

Tarion Annual Public Meeting April 26, 2010

The second Tarion Annual Public Meeting took place on Monday, April 26, 2010 at the North York Novotel Hotel.

Opening Remarks – Chair of the Board

The meeting commenced at 6:30 p.m. with opening remarks from the Chair of Tarion's Board of Directors, Harry Herskowitz.

Mr. Herskowitz welcomed attendees and spoke about his background in the building industry and on the Tarion Board. Mr. Herskowitz proceeded to introduce the Board of Directors and present an overview of the role of the Board. He advised that the Board is comprised of 15 members and 2 associate members that bring a wide variety of experience and skills to the table. The Directors adequately represent all four of Tarion's key stakeholders: new home buyers, new home builders, the provincial government and the company's employees. Mr. Herskowitz outlined the responsibilities of each of the Board's seven standing committees and spoke about the development of the Regulatory Affairs Committee, a result of the province's review of all of the Delegated Administrative Authorities. He also stressed the importance of consultation and teamwork when the Board conducts its business.

Mr. Herskowitz introduced Tarion's Corporate Leadership Team. He then reviewed the evening's agenda and established the Rules of Order for the meeting.

An overview of Tarion's legislatively created mandate was provided. Mr. Herskowitz advised that Tarion is a not-for-profit corporation created in 1976 to administer the *Ontario New Home Warranties Plan Act*. The *Act* provides for the regulation of Ontario new home builders and the administration of statutory warranties designed to protect homeowners from certain defaults and builder failures. Mr. Herskowitz explained that, as part of its mandate, Tarion provides new homeowners with a forum for complaints about builders, assists with their timely and fair resolution, maintains a guarantee fund to provide compensation, and is responsible for educating new home builders to promote improvement in the quality of housing in Ontario.

2009 Overview – President and Chief Executive Officer

Tarion President and CEO, Howard Bogach, presented an overview of key operational information for 2009. A total of 47,649 new homes were enrolled with Tarion during the year. This compares with a forecast of 30,000 enrolments. Mr. Bogach spoke of the effect of the economy on product mix: overall, condominium unit enrolments had dropped by almost 52 percent, while freehold home enrolments were only down by 15 percent.

As of yearend, there were 5,517 builders registered with Tarion. Registrations decreased by six percent in 2009, marking the first decline in several years. Mr. Bogach explained the role played by Tarion in licensing builders, the risk management involved and the power Tarion has to deny builder registration and renewal applications. In 2009, 94 builders were denied a license or had their license revoked.

Mr. Bogach also spoke about Tarion's mandate to investigate and prosecute illegal builders. Illegal building involves the construction of a new home without a license or the sale of a newly built home that has not been enrolled with Tarion. In 2009, Tarion's enforcement activities led to 241 convictions and fines totaling over \$1 million. In 2010, Tarion will be engaging a criminal analyst to assist in examining building permit information, which will be received as part of an information-sharing agreement with the Ministry of Municipal Affairs and Housing.

An overview of the warranty claim process followed. In 2009 Tarion paid approximately 1,450 claims, totaling \$21 million dollars, an increase of 50% over claims paid in 2008. This can be attributed to a higher than usual number of small claims related to builders that encountered financial difficulties due to the economy and the start of a high cost repair project.

In July 2009, Tarion launched MyHome, a portal that allows homeowners to manage their warranty online. Over 5,000 homeowners signed up for this new service in the first six months which allows them to submit forms online quickly and easily and receive notifications about upcoming deadlines and key dates during their warranty period.

In 2009, Tarion also moved its popular New Home Buyer Seminars online providing a more convenient way for new and prospective home buyers across the province to access information about the warranty process. A welcome package was also developed, which is being sent to homeowners during the first 30 days after they move into their new home. It includes a letter explaining key warranty dates and a 10-Minute Warranty Guide DVD highlighting key warranty features.

