

**TARION WARRANTY CORPORATION
BUILDER ARBITRATION FORUM**

FREQUENTLY ASKED QUESTIONS

What is Tarion Warranty Corporation?

Tarion Warranty Corporation (“Tarion”) is the private not-for-profit corporation that administers the *Ontario New Home Warranties Plan Act* (the “ONHWP Act”). This involves two principal roles: (i) backstopping vendor statutory new home warranties; and (ii) licensing new home builders.

Tarion receives no government funding and is financed entirely by builder registration, renewal and enrolment fees.

How is Tarion governed?

Tarion is governed by a Board of Directors with 16 members with backgrounds and skill sets relating to the housing industry, home buyer interests, consumer advocates, the financial services and provincial and municipal governments.

Tarion reports to the Minister of Consumer Services.

What is the Builder Arbitration Forum?

The Builder Arbitration Forum is a contractual arbitration process to deal with warranty related disputes between builders and Tarion in a way that is impartial, timely, affordable and final.

The Forum will cover disputes about whether a homeowner’s warranty claims are or are not warranted, and whether a conciliation is chargeable.

The parties will select an arbitrator from a roster comprised of approved private sector arbitrators. The arbitrator will hear the evidence and arguments from both parties and will then issue a final and binding decision.

What do ‘warranted’ and ‘chargeable conciliation’ mean?

‘Warranted’ means that a complaint item raised by a homeowner is properly warranted (a remedy is available) under the warranties set out in s. 13 of the ONHWP Act and in Part IV of Regulation 892 under the Act.

A “chargeable conciliation” is a conciliation in which Tarion determines that: (i) one or more items reported by the homeowner is warranted under the *Ontario New Home Warranties Plan Act* and the builder failed to repair or resolve the items during the applicable repair period; and (ii) no exception to chargeability as outlined in Builder Bulletin 20 applies.

What is “arbitration”?

“Arbitration” is a process on which the builder and Tarion both agree in advance, by signing an Arbitration Agreement, to submit their dispute to an impartial third party – the arbitrator. The arbitrator will listen to the evidence and arguments presented by both parties and make a decision that is final and binding upon them.

Why is a Builder Arbitration Forum needed?

If a homeowner disagrees with Tarion’s warranty assessment as set out in a Warranty Assessment Report, the homeowner may request a formal Decision Letter and thereafter has the right to request a hearing before the Licence Appeal Tribunal (“LAT”). A builder may and often is an added party to such proceedings.

However, if a warranty assessment or a chargeability assessment is adverse to the builder, there is no recourse for a builder to LAT. The ability to challenge Tarion’s warranty assessments or chargeability assessments at BAF allows a builder to dispute those assessments without affecting its registration. (Failure by a builder to meet its warranty obligations may be a ground for refusing renewal or revoking a builder’s registration.)

ISSUES THAT MAY BE CHALLENGED AT BAF

Subject to the eligibility requirements discussed later in this Bulletin, a builder may raise the following issues in arbitration with respect to a Warranty Assessment Report:

- (i) whether an alleged defect or deficiency in a Warranty Assessment Report is or is not warranted;
- (ii) whether a conciliation is or is not properly a “chargeable conciliation;” and
- (iii) whether Tarion should be ordered to reimburse the builder where a builder has made a repair or paid compensation under protest.

If a builder appeals to BAF, Tarion may request that the Arbitrator order the Builder to indemnify Tarion for reasonable amounts invoiced in respect of repairs done or payments made by Tarion to resolve one or more of the items found to be warranted and appealed in the Arbitration.

At Tarion’s discretion, a builder may also challenge Tarion’s determination on a deposit refund claim, a delay compensation claim, or a financial loss claim, as well as any assessment of a chargeable conciliation in connection with each.

What are the advantages of the Builder Arbitration Forum?

The Builder Arbitration Forum provides a confidential dispute resolution mechanism for builders – one that is timely, efficient, impartial and credible. It allows builders to dispute certain warranty related rulings by Tarion without putting their Registration at risk.

Importantly, an arbitration under BAF is between the builder and Tarion. It will have *no impact*

on the homeowner's rights for repairs or compensation. If items have been found to be warranted in the Warranty Assessment Report, the homeowner can still expect repairs or compensation, even if the builder decides to challenge the report using BAF. This can occur in one of two ways:

- Tarion can arrange for repairs or can compensate the homeowner. The homeowner will not have to wait until the arbitration is completed for this to happen.
- The builder can make the repairs "under protest" and let the arbitrator decide if the items were warranted.

Is the Builder Arbitration Forum mandatory?

The Forum is optional for builders. The Forum provides the only opportunity for a builder to dispute, through the arbitration process, warranted and/or chargeability findings made by Tarion in a Warranty Assessment Report.

What are the procedures and timelines for the Builder Arbitration Forum?

The Forum's process starts when a Warranty Assessment Report ("WAR") is issued by Tarion. The entire process is designed to be completed in 84 days in most cases.

