take security as part of the QFE and enrolment process. For homes that have not received confirmation of QFE (or enrolment confirmation), Tarion has no opportunity to mitigate purchasers' risks because it is unaware of the risk.

If a builder enters a purchase agreement to sell a home to a new home buyer without QFE approval from Tarion, that is illegal and could put the builder's licence with the HCRA in jeopardy. However, if a builder wrongfully enters into an illegal sale, Tarion does not have any independent means by which it can track or monitor that conduct. Furthermore, Tarion cannot expect the rogue builder to self-report. Tarion will not know how many deposits are taken or what the aggregate amount of those deposits is, creating an unknown level of exposure and risk.

In general, engaging in this kind of conduct is deterred by the risk that a builder may lose their licence. However, that deterrent may not always be effective especially in extreme market conditions, including the market conditions that are occurring now. The potential exposure to illegal deposits is therefore effectively unlimited and unquantifiable.

This in turn means that, without specific mitigation, the future solvency of the Fund could be put at risk, compromising warranty protections for Ontarians.

¹ Condominium unit deposits are protected under a separate framework established by the Condominium Act, 1998.

² Freehold Home includes freehold homes on parcels-of-tied-land.

Historically, the general deterrence of the licensing process has resulted in deposit risk being relatively low for freehold homes. From 2005 to 2021, the total amount of deposit claims paid out was approximately \$15 Million, just under \$1 Million per year.

However, from 2023 to 2024 there has been a marked increase in builder receiverships, as well as a historic increase in exposure to deposits collected on illegal sales. In 2023, Tarion faced an extraordinary claim event associated with illegally sold homes and anticipates the impact on the Fund to be as high as \$100 Million. In addition, the sector anticipates more receiverships based on market conditions.

It is important to note that, unlike normal construction warranty losses (in which Tarion can pursue compensation from the builder for any payments made), deposit losses frequently arise in the context of builder bankruptcies; the likelihood of any recovery of amounts paid out to homeowners is low. Recovery is not a material source of loss mitigation for deposit coverage claims.

Tarion has implemented underwriting improvements (increased security, increased risk reviews for example) and a new voluntary purchase agreement notification. However, these interim steps will not close the risk gap for Tarion (and for purchasers) as Tarion currently can not quantify and underwrite the risk associated with illegal agreements and further changes are required to reduce this risk.

If no mitigation is put in place to address the risk to the Fund that protects consumers, Tarion may not be able to provide sustainable coverage for existing and future purchasers under the Fund, leaving consumers exposed. This could result in a recommendation to curtail the deposit coverage entirely or reduce all of the applicable limits.

These options have considerable negative impacts and increase costs for both consumers and the industry. Removing deposit protection entirely would leave all purchasers unprotected and does not align with Tarion's consumer protection mandate.

We consider the option requiring purchasers to provide notice when they sign a purchase agreement to be a reasonable near-term mitigation strategy, as this option does not impact housing affordability, is easy for the purchaser to use, and **will allow Tarion to still provide deposit coverage to all purchasers.**

Proposed Change – Prompt Notification of Purchase Agreements

Tarion is proposing changes to the deposit coverage policy, requiring purchasers to provide notice when they sign a purchase agreement, to help combat illegal vending of new homes and ensure protection for future new home purchasers.

Specifically, Tarion is consulting on the following changes:

1. Requiring purchasers of new freehold homes (including freehold homes on parcels-of-tied-land) to provide notice and information to Tarion about their new home purchase within a specific period of time after entering into an agreement of purchase and sale with a vendor/builder to qualify for the maximum entitlement to deposit coverage.
 - a. The notice to Tarion would include information about the purchaser, builder, and deposit paid.
2. Introduce a variable compensation limit for freehold home deposit coverage depending upon whether the purchaser provides notice to Tarion that they have entered into a new home purchase agreement as would be required. Purchasers that do not provide notice to Tarion would continue to be eligible for deposit coverage at the variable limit.

For freehold home purchasers who provide notice of their purchase agreement, their entitlement to deposit coverage remains at the current level, which depends on the purchase price and type of home they buy. As noted above, If the price of the new freehold home is \$600,000 or less, the deposit is covered for up to \$60,000. If the purchase price is over \$600,000, the deposit is covered for 10 per cent of the purchase price, up to a maximum of \$100,000.

For freehold homes where the purchasers do not provide notice within the required time of their purchase agreement, their compensation limits will be subject to a further sub-limit (E.g. \$5 Million) in any given year. Such claims will be aggregated at the end of each calendar year. If the total is less than sublimit, their deposit coverage limit will not be impacted, and their claim would be subject to the limits noted above. However, if the aggregate claims are more than the sublimit in a calendar year, their compensation limit will be based on a proportional share derived from the difference between the aggregate claims and sublimit.

In all cases, consumers will continue to receive warranty coverage of the construction warranty for defects in their new home.

Tarion did some initial research to help understand how consumers would feel about a notification requirement. At the end of 2023, we commissioned Environics Research to survey Ontarians planning to buy a home in the near future to develop our annual New Home Buyers Report and, as part of that work, asked whether they would have any objection to registering their purchase agreements with Tarion if that was made a condition to qualify for deposit coverage – and 91% of potential new home purchasers responded positively.

Mandatory notification to Tarion will enable Tarion to both assess the magnitude of deposit exposure and to detect illegal vending activities earlier. The earlier identification of illegal vending will allow Tarion to take proactive actions to mitigate claim losses and combat illegal vending of new homes with the HCRA.

