

Deposit Protection

Summary of Proposed Enhancement to Tarion's
Non-Condominium Freehold Deposit Coverage

October 2017

Introduction

Tarion is seeking feedback on a proposed policy for enhanced deposit protection coverage for buyers of new non-condominium freehold homes in Ontario. This summary provides background information on the current warranty protection, an overview of feedback received in response to the April 2017 [Discussion Guide](#) and a description of the proposed approach to improve deposit protection coverage.

Tarion's proposed regulation can be found [here](#).

In addition, the Minister of Government and Consumer Services is proposing changes to the Ontario New Home Warranties Plan Act (ONHWPA) which if passed, would allow for deposit protection coverage to include upgrades and extras.

Background

Tarion's deposit protection levels were last changed in 2003. The Ontario housing marketplace has changed dramatically since then. The price of new homes has escalated across the province, most notably in the Greater Toronto Area (GTA). Additionally, the collapse of large builder/vendors such as Urbancorp and the recent insolvencies of other builder/vendors have demonstrated that many home buyers – particularly in the GTA – are vulnerable to losses, not only for deposits they've paid, but also for amounts paid for upgrades and extras that exceed the maximum amount recoverable under the warranty coverage available today.

In 2016, Tarion publicly committed to a review of its non-condominium freehold deposit protection for Ontario's new home buyers. The Ontario government also publicly stated its desire for Tarion to move forward with a timely review in this current marketplace. Specifically, Minister Tracy MacCharles said in a speech on March 28, 2017: "There will be several options on the table, and one important change as well. Right now, deposits on upgrades... are not covered by Tarion. They will be under whatever new plan comes out of the pending consultations."

Principles for an Enhanced Deposit Protection Policy

- Fairness – The policy should provide fair and adequate protection for consumers, while not disproportionately increasing the burden on builder/vendors or adversely affecting the new home market.
- Accountability – Vendors and builders should be accountable to their customers for their business practices, especially in a shifting marketplace.
- Relevance – A revised policy will be better aligned with likely current and future shifts in the marketplace.
- Cost Consciousness – The enhanced policy should not result in significantly increased costs to new home buyers, nor impact housing affordability.

Tarion's Current Levels of Non-Condominium Freehold Deposit Protection

If you sign an Agreement of Purchase and Sale for a new home and give your builder/vendor a deposit, Tarion protects those funds up to certain limits in the event that:

- your builder/vendor goes bankrupt;
- your builder/vendor fundamentally breaches the purchase agreement; or
- you have a statutory right to treat the purchase agreement as terminated.

Currently, deposits paid for all new non-condominium freehold homes are protected by Tarion up to a maximum of \$40,000.

When Tarion's deposit protection levels were last reviewed in 2003, maximum deposit protection amounts of \$40,000 per non-condominium freehold home and \$20,000 per condominium unit were established. Condominium units enjoy significant protection through the dual protection of the Condominium Act (i.e. any deposit amounts are protected by the trust provisions of the Condominium Act) and Tarion's coverage. As such, this policy review focuses on non-condominium new homes (e.g. freehold, single family, townhouse, rowhouse, etc.) Deposits and payments for upgrades and extras are legally protected by contract.

Builder/vendors are obliged to return both deposits, as well as payments for upgrades and extras to purchasers, in the event of a failed transaction – in accordance with the terms of

Tarion's Addendum. Similarly, through the trust provisions of the Condominium Act, both deposits and upgrades and extras are protected.

At present, it's not clear that the term "deposit" in Ontario New Home Warranties Plan Act covers upgrades and extras, but there is an argument that these monies are no less deserving of protection than deposit payments, where a purchase transaction is terminated through no fault of the purchaser. For this reason, the Minister of Government and Consumer Services is proposing amendments to the Ontario New Home Warranties Plan Act, which if passed, would allow for coverage to include upgrades and extras.

Stakeholder Feedback on the Discussion Guide

This Spring, Tarion presented three options to enhance non-condominium freehold deposit protection coverage in the [Discussion Guide](#) that was sent out to stakeholders for their consideration. The Discussion Guide presented the following three options:

- Option 1: Have all non-condominium freehold deposits held in trust
- Option 2: Increase the deposit protection cap
- Option 3: Increase deposit protection cap and require funds collected in excess of the cap to be held in trust (hybrid of Option 1 and 2)

From April to June 2017, Tarion conducted in-person and telephone interviews, held roundtable discussions across Ontario, hosted one-one-one meetings and received formal written submissions. Stakeholders participating in the formal consultation included homeowners, the building sector, surety companies and employees.