There are seven key steps involved in the BAF process:

1. Tarion issues a WAR setting out its ruling on whether a homeowner's warranty claim items are or are not warranted and in the WAR or covering letter whether the conciliation is chargeable. The WAR or covering letter notifies the builder of his/her right to dispute that ruling, through the Builder Arbitration Forum.
2. The builder delivers to Tarion in writing, a Request to Arbitrate (including the administration fee, Arbitration Agreement and a list of three nominees from the roster) within 28 days of delivery of the WAR.
3. Within 14 days of delivery of the Request to Arbitrate, Tarion delivers to the builder a Notice of Response containing Tarion's selection of the arbitrator from among the builder's nominees.
4. Within 14 days of delivery of the Notice of Response, the builder delivers to Tarion the deposit for arbitrator's fees.
5. Within 14 days of delivery of the deposit for arbitrator's fees, Tarion delivers its Case Materials to the builder and to the arbitrator.
6. Within 14 days of delivery of Tarion's Case Materials, the builder delivers its Case Materials.
7. Within 14 days of delivery of the Builder's Case Materials, the parties will confirm a date for arbitration or pre-hearing. Tarion may also deliver to the builder and arbitrator a response to the Builder's Case Materials.
8. Within 30 days of the hearing, the Arbitrator issues a written decision that is final and binding on Tarion and the builder.

What is the format for the arbitration hearing?

Arbitration hearings are less formal than court or tribunal proceedings. Arbitrations are usually conducted in person but the parties can agree to do a hearing in writing. Pre-hearings and motions might also be done by teleconference, at the discretion of the arbitrator. The arbitration hearings will be conducted at Tarion's head office unless otherwise agreed by the parties.

Do I need a lawyer at the arbitration?

The parties must be represented at the arbitration hearing by an officer, director, employee or proprietor although they can also be represented by legal counsel if they so choose.

What types of decisions can the arbitrator make?

The arbitrator will have the authority to decide:

1. whether the disputed items in the WAR are or are not warranted;
2. whether the conciliation is chargeable;
3. whether Tarion should reimburse the builder for repairs done under protest by the builder to a disputed item found not to be warrantable by the arbitrator, and if so, in what amount; and
4. whether the builder should indemnify Tarion for reasonable amounts invoiced in respect of repairs done or payments made by Tarion to resolve one or more of the items found to be warranted and appealed in the Arbitration.

Will arbitration decisions be published?

Arbitration decisions are private and confidential and will not be published.

What minimum qualifications are the arbitrators required to have?

Arbitrators must have the following qualifications:

1. knowledge of the *Ontario New Home Warranties Plan Act*;
2. sufficient training and/or experience as arbitrators or adjudicators to conduct a fair and efficient hearing;
3. a minimum of five years involvement in the new home construction process gained through experience, training, or employment; and
4. appropriate references.

Who selects the arbitrator to hear the particular case?

Both the builder and Tarion have a say in who will arbitrate a particular case. The builder first nominates three persons from the roster of arbitrators approved for the Forum and must inform them in writing that they have been nominated. The nominees, in turn, must confirm in writing that they are available to be an arbitrator and that there is no conflict of interest that would disqualify them. Tarion will then appoint one arbitrator from the builder's nominees.

Who pays for the costs associated with the arbitration?**Administration Fee:**

The builder pays an administration fee of \$787.50 (\$750 plus GST) to Tarion to help defray the cost of administering the Forum.

Arbitrator's Fees and Disbursements:

1. The unsuccessful party pays the arbitrator's fees.
2. The builder pays a standard deposit before the commencement of the hearing to cover the estimated arbitrator's fees if the builder is unsuccessful.
3. If the builder is successful, Tarion will refund the builder's deposit without interest or penalty, immediately after the arbitration decision is delivered. If the builder is unsuccessful, Tarion is entitled to use the builder's deposit to pay the arbitrator's fees.
4. If success is divided, the arbitrator will allocate the fees, disbursements and charges between Tarion and the builder. Tarion will be entitled to apply the builder's deposit to satisfy the fees and disbursements allocated to the builder by the arbitrator and will refund any remaining deposit to the builder.

Parties' Own Costs:

Each party bears its own costs of preparing for, and attending, the arbitration, including legal fees, witness fees, and transportation.

How much is an arbitrator paid?

The arbitrator will be paid according to a standard Tariff available from Tarion.

Where Can I find the Roster List, Procedural Rules and Tariff?

The Roster List and Procedural Rules are available at:

- The Tarion website: www.tarion.com; or
- By contacting Tarion's Corporate Office at:

Tarion Warranty Corporation
5160 Yonge Street, 12th Floor
TORONTO ON M2N 6L9
Attn: Administrative Appeals Coordinator
Tel: (416) 229-9200
Toll Free: 1-877-9TARION
Email: baf@tarion.com

Where can I get a copy of the *Ontario New Home Warranties Plan Act*?

The Ontario New Home Warranties Plan Act, R.S.O. 1990, c.O.31, and Regulations are available on the internet at "elaws.com." The ONHWP Act and Regulations are also available on the Tarion website www.tarion.com.