Establishing a record of purchase agreements signed will also create a strong deterrent to illegal vending as the activity will be more likely to be exposed (and will also be exposed early in the process).

Under this proposal, purchasers would get information on how to easily provide notice of their purchase agreement directly in the Warranty Information Sheet accompanying the purchase agreement as well as other outreach materials.

This will also enhance consumer protection because if, in the course of providing notice of new purchase agreements, illegal vending is identified by Tarion then Tarion will have the ability to immediately contact the purchaser, get clarification on the situation, and take appropriate actions in partnership with the HCRA to support the purchaser and address the illegal vending.

Tarion would also recommend that purchasers of new condominium units and contract homes give notice of their purchase agreements/construction contracts, as such information will assist in efforts to thwart illegal sales activity, but the deposit and financial loss compensation eligibility will not be affected in the same way as for freehold homes.

As part of this proposal, Tarion would need to conduct a continued, large public awareness campaign to educate potential purchasers, realtors, legal professionals, and mortgage professionals on the changes. These stakeholder groups will need to know the requirements of providing notice of purchase agreements is a critical part of buying a newly constructed home and potential negative impacts of not following the proper process. This would require a multi-channel approach to ensure Tarion is accurately targeting the right audiences.

Additionally, Tarion is consulting on proposing to change how Tarion collects enrolment fees, namely, to charge a portion of the enrolment fee to vendors/builders earlier - before purchase agreements are signed - to better cover the deposit protection risk.

Currently, the enrolment fee is required to be paid when builders enrol the home; however, the deposit risk arises well before the enrolment fee is paid, and therefore, the deposit risk is unfunded.

As part of this proposal, Tarion is also considering charging builders the enrolment fee or portion of the enrolment fee that covers deposit risk earlier at the time of the QFE – rather than later in the process when the home is enrolled. This change would add transparency to the cost of deposit protection and is consistent with warranty industry standards.

Stakeholder Impacts

Purchasers/Consumers

- Purchasers will continue to receive the warranty coverage of the construction warranty for defects in their new home.
- Purchasers and current homeowners would benefit from the continued existence of a robust guarantee fund for warranty claims.
- There would be a new requirement for freehold purchasers, but one which would involve minimal effort for purchasers with only a few key pieces of information needing to be entered to provide notice of the purchase agreement.
- Following notification of new home purchase agreements such purchasers would now be advised about what they are covered for (for example if they provided more than \$100K they would know their exposure), which is new and important information for purchasers to know.
- Purchasers of freehold homes who duly provide notice of their purchase agreements will continue to be eligible for full coverage up to the current \$100,000 limit.
- Purchasers of freehold homes who do not promptly provide notice of their purchase agreements will continue to be eligible for coverage up to the current \$100,000 limit but, depending upon the total number of claims in a calendar year, their entitlement will be based on a proportional share derived from the difference between the aggregate claims and sublimit (e.g., \$5M).
- Tarion would need to engage a large public awareness campaign leading up to any change to educate potential purchasers on these new requirements.
- There would be no impact to purchasers of condos or contract homes.

Builders and Vendors

- Tracking purchase agreements will be an invaluable tool in combating illegal vending, as builders and vendors will be unable to “stay under the radar” because purchasers will be disclosing the existence of the new home transaction, and this would benefit licensed builders and vendors by reducing competition with illegal vendors and reputational harm of illegal building to the industry.
- Based on the proposal, a portion of fees could be required to be paid by vendors earlier in the process - at the time of QFE.

Real Estate Agents, Lawyers, and Others

- As key agents who participate in the new home sale and re-sale market, real estate and legal professionals have a key role to play in advising their purchaser clients of the need to provide notice of their purchase agreement to Tarion.
- Another key stakeholder would be mortgage and financial lending professionals who are involved with the financing and payment of the deposit. Tarion would work directly with industry groups and financial institutions so that it becomes widely understood that providing notice of purchase agreements is a critical part of buying a newly constructed home when discussing financing with potential purchasers.
- Tarion could share information about builder activity with the Home Construction Regulatory Authority, providing insight into who is involved in illegal selling and building activity, enabling them to better target enforcement activities.

Tarion

- By requiring prompt notification of purchase agreements, Tarion would be in a position to track whether or not the builder was licensed or had the appropriate QFE and would be able to take appropriate actions to mitigate the risk to the guarantee fund in a more immediate timeframe.
- Tarion would also be able to track the magnitude of the Fund's exposure to deposit coverage claims, allowing for better financial management of the Fund.
- Additionally, Tarion would be able to immediately act and intervene to address illegal activity once identified.

Questions for Stakeholders to Consider

1. Are there additional ways to ensure that purchasers can check if their builder is licensed and authorized to sell by Tarion?
2. Is it reasonable to ask a purchaser to provide information to Tarion about their new home purchase in order to help Tarion protect that purchaser's deposit?
3. If a purchaser does not provide any information to Tarion to help Tarion protect their deposit, is it reasonable that the coverage limit be reduced?
4. What is a reasonable amount of time for a purchaser to provide notice to Tarion that they have entered into a purchase agreement – i.e. 10 days, 30 days, or 45 days?
5. What kind of situations could arise where it may be unfair to reduce deposit coverage to a homeowner because the homeowner did not provide information to Tarion about the purchase on time?
6. Consumer awareness will be important to ensure that homeowners know how to register for full deposit protection - what are the best ways to communicate this information to consumers?
7. What are the business impacts if Tarion charged a portion of the enrolment fee, associated with providing deposit protection, earlier in the new home process (as part of the QFE approval)?
8. Do you have any other feedback on the proposed changes to deposit coverage?