

CONSULTATION ON ILLEGAL BUILDING AND RELATED IMPROVEMENTS TO PROTECT BUYERS OF NEW HOMES



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About This Consultation

The Ministry of Government and Consumer Services is seeking public input about illegal building and related improvements to protect buyers of new homes, including any potential outcomes for buyers of new homes and the building industry.

This consultation is intended to seek the views of the public, including anyone with experience, involvement or interest in building or purchasing a new home.

Please note that nothing in this document constitutes legal advice and nothing in it should be relied on as the ministry's interpretation of legislation.

Thank you in advance for your time and input. Please submit your input [by the deadline of May 2, 2022](#), to newhomes@ontario.ca.

Introduction

When a person illegally builds a new home, that person violates requirements in two laws that provide protections for the buyers of new homes: the New Home Construction Licensing Act, 2017 (Licensing Act) and the Ontario New Home Warranties Plan Act (Warranties Act).¹

The Home Construction Regulatory Authority (HCRA) is responsible for administering the Licensing Act. The Licensing Act regulates builders and vendors of new homes (i.e., those who typically build and sell new homes). Among its responsibilities, the HCRA issues licences to builders and vendors that permit them to build and sell new homes, and investigates builders and vendors for illegal building.

The Warranties Act requires that all vendors of new homes provide certain warranties to the buyers of those homes. Tarion is responsible for administering the Warranties Act. The Warranties Act also creates rights to compensation for buyers from Tarion if a vendor of a new home fails to fulfill its warranties. More information about the warranties and entitlements is provided later in this consultation paper.

Builders and vendors are not the only people who build and, eventually sell, homes. A person may also build a home on their own land to live in it, rather than to sell it. Sometimes that person may also sell the home they have built for themselves due to changing life circumstances, such as the loss of a job or an illness in the family. Generally, people that build homes for themselves do not have obligations under the laws above. Some of the proposals

¹ When referring to the obligations imposed under the Warranties Act or the Licensing Act, reference to a "person" includes reference to an individual or a company.

discussed in this paper are intended to address the ways in which some people might attempt to exploit this exception to the rules. However, the purpose of this consultation is to discuss ways that protections for the buyers of new homes can be maximized while respecting the ability of a person to build a home for themselves.

For a detailed explanation of the terms used throughout this document, see our [glossary in Appendix A](#).

Consumer Protection: Licensing, Enrolment, and Warranties

Illegal building undermines the protections that Ontario law provides to buyers of new homes. In addition, other issues discussed later in this consultation paper involve ways in which the protections can be improved for buyers regardless of whether they bought an illegally built home. Four key protections are:

1. the regulation of the conduct of builders and vendors;
2. a requirement that vendors provide warranties for the new homes they sell;
3. an entitlement for buyers to receive compensation if those who sell new homes fail to meet certain obligations under Ontario law, such as their commitment to provide warranties; and
4. a requirement for vendors or builders to enrol the homes they build and sell with Tarion.

The HCRA regulates builder and vendor conduct by licensing builders and vendors. The licensing process can help prevent problems for buyers related to the quality of a new home's construction and the likelihood that the builder will complete the project. If a builder or vendor wishes to build or sell new homes, they must get a licence from the HCRA. To grant a licence, the HCRA's registrar must have reason to believe that the applicant will be financially responsible in conducting its business and that the applicant will conduct its business in accordance with the law and with honesty and integrity. Applicants may also be required to complete specific courses to show that, for example, they understand the requirements of the Ontario Building Code. A builder or vendor's financial responsibility, potential to adhere with obligations under the Licensing Act and other related legislation, likelihood of conducting business with honesty and integrity, and an understanding of the Ontario Building Code, all concern the likelihood that problems will arise for buyers. The HCRA's review of licensing

applications can help to screen out builders and vendors who are likely to create issues for buyers.² You can find [more information about the licensing process here](#).

Vendors in Ontario must also provide warranties for the new homes they sell to protect buyers when problems arise. A builder is also considered to be a vendor if the builder is hired by a landowner to construct a home on land that they already own for it to be occupied rather than sold. The warranties that vendors must provide to buyers of new homes include the following:

- a one-year warranty – for defects in the materials used, or defects caused by the way something has been installed;
- a two-year warranty – that the home will meet the requirements of the Ontario Building Code to protect health and safety; and
- a seven-year warranty – that the home will have no major structural defects.

The description above is only a partial description of the warranties that vendors must provide. You can find a [complete description of the warranties that vendors must provide here](#).

If a vendor refuses or is unable to honour its warranties under the Warranties Act, new home buyers may be entitled to assistance from Tarion. Tarion may resolve the defects directly with the homeowner. Tarion may also compensate buyers for other problems they encounter with their vendor or new home. For instance, if a vendor goes bankrupt and is unable or unwilling to return the buyer's deposit, Tarion may be able to provide compensation to the buyer. Visit Tarion's website for information about [deposit protection](#), and [other entitlements to compensation](#). Buyers are entitled to up to \$300,000 in total compensation or repairs from Tarion to address defects in their new home.

If a home will be built by someone other than the person who intends to live in it, then generally speaking, the builder or vendor of that home must enrol it with Tarion before construction begins. In addition, for a new home to be sold, Tarion must confirm either that the home qualifies for enrolment or that it has been enrolled. These requirements are provided for under the Warranties Act. As part of the enrolment process, Tarion may ask applicants about such things as the qualifications of those working for the applicant in connection with the construction of the home and in connection with the vendor's obligation to repair the home if certain defects arise. The enrolment process provides additional screening of the vendor that may reduce the risk of defects in a new home and increase the probability that vendors will honour their warranties if defects arise. In addition, the fees paid

² While the HCRA's application review process is most relevant to understanding the effects of illegal building and related improvements to protections, note that the HCRA's mandate involves more than licensing. You may find [more about the HCRA's mandate here](#).

by vendors and builders to enrol new homes help Tarion pay for the cost of resolving claims that arise from defects in new homes. You can find more [information about the enrolment process here](#).

