

For discussion purposes

**BACKGROUNDER
REGULATORY IMPACT ASSESSMENT
ENHANCED NON-CONDOMINIUM FREEHOLD DEPOSIT COVERAGE**

WHAT IS BEING PROPOSED?

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 (ONHWPA) 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 ONHWPA, which if passed, would allow for coverage to include upgrades and extras.

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
\$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 changes to ONHWPA, which if passed, would allow for coverage to include upgrades and extras.

WHY IS THE CHANGE NEEDED?

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.

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We believe that this policy proposal will enhance consumer protection by increasing deposit protection coverage for all non-condominium freehold homes.

WHY IS THE CHANGE NEEDED NOW?

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."

HOW WILL THOSE AFFECTED BE IMPACTED?

Home Buyers

- Homeowners will be provided with enhanced consumer protection, with both a higher level of deposit protection and upgrades and extras now being consistently covered by this policy.
- There will be better disclosure on how upgrades and extras will be covered

Builder/Vendors

- There may be positive impact on new home sales, as home buyers will have greater confidence in the new home marketplace and comfort that their deposits are better protected.
- More clarity around protection for upgrades and extras.

Tarion

- Is being responsive to the current marketplace, which increases confidence in Tarion's role in the new homebuying experience.
- Additional communications and educational resources will need to be developed by Tarion for all impacted stakeholders.
- Proposed changes to the definition of "deposit" will clarify the administration of the deposit warranty.

ARE THERE COSTS OR RESOURCING IMPLICATIONS FOR TARION, BUILDER/VENDORS OR HOME BUYERS?

Home Buyers

- Increased warranty coverage will result in a nominal enrolment fee increase that will likely directly or indirectly be passed on to consumers.
- Builder/vendors may take larger deposits from some homebuyers.

Builder/vendors

- Builder/vendors across the province will likely obtain higher deposit amounts, providing greater working capital, which in turn could improve the builder/vendor's balance sheet allowing for better loan terms.
- Any enhancements to warranty coverage will involve an additional cost and, therefore, Tarion is proposing a nominal enrolment fee increase.
- Potential change to tracking systems/business processes, with an enhanced policy being introduced.
- Builder/vendors will likely need to be trained properly on how to track and ensure that upgrades & extras are being accounted for in this enhanced policy.

Tarion

- Due to enhanced deposit protection coverage, Tarion is proposing a nominal enrolment fee increase.
- New communications materials and educational resources will need to be developed in order to ensure that both, homeowners and builder/vendors understand their rights and responsibilities under the amended policy.

WHAT ACTIONS WILL BE TAKEN TO ALERT AND CONSULT THOSE AFFECTED?

- Tarion issued a Discussion Guide in April 2017.
- Stakeholder emails launching the consultation process were sent out to relevant stakeholders, such as the builder/vendor and banking sectors and homeowners, including those with deposit claims.
- A banner was posted on the front page of Tarion's website.
- Requests for input were put out to the public and industry (April – July 2017) and a number of roundtables, stakeholder meetings and telephone interviews were held.
- Draft regulations and this Regulatory Impact Assessment will be posted on Tarion's website and the Government's website with a request for comments for at least 45 days.
- Tarion is developing a communications plan to ensure that all key stakeholders understand that this policy is being changed, and that the proper training/resources are available to these stakeholders.

WHAT ACTIONS WILL BE TAKEN TO LIMIT THE IMPACT OF THE PROPOSED CHANGES?

- Homeowners will be advised of changes through updates to the Homeowner Information Package, MyHome Portal and Tarion's website.
- The industry through its associations is aware that changes are coming. It has also been, and will continue to be communicated to the industry through Builder Updates.
- Builder/vendors will be aware of the specific changes through a Breaking Ground newsletter alert, a new Builder Bulletin, and the Builder Portal.
- General public awareness of this enhanced policy will be through Howard's Sun articles, other earned media, blogs/industry journals, social media and a video.
- There will likely be a joint communications effort between Tarion and the Province, as the Minister of Government and Consumer Services has been a close partner in this initiative – which will help broaden the notification reach.

HOW WILL THE CHANGE BE IMPLEMENTED?

The changes will be implemented through a combination of regulatory and policy changes at Tarion and, if passed, through legislative changes to the Ontario New Home Warranties Plan Act.

THE DATE THE BOARD WOULD CONSIDER THE PROPOSAL

December 14, 2017

WHAT WOULD THE EFFECTIVE DATE BE?

It is anticipated that enhancements to deposit protection will come into force with:

- the Tarion regulation to increase deposit protection coverage coming into force in January 2018 and
- the proposed Ontario New Home Warranties Plan Act changes to include coverage for upgrades and extras, if passed upon Royal Assent.