



Ontario
Home Builders'
Association

Tarion
5160 Yonge Street, 7th Floor
Toronto, ON M2N 6L9

Sent by e-mail: submissions@Tarion.com

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RE: TARION CONSULTATION – PROPOSED CHANGES TO DEPOSIT POLICY

Thank you for the opportunity to provide feedback on Tarion's proposed changes to Deposit Policy to Ensure Coverage for Current and Future Purchasers, including the direct engagement session on November 13, 2024. Ontario Home Builders' Association (OHBA) membership, including its Regulatory Affairs Committee, has engaged with these proposals and provided a range of responses.

We look forward to the opportunity to further discuss these proposals with you and to continue to identify solutions and outcomes of greatest benefit to homeowners.

The Ontario Home Builders' Association

OHBA is the voice of the residential construction industry in Ontario, representing 4,000 member companies organized into 28 local associations across the province, from Niagara to Thunder Bay and Windsor to Ottawa. Members include builders, developers, professional renovators, trade contractors, suppliers, and manufacturers serving the residential construction industry. The residential construction industry employed over 550,000 people, paying \$38.8 billion in wages, and contributed over \$83.8 billion in investment value across Ontario in 2023.

Please accept the below as our submission in relation to Tarion's proposed changes to Deposit Policy to Ensure Coverage for Current and Future Purchasers, which is being submitted on behalf of OHBA and its 28 local associations including but not limited to the Building and Land Development Association (BILD), West End Home Builders' Association (WE HBA), Greater Ottawa Home Builders' Association (GO HBA), and London Home Builders' Association (LHBA).

Deposit Coverage Framework

This response identifies

- the consensus feedback of OHBA members in relation to the three key proposed changes;

251 Consumers Road, Suite 301, Toronto, ON, M2J 4R3
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- detailed responses to the individual consultation questions; and
- a query in relation to the application of the proposals to condominium.

OHBA notes the proposed changes, as set out in your discussion guide.

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.*

OHBA understands the goal of the change is to reduce deposit coverage exposure for Tarion and by extension to help ensure the future viability of the warranty program.

In general, OHBA members provided support for this proposal. However, it was noted that this proposal will place an additional administrative task on homebuyers and will take multiple years to fully implement. Realtors, lawyers, and others associated with current processes will need to be educated on the changes to help inform purchasers.

Concerns have been raised about the cost associated with review of notices, and whether this cost will be passed on in the form of fees. While there was general acknowledgement that this change represents a positive step, there was also considerable feedback that this proposal does not address the full scale of illegal vending.

In relation to the additional information (p6 of discussion guide) to be sent to purchasers in relation to providing notice, OHBA also asks to be consulted in relation to the design of this process to ensure implementation is effective (should the process be implemented).

More generally, for this new process OHBA, and industry, would play a vital role in helping to inform purchasers of the importance of registering deposits with Tarion.

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.*

OHBA does not support any proposal that would reduce the amount of protection afforded to purchasers. OHBA notes there may be flaws in the proposed method for determining and allocating limited compensation. Alternatives could include a 'carrot' approach whereby purchasers who meet the requirement to provide notice receive an enhanced deposit protection percentage. Those who do not meet the requirement could have their protection

capped at current levels (which were set in 2018). The current proposal also represents an opportunity for review of these deposit protection levels.

- 3. Charge a portion of the enrolment fee to vendors/builders earlier - before purchase agreements are signed - to better cover the deposit protection risk.*

OHBA does not support this proposed change, noting the additional cost and administration such a proposal would introduce, particularly, for example, in cases where a purchase agreement does not proceed to finalization. OHBA members have been unanimous in seeing this proposal as unworkable and administratively burdensome.

Members did not support Tarion introducing a staged enrolment fee. Feedback indicated there is already a significant administrative burden on builders in managing HCRA and Tarion through the licensing, QFE and enrolment process. Adding another level to this already complex system was definitively seen as a move in the wrong direction.

Further, OHBA appreciates the data shared at the consultation on November 13, and the rationale and projections provided in relation to the proposal that an earlier fee collection process would offset potential losses from deposit coverage.