Consultation Topics

Illegal Building

Some people fail to adhere to their obligation to get a builder and/or vendor licence. In addition, some people fail to fulfill their obligation to have Tarion confirm that the home they wish to build and sell qualifies for enrolment, or that the home has been enrolled. In this document, **“illegal building”** refers to when builders and vendors violate any of those obligations.

Illegal builders are required to provide warranties for the homes they build and sell, and Tarion can still assist the buyers of those homes with defects in them. However, illegal builders do not undergo the HCRA’s and Tarion’s screening processes. Both processes involve a review of whether the applicant has the skills and resources required to build a home. Illegally built homes may, therefore, be more likely to have more defects, and more serious defects, than legally built ones.

The amount Tarion has paid to repair illegally built homes provides an indication of the seriousness of defects in illegally built homes for buyers. For instance, for illegally built homes that began their warranties between 2006 and 2016, and for which Tarion paid at least one claim, the average cumulative amount paid per home over the entire period of the home’s warranties was about \$46,000. In contrast, the average cumulative amount paid per legally built home was about \$20,000.³

In addition, for those homes for which Tarion paid at least one claim between 2010-2020:⁴

- Illegally built conventional homes (i.e., homes that are not condominiums (condos), or what Tarion calls “freehold homes”) accounted for, on average, 14 per cent of the total number of conventional homes that Tarion paid to repair each year. However, repairs to illegally built conventional homes accounted for, on average, 24 per cent of the total amount Tarion paid to repair conventional homes each year.

³ The data presented only reflects the cost of defects for which Tarion made payments up until December 31, 2020. If the buyer of an illegally built, defective home was never made aware of their warranties, or if the illegal builder repaired the defects to the buyer’s satisfaction, Tarion would not have made payments to resolve those defects.

⁴ The figures presented in the two bullets that follow reflect payments made up until June 30, 2021.

- Most payments from Tarion for legally built conventional homes amounted to no more than \$10,000 per home in any given year. In contrast, most payments for illegally built conventional homes amounted to more than \$10,000 per home in any given year.

Tarion is also less able to recover its costs when it repairs illegally built homes. While Tarion will resolve defects if the vendor fails to honour its warranties, vendors must reimburse Tarion for the cost of compensation or repairs. As part of the screening process that vendors undergo, applicants are reviewed for their ability to make repairs to a home or reimburse Tarion if the vendor fails to make repairs. As part of that same process, vendors may be required to provide Tarion with security that Tarion can use to reduce the cost of resolving defects. For conventional homes, security typically may be provided in the form of a promise by a third party to compensate Tarion for the cost of resolving defects if a vendor fails to do so. Third parties will provide the promise for a fee paid by the vendor. Security sometimes may also take the form of a cash deposit that Tarion can use to reduce the cost of resolving defects. Illegal builders bypass this process. Illegal builders may, therefore, draw on Tarion's funds more than legal builders do. Legal builders (and by extension, those who buy the homes they build) also pay enrolment fees, which provide Tarion with funds to resolve defects.

Illegal builders may also undercut compliant builders. For instance, they may be able to save costs by avoiding the screening process, such as licensing fees, enrolment fees, and the cost of providing security to Tarion. In addition, [in their 2019 audit the Auditor General suggested](#) that by building illegally, a builder could potentially avoid paying taxes.

Improving Protections for Buyers of New Homes

The Licensing Act and the Warranties Act could be changed to strengthen enforcement of the obligation to warrant a new home, to obtain a licence and to enrol a new home, and to better protect buyers of new homes. In addition, improvements should both respect a person's ability to build their own home while strengthening and expanding protections for consumers.

Strengthening Enforcement

The way the Warranties Act and the Licensing Act were written could be improved to increase the ability of buyers to benefit from warranty coverage. Changes to those laws could also improve the extent to which builders can be held accountable for failing to adhere to their warranty, licensing, and enrolment obligations. For instance, some people may avoid these obligations by claiming to build a home for themselves to live in when in fact they are building the home to sell it. If a person builds a home, or manages its construction, to personally occupy it, that person is exempt from the obligations above and is called an "owner-builder". However, if a person builds a home or manages its construction for the purpose of selling it, that person is a "builder" and must get a licence, enrol the home, and provide warranties for

the home. If a person fails to get a licence, enrol the home, or confirm that a home qualifies for enrolment, when required, in this consultation paper, that person will be referred to as an “illegal builder”. However, it may be difficult for Tarion to determine what the true intent of a person building a home was to determine whether they are a builder so that the buyer can benefit from the warranties. For the same reason, it may also be difficult for Tarion and the HCRA to hold the builder responsible for their warranty, licensing, and enrolment obligations. Changes to the Warranties Act and the Licensing Act could eliminate or reduce those difficulties.