Tarion also provides educational support to builders. Mr. Bogach spoke about the File Review Clinics that have been running for several years now, 58 of which were held in 2009

He then addressed homeowner satisfaction, referring to the results of an extensive customer service survey conducted in 2009. It was mailed to over 47,000 purchasers who took possession of a new home between October 1, 2002 and September 30, 2009 to which over 10,000 new homeowners responded. He explained the scope of this survey was greater than previous studies which went only to homeowners who were in their first year of possession.

The results for respondents in their first year of warranty coverage mirrored those of the previous year. Eighty-six percent expressed a favourable opinion of Tarion and viewed the company as easy to do business with, accessible, attentive to the needs and concerns of homeowners, helpful in creating an understanding of the warranty, and effective in ensuring that builders fulfilled their warranty obligations. Sixty-four percent of homeowners who had experienced a conciliation or claim inspection with Tarion, said they were highly satisfied with the courtesy of their Tarion representative. This represents a 4% increase over the previous year's results.

For respondents that were in their second through seventh year of warranty coverage, Mr. Bogach explained that the results indicate that impressions of and satisfaction levels with Tarion decline marginally in years 2 through 5, and more steeply in years 6 and 7.

Mr. Bogach advised attendees that a telephone survey had also been conducted with 275 randomly selected builders in 2009. The results were compared with a previous study conducted in 2007.

Ninety-five percent of builders said they view Tarion as accessible, compared to 90% in 2007 And 75% said that Tarion is fair, compared to 86% in 2007.

The most significant change was in respondents' views about changes made by Tarion over the previous 12 months. In 2007, 11% of builders said they had issues with changes made by Tarion during the previous year, however in 2009, this figure rose to 42%. Changes that had been made during the period in question included changes to the terms of warranty coverage such that builders were made responsible for claims over \$150,000, to a maximum of \$300,000. In addition, several fee increases were also introduced during 2009. Mr. Bogach explained the fees, which hadn't been changed in several years, had been increased as part of the 2009 Business Plan with a view toward cost recovery. He provided details on the various changes.

Financial Overview – Vice President and Chief Financial Officer

Mr. Bogach introduced Tarion's outgoing Vice President and Chief Financial Officer, John Becevello who would be moving to a new role as Vice President, Licensing and Underwriting effective May 1, 2010. He also introduced Mr. Becevello's successor, Edmond Lee.

Mr. Becevello presented Tarion's financial results for the year ended December 31, 2009 focusing on investment results, warranty liabilities and corporate equity. In 2009, investments increased by approximately \$19 million and warranty liabilities decreased by \$4.6 million. Tarion's total equity increased by \$24 million, due to a positive bottom line in the statement of operations and market value increases in the stock portfolio.

Ombudsperson Office Overview – Ombudsperson

Tarion's Ombudsperson, Ian Darling provided an overview of the 2009 Annual Report of the New Home Buyer Ombudsperson Office. As the Office was created in 2008, this was the first annual report presented. It is available on in the Ombudsperson section of tarion.com.

Mr. Darling outlined the breakdown of activities of the Ombudsperson Office, the number and types of complaints received throughout the year and how the Office determines which cases fall under its jurisdiction. He also stressed the independence of his Office and the fact that its work is based on the principles of fairness and impartiality. Mr. Darling thanked his staff for their work in 2009, and Tarion staff and management for their cooperation.

Closing Remarks – President and Chief Executive Officer

Mr. Bogach commented that 2009 was another challenging year for Tarion, mainly due to the economic situation. Tarion feared the housing market might collapse and that a resulting decline in new home enrolments and reduction in fees would impact the organization's ability to deliver the high quality of service that homeowners and builders need. Fortunately, the financial situation turned out better than expected.

He emphasized that challenging times create opportunities. Tarion had to look at ways to deliver services efficiently, while meeting the demands of all of its stakeholders. He explained that outreach efforts to key stakeholders had been increased as had Tarion's consumer focus. Mr. Bogach highlighted

an initiative called "Work the File" which has the potential to significantly reduce the time and expense of inspections for builders, consumers and Tarion. It has already helped to increase the level of communication between homeowners and builders and minimize their frustration with the warranty process.

