

# Description of Regulatory Proposal under the Ontario New Home Warranties Plan Act

## 1. Introduction

The Ministry of Government and Consumer Services (the Ministry) is seeking feedback on proposed regulations under the Ontario New Home Warranties Plan Act (ONHWPA) and under the Building Code Act, 1992 (BCA). In 2015, ONHWPA, the Condominium Act, 1998 (Condo Act) and the BCA were amended to extend most statutory warranties under ONHWPA to eligible residential condominium conversion projects (RCCPs). RCCPs are projects that incorporate into the construction pre-existing elements, such as the façade of a church or school, or the entire frame and building envelope of an office building.

A key feature of this change is that vendors of RCCPs must establish and fund a pre-existing elements fund. The purpose of the fund is to set aside money to pay for forecasted repairs to the pre-existing elements of an RCCP.

Tarion Warranty Corporation (Tarion), which will administer these warranties, has posted a proposed by-law (which would be deemed to be a regulation under ONHWPA) setting out certain requirements for registration of vendors and builders of RCCPs. Tarion's proposed regulation can be found [here](#). This proposal would support implementation of the RCCP warranties.

To the same end, the Ministry is proposing a supporting regulation under ONHWPA. The purpose of the proposed regulation is to prescribe:

- How the initial period is determined, which is the period of time when forecasted repairs to the pre-existing elements of an RCCP are expected to take place.
- How the money in a pre-existing elements fund must be held.

In addition, the government is proposing a regulation to make a related change to Ontario Regulation 332/12 (Building Code) made under BCA. The proposed regulation would amend the list of "applicable law" prescribed under this act in relation to building permits for RCCPs.

These proposed regulations would support Tarion's proposed by-law/regulation setting out specific requirements that apply to certain RCCPs in order for these projects to be covered by ONHWPA warranties.

It is anticipated that all of the regulations and related amendments would come into force in January 2018.

## **2. How the initial period is determined**

Under ONHWPA, the initial period for an RCCP is the time period that begins on the date determined in the manner prescribed and ends on the prescribed anniversary date, or on the third anniversary of the start date if no anniversary is prescribed.

### Start date for the initial period

The start date is proposed to be the date that a condominium corporation is registered or, in the case of a phased condominium, the date(s) that amendments to the condo declaration to create phases are registered, if the phases include pre-existing elements.

### When the initial period ends

The anniversary date is proposed to be seven years from the date of the registration of the condominium corporation or, for a phased condominium corporation, seven years from the date of each phase's registration.

## **3. How pre-existing elements funds must be held**

The pre-existing elements funds are proposed to be held in a trust account from the date the fund is established to the date that the condominium corporation is registered or, in the case of a phased condominium corporation, the date of the registration of the amendments to the declaration to create each phase.

Following registration of the condominium corporation, any remaining funds (including accrued interest) intended for repairs to the common elements would be disbursed to the condominium corporation, which would be required to hold the funds in a segregated account. Any remaining funds that were assigned to a unit's or proposed unit's pre-existing elements for intended repairs would be disbursed in the following manner:

- For funds assigned to a unit or proposed unit in the amount of \$10,000 or more at the time of registration, those funds would continue to be held in a trust account for a period of seven years following registration. Following that time period, any remaining funds would be disbursed to the owner of the unit to which the funds apply.

- For funds assigned to a unit or proposed unit that were less than \$10,000 at the time of registration, those funds would be disbursed to the owner of the unit to which the funds apply.

#### **4. Amendments to the Building Code (Ontario Regulation 332/12)**

The government also proposes to amend the Building Code (Ontario Regulation 332/12, made under the Building Code Act, 1992) to add subsection 17.4 (3) of the Ontario New Home Warranties Plan Act to the list of applicable law for building permits and conditional building permits. This change would require building officials to not issue building permits or conditional building permits for an RCCP or a phase thereof if it will contravene the prescribed provision of ONHWPA. This means the building official must not issue the permit unless the Registrar of Tarion has confirmed that the RCCP has been enrolled in the warranty plan, and that the builder or vendor of the RCCP is registered with Tarion.