Expanding Protections

The scope of the Warranties Act and the Licensing Act could be broadened to capture more activity so more new home buyers have protections under those laws. Some people manage to build and/or sell new homes without the obligation to provide warranties under the Warranties Act, to get a licence from the HCRA, and to enrol the home with Tarion. They may be able to do so because of the way in which the Warranties Act and the Licensing Act were written. For example, if a person lives in a home they built before selling it, it may not be considered a home to which warranties apply. Since those who build and sell those homes are not screened by Tarion and the HCRA, defects in their homes are often more likely to arise. And when defects do arise, they are often more likely to be expensive to fix. Unfortunately, the buyers of those homes will not be able to turn to Tarion for help if the person who built and sold the home does not resolve the defects in the home. Changes could be made to the Warranties Act and the Licensing Act to expand the number of new homes and people screened by Tarion or the HCRA, and the number of new homes for which Tarion can help resolve defects. These changes could reduce the likelihood and severity of defects in these homes and provide the buyers of these homes with support if defects do arise.

The Warranties Act could also provide more protections for some condominium unit owners. The Warranties Act does not require vendors to provide warranties for the common elements of some types of condominium corporations (condo corporations), nor does it permit those condo corporations to turn to Tarion for help if defects in their common elements are not repaired. “Common elements” refers to all the condominium property except the units, such as a building’s shared hallways or swimming pool. The Warranties Act could be changed to expand warranty coverage to the common elements of all types of condominium corporations.

The Types of Homes at Issue

Ontario law provides protections for buyers of new conventional homes (also referred to as “freehold homes”) and new condominium homes. Illegal building and the potential

improvements to protect buyers of new homes discussed in this document primarily concern conventional homes.

Geographical Concentration of Illegally Built Conventional Homes

Tarion's payouts to resolve defects in illegally built conventional homes suggest that illegal building disproportionately impacts the Greater Toronto Area (excluding Halton) and the area that includes Muskoka District, Parry Sound District, Haliburton County, and Simcoe County.⁵ The Greater Toronto Area (excluding Halton) accounted for approximately 36 per cent of conventional homes for which Tarion made payments, but 45 per cent of illegally built conventional homes for which Tarion made payments. The area that includes the Muskoka District, Parry Sound District, Haliburton County and Simcoe County accounted for approximately 11 per cent of all conventional homes for which Tarion made payments, but 15 per cent of illegally built conventional homes for which Tarion made payments.

The Auditor General of Ontario's Special Audit of Tarion

In their 2019 [Special Audit of the Tarion Warranty Corporation](#), the Auditor General reported that illegal building continues to be a problem in Ontario. While the report includes a number of observations and recommendations that are related to illegal building, the Auditor General specifically recommended that Ontario review British Columbia's model to address illegal building. British Columbia's model includes requirements on individuals building homes for their own use, and other measures to protect buyers of those homes, including:

- registration with the provincial regulator before starting construction;
- minimum occupancy requirements before selling;⁶
- disclosures to purchasers of the home's owner-built status;
- a publicly accessible database to ensure subsequent purchasers may also access information about the home; and
- warranty liability for owner-builders that sell their home during the warranty period.

Many of the proposals discussed in this document are informed by the BC model. The ministry acknowledges that fully addressing the Auditor General's recommendations about illegal

⁵ The figures that follow reflect only the cost of defects that Tarion resolved. If the buyer of an illegally built, defective home is not made aware of their warranties, or if the illegal builder repaired the defects to the buyer's satisfaction, Tarion would not have resolved those defects. The data presented would therefore not reflect those defects.

⁶ [BC Housing's Regulatory Bulletin No 5](#) indicates that, for a certain period of time, an owner builder must both live in the home and not sell or rent the home. BC Housing is the organization responsible for administering owner-builder requirements in British Columbia.

building would involve multiple steps. This consultation is the first step towards tackling the issue.

Collection of Information

The Ministry of Government and Consumer Services is seeking your input to allow us to understand issues and identify potential solutions for buyers of new homes and the new home building industry.

The collection of personal information is consistent with section 38(2) of the [Freedom of Information and Protection of Privacy Act](#) as necessary for the proper administration of the New Home Construction Licensing Act, 2017 and the Ontario New Home Warranties Plan Act.

All feedback received in response to this consultation from organizations and individuals participating in a professional capacity will generally be considered to be public information. Information from these parties may be used, disclosed and published by the ministry to help the ministry in evaluating and revising its proposal. This may involve releasing any response received to other interested parties.

Despite the above, any information shared by representatives of an organization or individual professionals that is of a personal nature would not be considered public information. Information of this nature would not be disclosed, published or released by the ministry.

All feedback received in response to this consultation from individuals participating in a personal capacity who do not indicate or do not have a known affiliation with an organization, or are not considered to be acting in a professional capacity, will not be considered public information. The ministry may use and disclose responses from these individuals to help evaluate and revise the proposal. The ministry may also publish responses received from individuals. Should the ministry use, disclose, or publish individual responses, the ministry will not disclose any personal information such as an individual's name and contact details without the individual's prior consent, unless required by law.

All submissions received as part of this consultation are also subject to the [Freedom of Information and Protection of Privacy Act](#). The public has the right of access to information under the custody and control of the ministry.

The ministry may use your provided contact information to follow up with you if we need to clarify your responses.

If you have any questions about the collection of this information, please contact Mike McRae, Director, Policy and Governance Branch via email (newhomes@ontario.ca) or mail (mailing address: 6th Floor, 56 Wellesley Street West, Toronto, Ontario, M7A 1C1).

We Value Your Input

Name and/or organization:

Email address or other contact details:

The government wants to hear from Ontarians about the illegal building of new homes and potential improvements to protect buyers of new homes. Your input will help the government develop policies to address these issues.

We welcome your responses to the questions posed in this document and any additional suggestions you may wish to offer. Please provide examples or evidence to support your suggestions where possible.