Below is a summary of the themes and issues that were raised by stakeholders:

- The current deposit protection for non-condominium freehold homes is inadequate, and regional differences should be considered;
- Requiring all non-condominium freehold deposits to be held in trust would be financially and administratively unfeasible for builder/vendors, especially rural and smaller builder/vendors and builder/vendors that produce model homes. It was also noted that holding deposits in trust is less burdensome for condominiums than non-condominium freehold homes, which often require greater liquidity and more nimble financing. Some concerns were raised regarding the potential for improper release of deposits;

- Increasing the deposit protection cap was the most favoured option (Option 2), especially from the consumer perspective if upgrades and extras are included in the coverage. Stakeholders felt that this option would be the least difficult to administer;
- Requiring a percentage for the deposit up to a maximum is a just means to account for regional disparities in the prices of homes across the province. It was also suggested that the cap should be high enough to be relevant;
- A hybrid model (Option 3) is too costly and complex for medium and small builder/vendors and would be burdensome. Some stakeholders noted that trusts may take too long to administer for smaller projects.

Proposal

Based on consultation feedback, including third-party survey data received from homeowners and builder/vendors, Tarion is proposing to increase deposit protection for non-condominium freehold homes from the current \$40,000 to 10% of purchase price to a maximum coverage of \$100,000 and a minimum of \$60,000. The minimum threshold of \$60,000 coverage ensures that all non-condominium freehold homes will have increased coverage under this proposal; this means that non-condominium freehold homes with a purchase price below \$600,000 will have \$60,000 coverage.

For illustrative purposes, this is how the protection would work for home prices at various price points:

Purchase Price	Maximum coverage
0 to \$600,000	\$60,000
\$601,000 - \$1,000,000	10% of purchase price
> \$1,000,000	\$100,000

Any enhancements to warranty coverage will involve an additional cost and, therefore, Tarion is proposing a nominal enrolment fee increase. The average enrolment fee increase is \$23 but it is distributed in a progressive manner. There is a no fee increase for homes with purchase prices up to \$400,000. Below is the proposed revised schedule of enrolment fees:

Purchase Price	Revised Fee
0 to \$100 000	\$385

Purchase Price	Revised Fee
\$101 000 - \$150 000	\$430
\$151 000 - \$200 000	\$500
\$201 000 - \$250 000	\$570
\$251 000 - \$300 000	\$640
\$301 000 - \$350 000	\$710
\$351 000 - \$400 000	\$780
\$401 000 - \$450 000	\$870
\$451 000 - \$500 000	\$945
\$501 000 - \$550 000	\$1 025
\$551 000 - \$600 000	\$1 075
\$601 000 - \$650 000	\$1 130
\$651 000 - \$700 000	\$1 210
\$701 000 - \$750 000	\$1 260
\$751 000 - \$800 000	\$1 315
\$801 000 - \$850 000	\$1 365
\$851 000 - \$900 000	\$1 485
\$901 000 - \$950 000	\$1 540
\$951 000 - \$1 000 000	\$1 595
\$1 001 000 - \$1 500 000	\$1 725
> \$1 501 000	\$1 800

The Minister of Government and Consumer Services is proposing amendments to the Ontario New Home Warranties Plan Act, which if passed, would allow for coverage to include upgrades and extras.

Additional Background Information Available

Background information that may assist in your consideration of this proposed by-law is contained in the following schedules that are available in a separate document upon request from Tarion.

Schedule A consists of background information about deposits, other payments such as upgrades and extras, the differences between each, and common purchaser expectations in the event of failed purchase transactions.

Schedule B provides further background and context, to assist with a better understanding of possible options for improving deposit protection. This schedule sets out the current rules for protecting deposits, as well as upgrades and extras.



Schedule C sets out some thoughts about challenges that currently exist when considering different options to improve home buyer protection.

Schedule D sets out in greater detail possible impacts associated with different options.

Schedule E provides some preliminary results from a homeowner survey Tarion conducted with Forum Research.

Feedback Process

We want to hear from you on how to enhance Tarion's Non-Condominium Freehold Deposit Coverage. This is your opportunity to provide direct feedback on the proposed policy and draft regulation.

Please send any comments to submissions@tarion.com by December 7, 2017. Your feedback is important to us!