Mr. Bogach concluded his remarks by calling attention to the work performed by Tarion employees. He stressed how important their efforts and commitment are to Tarion's ability to deliver the highest level of service possible. He also thanked the Board of Directors and senior management for their role in Tarion's success in 2009.

Question and Answer Period

Mr. Bogach opened the floor to questions from the audience.

Q: I believe that the new Tarion fee is not based on the cost of the new home and just wanted to know if the fee is grandfathered if the unit was bought 3 or 4 years ago, but the condominium has still not been completed?

A: The fee you pay is based on the enrolment fee the builder paid to Tarion when they enrolled the project with us. In the case of a condominium, that would have been approximately when they obtained a building permit or 30 days prior to commencement of construction. Whatever the enrolment fee was at that particular time is what you should have been charged. It isn't a question of grandfathering, it is a matter of when construction started on the phase that your unit belongs to.

Q: How do we find out what fee the builder paid to Tarion?

A: Call us, give us your municipal address and we will look it up for you.

Q: Tarion used to have as part of the education mandate for new homeowners, public sessions that have now been replaced by webinars. Have you totally abandoned that format of informing consumers or will there be more?

A: We have temporarily abandoned the in-person seminars. The rationale was that the seminars were proving to be semi-effective in the Toronto area. However, we weren't reaching people outside of Toronto. We believe the webinar is a better way to reach out to all Ontarians. We will re-evaluate the effectiveness of the webinar, how many people are using it and whether we have to supplement that.

Q: I know that Tarion is designed to deal with deficiencies in new homes. What about deficiencies that don't present themselves in the first couple of years, but senior individuals in construction can see that they may become a problem?

A: That is an interesting question. I'm not sure how we can deal with this one without having some form of a crystal ball to see what is going to be versus what is. Our warranty program is designed to identify noted deficiencies that are there. If someone sees something as a deficiency, they should be able to see it there today. I don't know how you identify something and say that it is a future deficiency. We do look at issues now that may not meet the Building Code, etc. But to look at something and say that there may be a failure in the future, is very difficult. If there are specifics that you would like to provide, we would be happy to talk to you about a specific issue.

Q: Is Tarion still using the value of work as a determinant in the meaning of a builder in the Warranties Plan Act, in any which shape or form?

A: We are not.

Q. So you are not using values of work, at all?

A: Value of work may come into the 2 tests that are being applied these days as to “what is a new home?” - those are, who has control over the construction of the home, and who has provided the essential elements of the home. So the value of work may come into those particular tests. But the value of work in place that you are referring to, was a test that was applied in past years. And the tests have evolved over the years that are being applied by the License Appeal Tribunal.

Q. So the answer is that you are still using the value of work contributed by either the homeowner or the builder to determine the meaning of a builder?

A. I don't want to debate this, but let me give you what I think is the clear answer on this issue, so let me restate it one more time. We have 2 tests as to what is there: who is in control of this project and certain key functions, and who is supplying those key functions along the way. Along that issue, the amount that is spent in those functions can be of relevance. But the amount, on its own, is not being looked at. It is only if it is a matter of who is controlling what and what services are provided. So the amount is not included on its own. I hope that is a specific answer.

Q. It is not. The answer is, yes you are still looking at the cost...

A. Thank you for your comments, Dr. Shuman. I appreciate what you are saying. I am not prepared to sit and debate that point with you. I have corresponded with you over that. We don't agree on all of the interpretations. I have been quite clear in what I have said, and will say it one more time. We don't apply the dollar test of its own. We do apply a test that looks at who is in control of the project and looks at what aspects of the project are supplied by that party. And, I think that answers your question.

Q. It does. You are still using the test.

A. Thank you, Dr. Shuman.

Q. Many homeowners use the Tarion website to research builders ahead of time, to see if they have any chargeable conciliations. By using that site, it is quite clear that many conciliations that should be chargeable are not on there. In fact, when you do research and look at how many homes a builder has enrolled and how many charges they have...to me, it looks statistically impossible that so few homes ever have charges. Is there something to look at, to say, can it be more transparent to homeowners to have a way to understand, which builders have clean records and which builders have charges?