You may download this paper and submit your completed responses **by the deadline of May 2, 2022**. You can submit comments by email to newhomes@ontario.ca.

Please provide your name and contact information, such as an email or mailing address.

Please also check the appropriate box to indicate whether you are providing input primarily as a:

- ☐ Person who is building or thinking about building their own home
- ☐ Homeowner or consumer
- ☐ Consumer group
- ☐ Architect, engineer, or project manager
- ☐ Builder or developer
- ☐ Contractor, general contractor, tradesperson
- ☐ Home inspector
- ☐ Municipality or building official
- ☐ Real estate professional
- ☐ Real estate lawyer
- ☐ Other: please note your affiliation here

Thank you for taking the time to review and provide your input. If you have any questions about this consultation, please email newhomes@ontario.ca.

Proposals for Consultation

1. Disincentives to building illegally and holding people accountable

It is important that there be disincentives to building illegally and to ensure that people are held accountable for the defects they cause.

If a person is convicted of illegal building, the fines imposed on them may not be enough to discourage them from doing so again. In [their 2019 audit, the Auditor General](#) noted that some people have continued to build illegally after having been convicted.

In addition, beyond building and selling a home without a licence and without enrolling it, some people may also attempt to avoid honouring the warranties they must provide under the Warranties Act. They might attempt to do so by building and selling homes through a corporation that they created to avoid liability for their work, and that they run as the corporation’s officer and/or director. Creating such corporations may make it more challenging for Tarion to hold accountable those responsible for defects in an illegally built home.

Proposals

Consumer protection could be enhanced by:

- introducing new measures that better deter illegal building; and
- making it easier to hold those responsible for illegal building accountable for the defects they cause.

Escalating Fines

To better discourage people from continuing to build illegally, the maximum fine for illegal building after a previous conviction could be increased.

Consultation Questions:

1. Should the maximum imposable fine be increased after each conviction for illegal building?

No	I’m not sure	Yes

2. Could increasing maximum fines be an effective deterrent?

No	I'm not sure	Yes

3. What are the potential benefits and/or negative consequences of increasing the maximum imposable fines after each conviction for illegal building?

Please enter your comments here

4. What other ways could the government discourage people from building illegally?

Please enter your comments here

5. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

Personal Accountability

To promote accountability for illegally built homes, officers and directors of corporations could be held personally responsible for the defects their corporations caused in certain circumstances. More specifically, legislation could provide that the officers and directors of corporations that illegally build must compensate Tarion for the cost to resolve defects caused by those corporations.

Consultation Questions:

6. Should officers and directors be required to compensate Tarion for the defects their corporations caused if the corporation built illegally?

No	I'm not sure	Yes

7. What are the potential benefits and/or negative consequences of holding officers and directors personally responsible for compensating Tarion?

Please enter your comments here

8. Could holding officers and directors personally responsible for compensating Tarion effectively promote accountability?

Please enter your comments here

9. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

2. Improving Protections for Buyers

The Warranties Act and the Licensing Act provide protections for buyers of new homes in the form of licensing requirements, warranty requirements, and an entitlement to compensation from Tarion if a vendor fails to honour its warranties. However, the protections that those laws provide depend on how they define the types of people who have licensing and warranty obligations, and how they define the types of homes regulated under those laws. More people in the business of building or selling new homes could enrol them with Tarion, or get a licence from the HCRA, if those definitions were changed. If more homes were enrolled and if more people were licensed, the risk that defects could arise in new homes could decrease, and more consumers could require that defects be repaired when they arise. In addition, improvements to those definitions could make it easier for the HCRA or Tarion to hold those responsible for their licensing and warranty obligations under the Licensing Act and the Warranties Act.

If a person claims to build a home to personally occupy it, when in fact, they are building the home to sell it, their warranty and licensing obligations may become less certain. If a person builds a home to personally occupy it, that person is not required to get a licence from the HCRA, enroll the home, and provide warranties for it under the Warranties Act. Such people are called “owner-builders.”

However, if a person builds a home to sell it, that person is a “builder” and must respect their warranty, licensing, and enrolment obligations. When people claim to be an owner-builder when they are actually a builder, it may be harder for the HCRA and Tarion to hold them responsible for their licensing, enrolment, and warranty obligations because the current definitions may make it difficult to prove that they are in fact a builder.

Warranties for Common Elements

Consumer protection could also be improved by addressing the exclusion of common elements, in some condo corporations, from warranty coverage under the Warranties Act, including:

- Common elements condo corporations: these condo corporations have no units and only common elements. Owners purchase land tied to part of a common elements condo corporation in which they also have an ownership interest.

- Vacant land condo corporations: units in these condo corporations are not part of a building, cannot be above or below another unit, may be vacant at the time of purchase and do not need buildings in them before the condo corporation is registered with the Land Registry Office.

As a result of this exclusion, some vendors may attempt to organize their developments into these types of condo corporations so they do not have to provide warranty coverage for common elements. If common elements in these condo corporations have defects, and if the vendor does not address them, Tarion is unable to assist by providing compensation or by making repairs. Vendors may be able to do this while respecting their enrolment and licensing obligations.

Proposals

Refining the Definitions

The definitions of “builder”, “vendor”, and “home” in the Warranties Act and the Licensing Act could be changed to make it easier to identify who has licensing, enrolment, and warranty obligations. Changes to the definitions could reduce the ability of some people to avoid licensing, enrolment, and warranty obligations by claiming to be an owner-builder, when they are in fact a builder (that is, when they are building the home to sell rather than to personally occupy it).