However, on the calculations provided, it was apparent that charging the fee earlier would not generate any meaningful sum in relation to coverage of the deposit coverage.

Itemized feedback to detailed questions is provided below:

1. Are there additional ways to ensure that purchasers can check if their builder is licensed and authorized to sell by Tarion?

- Contacting HCRA. When it comes to home buyers selecting a new home builder, home buyers need to do their homework and can already get reference information from Tarion and the HCRA.
- Purchasers can check on Builders through the HCRA website which is also linked to the Tarion website. This provides information on the activities of builders over the past 10 years, possessions, regulatory actions, and warranty claims against the builder. The HCRA reviews all builders in Ontario on an annual basis and makes risk assessments based on their activities, financial reports, and ownership structure. Builders' licenses are renewed based upon these risk assessment factors.
- Huge marketing campaign to public to check out a builder on Tarion before they sign a contract. Better education to lawyers and real estate agents to have some skin in the game to check builder history and licensing if they are representing a client.

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?

- New home purchasers are already inundated with information about the purchase process, and this is an additional requirement that adds to their list of responsibilities and administrative tasks.
- If it is an illegal builder, they are not even including Tarion forms in their contract - how will a homebuyer even know?

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?

- OHBA does not support reduced consumer protection.

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?

- 30 days seems appropriate.

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?

- if the requirement was not conveyed to the purchaser in a clear manner and/or if the notification process was particularly cumbersome

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?

- Social media, tv, billboards, radio, home shows - all marketing areas.

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)?

- It is ridiculous to ask for enrolment fees at the time of QFE applications. To give you an idea, we still have QFE room for builds that we applied for two years ago, because of the slow-down, so Tarion would have been holding a big chunk of capital all this time on houses we haven't even sold, let alone started to build.
- Contracts are signed at any given time. We're not registering empty lots and providing payments when we do not know when or what we are selling'
- Particularly burdensome for small/medium builders.

- Builders may not be able to afford it and will register less units. slowing down development. Time to build will increase.

8. Do you have any other feedback on the proposed changes to deposit coverage?

- Tarion states in the guide that charging builders at the time of QFE approval is consistent with warranty industry standards – I have found no proof of that, and none is offered in the discussion guide.
- Why not put in a simple requirement, that all municipalities that issue building permits for new homes need to see/confirm the builders' Tarion status?
- As a homebuilder we are required to pass along customer contact information already within 30 days of signing a contract, so a big expensive PR program to reach out to home buyers is not necessary.
- Tarion should strongly consider getting out of the "Deposit Insurance" business and stick to warranty issues alone.
- Retaining the deposit amount as at 2018 represents outdated numbers - needs to be higher to allow for more deposit money to be collected by builders.
- Allow for more insurance companies to get in the market. Every other province has options for warranty providers to use and this allows for lower insurance costs.
- Better mandatory education needed for Real Estate Agents.
- Still not sure why we are covering deposit coverage for illegal builders' customers. Customers must do some research and be responsible for their decisions before they jump into a purchase.
- If the deposit protection warranty is no longer viable for Tarion to continue at the current level of protection, then we suggest that the amount of the deposit protection be reduced.

Application of proposed changes to Condominium Builders

The discussion paper (p6) recommend that purchasers of new condominium units and contract homes also give notice of their purchase agreements/construction contracts, but that deposit and financial loss compensation eligibility will not be affected in the same way as for freehold homes.

However, the discussion paper is silent on whether any change in the timing of enrolment fees would apply to condominium builders.

OHBA has received advice that

- Any requirement to pay the enrolment fees prior to the sale of at least 75% of the total number of proposed dwelling units in the condominium project, could impose a significant financial burden on some condominium builders; and
- As all deposit monies payable to a condominium declarant are impressed with a statutory trust and must accordingly be held in trust by a prescribed trustee or by the declarant's solicitor, the deposit risk to Tarion in the condominium scenario is almost totally obviated.

Thank you again for the opportunity to provide comment on the proposed changes to deposit policy. OHBA looks forward to continued collaboration on this and other issues in the future.