A. It is an area that we are working on. We struggle with it, too. There is a complexity of rules that surround whether something is chargeable or not, based on things like: did a builder have access, was it identified beforehand on a form? So there are all these issues that our Consumer Committee is working on. We are trying to get a handle on what the right way is to deal with it. And we will acknowledge that it is a bit of a problematic issue for us.

Q. If the builder, after enrolling a home, goes through the process and then disputes whether the home should be enrolled – would that be grounds to make something non-chargeable?

A. It could be. There is a Builder Arbitration Forum which the builder can take their issues to, and if they are successful it would be impossible for Tarion to show an issue on that home as chargeable because the home would not be enrolled with Tarion. Similarly, a homeowner can go to the License Appeal Tribunal to appeal a decision. Both forums have the ability to overturn chargeability.

Q. But can something be deemed not-chargeable before going to Builder Arbitration Forum or LAT?

A. There are a couple of circumstances that do fall into this category. The builder may fix something that wasn't identified on the original claim form, but not within the prescribed warranty timeframe. So there are circumstances that do have some of those issues. That is why I said that those are very complex issues for us.

Q. Why is that Tarion doesn't strive to hire people that are actually qualified to look at chargeable conciliations? Why is it that the answer I consistently get is that Tarion staff is trained by Tarion and they don't need to know anything more than that? And then they respond on a claim that they may not have ever known was a violation or not, and when you ask them to quantify their experience as to why they are making that judgment, they just say "well, that is what we decide". And when you find out what their qualifications are, after months of probing, you find that they indeed have no qualifications. So how do you rely on this person to make such a huge decision when it is essentially handled by lawyers somewhere, who have never seen what you are talking about?

A. So your question to me is what are the qualifications of Tarion parties?

Q. No, why does Tarion not seek out people with qualifications if they are going to put them in these field positions?

A. Tarion does hire people with qualifications. Occasionally, there are issues that require advanced qualifications and we will often bring in professional firms to give us advice on those issues. And that is generally how we manage those aspects. If you are concerned about a specific party within Tarion for their qualifications, I would be happy to provide them to you.

Q. Well, I have asked that question many times and never got a reasonable response. Why is it that you stand up here, read from a booklet and tell us what your process is. However, when you are actually in the process that is not how essentially the process goes. And then when you pursue it, and pursue it and are finally found to be right and credible, Tarion responds by saying, "oh we have all these homes registered and we can't possibly attend to the needs of every homeowner that complains". When I know that when I send an email, I get a receipt, so I know that it is being read and I know it is being looked at, but it is not being handled. That, I think, is the problem that consumers have. When you stand in front of a podium and read off literature that was designed by you, to report to your own staff on how it should work, I think you are not listening to the consumer who says "hey, it is not working...and we have some serious problems on our hands here. And delay, delay, delay – lawyer up, lawyer up – is not necessarily going to be the answer here. When you are specifically putting people in harm's way."

A. Let me respond to your question. If you are speaking of matters that relate to your specific home, I am happy to talk to you after the meeting. As I said earlier, we have half a million homes in the process. I will admit to you that there are occasions where things fall through the cracks and issues happen. We have never said that we are perfect. We try and adjust those issues. If those are your concerns, I am happy to try to resolve your concern, whatever it is. But, I think for the most part, the processes do work as described.

Are there any other questions?

Q. I'm from a builder and my only request from you, Tarion, is that from the experiences we have had lately, we have noticed a lot of inconsistencies in your decisions with respect to various inspections. There are so many inconsistencies, it isn't even funny. We don't know on a particular issue, whether it is going to be warranted or not. We are just looking, from a builder's perspective, for you to please keep that in mind.

A. I appreciate your comments.

Are there other questions? Not seeing any other questions, I would like to adjourn the meeting and like I said, if anybody has any questions, I am happy to stay beyond the meeting and sort out issues. Thank you very much for coming out. We really do appreciate this. I appreciate you giving up time to give us further feedback on Tarion.