Consultation Questions:

10. Should the definitions “builder”, “vendor” and “home” be refined to make it easier to identify who has licensing, enrolment, and warranty obligations?

No	I’m not sure	Yes

11. If you think it is important to refine the definitions, what specific issues do you see with the current definitions?

Please enter your comments here

12. If you do not think it is important to refine the definitions, please explain why.

Please enter your comments here

13. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

Increasing Public Awareness

A consumer may wish to have a home built for themselves on land that they own. While they might hire someone to build most of the home, they might also wish to be involved in its construction. For instance, a consumer may wish to complete finishing elements of the home themselves, such as cabinets or lighting fixtures. However, the extent to which a consumer may get involved in the construction of the home without losing warranty coverage under the Warranties Act is not always clear.

In addition, some consumers may agree to arrangements with their builders that could mask the builder’s involvement in the construction of a home. As a result, in some cases, it may not be clear that their builder is a “builder” under the Warranties Act, such that the consumer may have difficulty benefiting from warranty coverage and getting assistance from Tarion. Some consumers may not be aware of the consequences of these arrangements.

Furthermore, some consumers may buy homes recently built by owner-builders. The buyers of owner-built homes are not entitled to warranty coverage under the Warranties Act, nor are they entitled to compensation from Tarion to resolve defects. Owner-builders are also not regulated by the HCRA, or screened by the HCRA for their ability to build their homes, nor are they screened by Tarion for the likelihood that they will repair defects in their work. Consumers may not be aware of the relative lack of protection for buyers of owner-built homes. For instance, they may not be aware that the owner-builders of owner-built homes are not required to provide warranties for them.

An awareness campaign could provide consumers with information about warranty coverage and offer warnings about the impact of a consumer’s involvement in the construction of their home before, or shortly after construction commences. This could help consumers avoid putting their warranty coverage at risk. A campaign might also help increase awareness of the potential risks associated with buying owner-built homes.

Consultation Questions:

14. Should there be an awareness campaign to warn consumers about:
- a. the impact of their involvement in the construction of their homes?

No	I’m not sure	Yes

- b. the risks of buying owner-built homes?

No	I’m not sure	Yes

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15. To address illegal building, what specific subjects and/or activities do you think should form part of an awareness campaign?

Please enter your comments here

16. Please share any other comments you have on the issues or proposal above.

Please enter your comments here

[Restrictions on Owner-Building](#)

If a person builds a home to personally occupy it, that person is not required to get a licence from the HCRA, enroll the home, and provide warranties for it under the Warranties Act. Such people are called “owner-builders.” However, a person may claim to build a home to personally occupy it, when in fact, they are building the home to sell it.

To prevent people from exploiting the owner-builder exemption, restrictions could be placed on owner-builders to protect consumers, while recognizing that many landowners build their own homes without the intent to sell them. In their [2019 audit, the Auditor General recommended](#) that Ontario consider adopting similar restrictions to those that British Columbia places on owner-builders.

Restrictions to protect consumers could include:

- disclosures to the HCRA;
- waiting periods before owner-built homes can be sold;
- restrictions on the frequency at which an owner-built home can be sold; and
- lifetime prohibitions on owner-building for illegal builders.

[Disclosures to the HCRA](#)

The HCRA’s registrar could be permitted to require that all owner-builders disclose their status as an owner-builder to the HCRA before they build their home. These disclosures could provide the HCRA with an additional way to identify individuals that have exploited, or intend to exploit, the owner-builder exemption while providing the HCRA with an ability to distinguish true owner-builders. In addition, it could help the HCRA with its inspection procedures so that other restrictions, discussed below, could be enforced, if necessary.

Consultation Questions:

17. Should owner-builders be required to disclose their status as owner-builders to the HCRA before building their home?

No	I'm not sure	Yes

Please enter your comments here

18. What are the potential benefits and/or negative consequences of a new disclosure requirement?

Please enter your comments here

19. What other tools or information could the HCRA be provided to better identify illegal builders or to enforce any new owner-builder obligations?

Please enter your comments here

20. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

[Waiting Periods & Frequency Restrictions](#)

If a person builds a home to live in themselves, lives in the home, and later sells it, the person who builds that home will not be required to get a licence from the HCRA and will not be required to enrol the home. In addition, the buyer of that home will have no warranty coverage for it and Tarion will be unable to help resolve any defects with it.

To restrict the ability of such a person to compromise these protections, owner-builders could be prohibited from selling the homes they build for a period of time after the home is constructed. In addition, limits on the frequency at which a person can build their own homes or sell them could be imposed. Both measures are intended to find a better balance between permitting people to build a home for themselves with limited requirements, and restricting the ability of people to exploit the owner-builder exemption.

Consultation Questions:

21. Should owner-builders be prohibited from selling the homes they build for a certain amount of time after they are constructed?

No	I'm not sure	Yes

22. If you agree with the statement above, how long should owner-builders be prohibited from selling the homes they build?

Please enter your comments here

23. If you disagree with the statement above, please explain why.

Please enter your comments here

24. If owner-builders are prohibited from selling the homes they have built for themselves, for a certain period of time, are there any circumstances under which an owner-builder should be permitted to sell their home before that period of time elapses?

Please enter your comments here

25. Should limits be placed on how frequently a person can build or sell their own home?

No	I'm not sure	Yes

26. If you agree with the statement above, how often should a person be permitted to build or sell their own home?

Please enter your comments here

27. If you disagree with the statement above, please explain why.

Please enter your comments here

28. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

[Lifetime Prohibitions](#)

If a person is convicted of illegal building, the law does not prohibit this person from building another home as an owner-builder. To discourage illegal building, and to prevent a person

from repeatedly engaging in illegal building, convicted illegal builders could be indefinitely prohibited from building homes for themselves.

Consultation Questions:

29. If a person has been convicted of illegal building, should they be prohibited from building a home for themselves indefinitely?

No	I'm not sure	Yes

30. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

Protections for Buyers of Owner-Built Homes

Some of the protections for buyers of homes built by builders could be extended to protect the buyers of owner-built homes. In addition, new protections could be created to address issues specific to buyers of owner-built homes.

Protections for buyers of owner-built homes could include:

- owner-builder warranties;
- compensation from Tarion;
- disclosures to potential buyers;
- public information about owner-built homes; and
- public information about an owner-builder’s record.

Owner-Builder Warranties

In some cases, a person may avoid their responsibilities under the Licensing Act and the Warranties Act. In other words, they may claim the owner-builder exemption to avoid licensing, enrolment, and warranty requirements, even if they really are a builder. In addition, Tarion and the HCRA may be unable to prove that the person was a builder so that Tarion can hold the person accountable for their warranties under the Warranties Act, and the HCRA can hold the person accountable for failing to get a licence and enrol the home.

In other cases, a person may genuinely be an owner-builder, but be forced to sell the home they have built. For instance, a person may have to move to another city for a new job. As

indicated above, owner-built homes do not have warranty coverage and Tarion cannot provide assistance to the buyers of those homes to resolve problems with them.

To reduce the incentive to illegitimately claim the owner-builder exemption to licensing and warranty requirements, owner-builders could be required to personally warrant the homes they build for themselves to those who purchase them. This expansion of warranty coverage could also protect all buyers of owner-built homes. For instance, if an owner-builder must sell their home because of a change in life circumstances, the buyers of those homes would be protected by the owner-builder’s warranty. Under this proposal, the person who first bought an owner-built home, and other people who buy it in the future, would benefit from a warranty until it expires. This warranty would permit the buyer of a home to commence legal proceedings against the person who built it for the cost of resolving defects with it.

For instance, the length of the warranty could be seven years from the time the home is built. If the owner-builder sells the home in the third year after the home is built, then the buyer, and any subsequent buyer, would benefit from the balance of the warranty period until the end of the seventh year from the time the home was built.

Consultation Questions:

31. Should owner-builders be required to personally warrant the homes they build for themselves if they sell them?

No	I’m not sure	Yes

32. Should owner-builders be required to provide the same warranties as those that vendors must provide? (You can find a [description of the warranties vendors must provide](#) on Tarion’s website.)

No	I’m not sure	Yes

33. What are the potential benefits and/or negative consequences of requiring owner-builders to personally warrant the homes they build for themselves?

Please enter your comments here

34. Please share any other comments you have on the issue or proposals above.

Please enter your comments here

Compensation from Tarion

In addition, the buyers of owner-built homes could be given the right to get help from Tarion just as the owners of new homes sold by a vendor may have Tarion repair defects or provide them with compensation. To permit Tarion to manage the cost of providing this help, owner-builders would have to, at a minimum, inform Tarion of their intent to sell the home within the warranty period.

Many people who build or sell new homes today must provide Tarion with security before they build a home. This helps Tarion manage the cost of resolving issues with new homes, because it permits Tarion to draw on the security provided to resolve those issues, rather than drawing on the funds Tarion has raised from the fees it charges builders and vendors. These fees may ultimately be passed on to consumers. To reduce Tarion’s costs to resolve issues with owner-built homes, Tarion could be permitted to require owner-builders to pay fees and provide security to Tarion before they are allowed to sell their home.

Consultation Questions:

35. Should the buyers of owner-built homes be able to get assistance from Tarion if the owner-builder does not honour its warranties? In other words, should buyers of owner-built homes be entitled to repairs or compensation from Tarion?

No	I’m not sure	Yes

36. Should owner-builders be required to provide Tarion with security before they are permitted to sell their home within the warranty period (seven years from the time the home is built)?

No	I’m not sure	Yes

Please enter your comments here

37. What are the potential benefits and/or negative consequences of permitting the buyers of owner-built homes to get assistance from Tarion, and requiring owner-builders to provide security?

Please enter your comments here

38. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

Disclosures to Potential Buyers

Even if owner-builders are required to warrant the homes they build and sell, and even if Tarion is required to assist buyers with defects and other problems with their home purchases, the risk of defects in owner-built homes may be greater than those built and sold by builders and vendors. That is because owner-builders, unlike builders and vendors, would not have to be screened by the HCRA or Tarion for such things as their familiarity with the Ontario Building Code or whether they have people qualified to build the home.

To better ensure that the buyers of owner-built homes are aware of these risks, owner-builders could be required to disclose to potential buyers that a home is owner-built and to outline the risks involved in purchasing those homes.

Consultation Questions:

39. Should owner-builders be required to disclose to potential buyers that the home they are selling is owner-built before it is sold?

No	I’m not sure	Yes

Please enter your comments here

40. What are the potential benefits and/or negative consequences of requiring owner-builders to disclose to potential buyers that the home they are selling is owner-built?

Please enter your comments here

41. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

Public Information about Owner-Built Homes

Even if an owner-builder must disclose to potential buyers that the home they are selling is owner-built, subsequent buyers may not be able to benefit from that disclosure. More specifically, the first buyer would receive the disclosure, but since the owner-builder would be required to make the disclosure to the first buyer only, those who subsequently purchase the home may not receive it.

To provide subsequent buyers with the same information, information could be made available in a publicly accessible database about whether a home was owner-built and the risks involved in purchasing those homes.

In addition, if owner-builders are required to warrant the homes they build and sell, potential purchasers may wish to quickly and independently verify that the home they wish to buy has warranty coverage. The HCRA already hosts a [publicly accessible database](#) where potential buyers can search the warranty status of a home. The database permits potential buyers to confirm whether a vendor of a home provides warranties for it under the Warranties Act. The HCRA could be required to also indicate that an owner-built home is covered by warranties under the Warranties Act if owner-builders are required to warrant the homes they build and sell.

Consultation Questions:

42. Should potential buyers of a home be able to determine whether it is owner-built by searching for it in a publicly accessible database?

No	I’m not sure	Yes

43. If owner-builders are required to warrant the homes they build and sell, should potential buyers of an owner-built home be able to verify its warranty coverage in a publicly accessible database?

No	I’m not sure	Yes

44. What are the potential benefits and/or negative consequences of creating a publicly accessible database that shows whether a home was built by an owner-builder, and whether the home has warranty coverage (if owner-builders are required to warrant the homes they build and sell)?

Please enter your comments here

45. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

Public Information about an Owner-Builder’s Record

Potential buyers may wish to know about who built an owner-built home just as they can learn about the builders and vendors of homes that are not owner-built. For instance, potential buyers may wish to know whether the owner-builder that built the home was convicted for violating the Warranties Act and Licensing Act (the laws that provide protections for buyers of new homes). Buyers also may want to know whether the owner-builder has refused to honour its warranties for other homes that they have built.

To better inform potential buyers of an owner-builder’s record related to the construction of the home they are selling, the HCRA could be required to provide a publicly accessible database that offers information to potential buyers about the owner-builder, including, for instance, whether the owner-builder has:

- been charged or convicted for violating the Warranties Act or the Licensing Act;
- been the subject of measures to enforce the Licensing Act, such as whether the person has been ordered to comply with the Licensing Act by the HCRA’s Director; and
- refused to honour their warranties under the Warranties Act.

Consultation Questions:

46. Should the HCRA maintain a publicly accessible database to inform buyers about an owner-builder’s record related to the construction of the home they are selling, such as past convictions under the Warranties and Licensing Act, and past refusals to honour their warranties under the Warranties Act?

No	I’m not sure	Yes

47. If the HCRA should maintain a publicly accessible database about owner-builders, how long should that information be available?

Please enter your comments here

48. What are the potential benefits and/or negative consequences of publishing information about owner-builders’ records related to the construction of the home?

Please enter your comments here

49. What other actions could the government take to help inform potential buyers about the risks of buying owner-built homes?

Please enter your comments here

50. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

Expanding Protection for Condominium Common Elements

Warranty coverage could be extended to common elements in common elements condo corporations and vacant land condo corporations (see definitions for these condo corporations in [Appendix A](#)). The objective of this proposal is to prevent vendors from avoiding warranty obligations for common elements when they organize their developments into these types of condo corporations. If warranty coverage were extended to common elements in these condo corporations, Tarion would be able to assist these condo corporations when vendors do not address defects in common elements.

Consultation Questions:

51. Should warranty coverage be extended to cover common elements in common elements condo corporations and vacant land condo corporations?

No	I'm not sure	Yes

52. How could costs increase for vendors if warranty coverage were extended to common elements in common elements condo corporations and vacant land corporations? How much of these costs would be passed down to consumers?

Please enter your comments here

53. If warranty coverage were extended to the common elements in common elements condo corporations and vacant land condo corporations, when should warranty coverage start for these common elements?

Please enter your comments here

54. Why might a vendor organize their development into a common elements condo corporation or a vacant land condominium corporation?

Please enter your comments here

55. If warranty coverage were extended to cover the common elements in common elements condo corporations and vacant land condo corporations, would there be any specific cases or circumstances where it would be appropriate to exclude certain

common elements condo corporations or vacant land condo corporations from warranty coverage?

Please enter your comments here

56. What are the potential benefits and/or negative consequences of extending warranty coverage for common elements in common elements condo corporations and vacant land condo corporations?

Please enter your comments here

57. Please share any other comments you have on the issue or proposal above.

Please enter your comments here

Other Illegal Building Issues and Proposals to Improve Protections for Buyers of New Homes

Please describe below whether you have any other issues to raise or solutions to propose about illegal building and related improvements to protect buyers of new homes.

Consultation Questions:

58. Please describe any additional issues about illegal building or related improvements to protect buyers of new homes that should be considered.

Please enter your comments here

59. What other proposals should be considered to address illegal building or to make related improvements to protect buyers of new homes?

Please enter your comments here. Please note additional proposals as necessary.

Proposal A –

Proposal B –

Proposal C –

60. What are the potential benefits and/or negative consequences of any of the proposals suggested in response to the previous question?

Please enter your comments here.

61. Please share any other comments you have on the issues or proposals above.

Please enter your comments here

Consultation Deadline

The ministry welcomes input to this policy consultation. Please submit your ideas to newhomes@ontario.ca **by the deadline of May 2, 2022**. Thank you in advance for your time and comments.

Appendix A - Glossary of Terms

Term/Phrase Used in the Consultation Paper	Technical Term(s)	Explanation
Builder	Builder	<p>This term refers to a person or company who undertakes to build substantially all of a home under three circumstances:</p> <ul style="list-style-type: none"> • for the purposes of selling the home; • under contract with a vendor who will ultimately sell the home; or • under contract with a consumer who already owns the land on which the home will be built. <p>A person can be a builder under the Warranties Act and the Licensing Act even if they do not build the entire home. A person must only build, or manage the construction of, substantially all of the home to be considered its “builder”. Whether a person has built, or managed the construction of, enough of a home to be considered its builder depends on the specific circumstances.</p> <p>Builders must have a licence from the HCRA to build new homes. Builders must only warrant the homes they build under the Warranties Act if they are also a “vendor”. See the definition of “vendor” for more.</p> <p>For the technical definition in legislation, see section 1 of the Warranties Act. For a detailed explanation of the considerations that go into determining whether a person is a builder, see the HCRA’s advisory on the “builder” definition.</p>
Common elements of a condominium corporation	Common elements of a condominium corporation	<p>This term refers to all the property of a condominium corporation except the condominium units, such as a building’s shared hallways or swimming pool.</p>

Term/Phrase Used in the Consultation Paper	Technical Term(s)	Explanation
Common elements condo corporations	Common elements condominium corporation	These condo corporations have no units and only common elements. Owners purchase land tied to part of a common elements condo corporation in which they also have an ownership interest.
Conventional home, freehold home	Freehold home	<p>This term refers to a detached house, semi-detached house, or a townhouse that is not a condominium unit.</p> <p>For the technical definition in legislation, see the definition in section 1 of Ontario Regulation 165/08.</p>
Home Construction Regulatory Authority, the HCRA	The Home Construction Regulatory Authority	The Home Construction Regulatory Authority is the not-for-profit corporation responsible for administering the Licensing Act, including the licensing and regulation of builders and vendors of new homes.
Illegal building	Illegal building	“Illegal building” refers to a person’s failure to adhere to their legal obligation to obtain a builder or vendor licence from the Home Construction Regulatory Authority, to confirm that the homes they build and sell qualify for enrolment with Tarion, and/or to enrol those homes with Tarion.
Licensing Act	New Home Construction Licensing Act, 2017	The Licensing Act regulates the conduct of builders and vendors of new homes. The Home Construction Regulatory Authority is responsible for administering the Licensing Act, which includes licensing and regulating builders and vendors.
New home, home	Home	<p>This term refers to:</p> <ul style="list-style-type: none"> • a detached house, semi-detached house, or a townhouse that is not a condominium unit, • a condominium unit that is meant to be lived in, including generally speaking, the common elements of the unit’s condominium corporation, and

Term/Phrase Used in the Consultation Paper	Technical Term(s)	Explanation
		<ul style="list-style-type: none"> • certain accessories to the house or condominium unit, such as attached garages. <p>For the technical definition in statute, see section 1 of the Warranties Act. For a detailed explanation of the considerations that go into determining whether a building is a home, see the HCRA's advisory on the "home" definition.</p>
Owner-builder	Owner-builder	<p>This term refers to an individual who constructs a home, or manages the construction of a home, that they plan to live in.</p> <p>For the technical definition in legislation, see section 1 of the Warranties Act.</p>
Tarion	Tarion	<p>Tarion is the not-for-profit corporation responsible for administering the Warranties Act, including the processing of claims for consumers related to their warranties.</p>
Vendor	Vendor	<p>This term refers to a person or company who, on their own behalf, sells a home to a consumer (i.e. an "owner") that has never been occupied.</p> <p>Vendors must have a licence from the HCRA to sell new homes. They must provide warranties under the Warranties Act for the new homes they sell. In addition, Tarion must provide assistance to consumers who buy those homes if the vendor refuses to honour their warranties. For instance, Tarion may compensate the homeowner or make the repairs itself.</p> <p>If a landowner hires a builder to construct a home for the landowner on their land, the builder is also considered to be a vendor under the Warranties Act and the Licensing Act. These builders therefore must be licensed by the HCRA as a vendor, and provide warranties under the Warranties Act for the homes</p>

Term/Phrase Used in the Consultation Paper	Technical Term(s)	Explanation
		<p>they build. Tarion must provide the same assistance to the buyers of those homes if their vendors fail to honour their warranty as the assistance it provides to consumers of other vendors.</p> <p>For the technical definition in legislation, see section 1 of the Warranties Act. For a detailed explanation of the considerations that go into determining whether a person is a vendor, see the HCRA's advisory on the "vendor" definition.</p>
Vacant land condominium corporation	Vacant land condominium corporation	The units in these condo corporations are not part of a building, cannot be above or below another unit, may be vacant at the time of purchase and do not need to have buildings in them before the condo corporation is registered with the Land Registry Office.
Warranties	Warranties under the Warranties Act	<p>Generally speaking, this term refers to guarantees under the Warranties Act that a home will be free from defects. Warranties are provided by the vendor of a home. If the vendor fails to honour its warranties, a consumer may be entitled to compensation from Tarion.</p> <p>For a list of some of the warranties under the Warranties Act, see section 13 of the Warranties Act.</p>
Warranties Act	Ontario New Home Warranties Plan Act	The Warranties Act provides warranties and entitlements to compensation for buyers of new homes. Tarion is responsible for administering the Warranties Act, which includes processing claims for consumers related to their warranties.
Warranty coverage	Warranty and protection	This term is used to indicate whether the owner of a home is entitled to the warranties and other forms of compensation under the Warranties Act. For instance, if a home has warranty coverage, then the owner of

Term/Phrase Used in the Consultation Paper	Technical Term(s)	Explanation
	coverage under the Warranties Act	that home is entitled to make a claim against the home’s vendor for certain defects.