

Karen Somerville's guest post to Ellen Roseman's blog, Apr. 29, 2012

“People Freezing and Sweating in Newly Built Homes”

26 comments

1. Dara Bowser

Apr 29 2012

Thanx for the post Ellen & Karen. I appreciate the good work that Karen and her association does.

As far as I know, they are the only independent association working for new home consumers in Canada.

What Karen is speaking about is unfortunate, but is the inevitable result of a system of standards, enforcement and warranty responsibility that has been neglected and circumvented to the extent that it no longer works.

It is my hope that by highlighting these problems, something will actually be done.

2. Barbara

Apr 30 2012

All true, and Karen Somerville's organization is the only one I know helping consumers' fight through all of this mess regarding HVAC defects.

Many HVAC system defects are very difficult for laymen to diagnose, we usually only see symptoms of something we don't understand the cause of, and can't get to the bottom of. As with complicated medical problems, one can go for years without a proper diagnosis, even after consulting several doctors. The key is to consult technicians NOT in any way associated with your builder, since only they will give you the truth, and no self-serving run-around.

We had to learn the science of “hydronics”, the science of hot water heating, to discover a defect in the design and installation of our in-floor heating/hot water/snow melt system.

There seem to be few licensed practitioners out there who really know what they're talking about, or have the required experience and training to inspect these problems. And there are

certainly a lot of posers out there. But that's presumably why we have Tarion Warranty Corporation in the first place – to protect consumers against short-cutting builders through the new home warranty we are forced to buy. Tarion says on their website they “investigate illegal building practices” and “regulate the new home building industry in Ontario”. Sounds good, but in practice, they side with the builder in these disputes. That's more fun for their legal department, builders have more money, power, and usually lawyers too. It's just easier to get rid of another pesky, self-represented, warranty holder.

For highly technical areas like any HVAC defects, there should be a “discoverability clause” in Tarion's warranty coverage to allow a new homeowner more time to cut through the run-around given them by self-serving builders, seek proper outside advice from the technical experts required. Anyone who's had these hidden defects will attest to the fact it's not easy for a homeowner to cut through the b.s. and get to the truth on highly technical home defects. This area is currently a new home builder's dream come true.

3. Al

Apr 30 2012

Thanks for this very important information. If you happen to get a bad builder, you may be in real trouble. (I agree there is absolutely no reliable insights into who is a good or bad builder).

The support systems that you might expect to rely on if there are problems (federal, provincial, municipal, warranty programs, etc.) often do not assist homeowners.

BUYER BEWARE !!!!!

4. Joost

Apr 30 2012

Thank you so much, Canadians for Properly Built Homes. Thank you, Dr. Karen Somerville. And thank you, Ellen Roseman!

Not Tarion, not building inspectors, not our Ontario ministers, not our ombudsman. They're not taking the right steps in defending home owners in these complicated matters. But you are, by bringing these matters to light.

The HVAC industry knows that quite a number of developers are cutting corners with HVAC installations and leaving new home owners with costly and nerve wracking problems, but do not speak up because of their financial interests.

It is just a matter of arithmetic. The new homeowner has already paid for a new HVAC installation at the time of buying the new house. He has to pay again, say three years later, after finally discovering, diagnosing and solving the problem.

The amounts of money out of pocket are substantial and many homeowners cannot justify it, as well as paying a \$10,000 to \$20,000 bill for a legal advisor.

In our case, we could only diagnose our HVAC problems just after the 2-year Tarion warranty had expired. We had to partly redesign and re-install our HVAC installation.

Costs approximately \$20,000, to be increased with \$ 10,000 for various other expenses, like court costs, cost for additional plumbing work etc., but excluding legal costs.

On our path, our opponents are the lawyers for Tarion and the builder. To manage these spiralling costs, we have to be self represented.

This is just not a fair and level playing field. Is our government protecting us against shoddy building practices?

5. Frank

May 1 2012

This is a great article, but here's an important comment. You should ALWAYS insist on an inspection when buying a house.

There are some shady, but also some very experienced inspectors. I will not name the company we use, but they have inspected 4 houses for us, and every time took the time to walk through each piece of the house, including the HVAC.

These same companies are also performing PDI inspections.

When buying new, if the HVAC is not yet installed, you should ask to see the plans before they go in. One of our houses had lines running every which way, leading to a lot of heating loss.

You can also request to have the entire HVAC system sealed, which is very easy using the correct materials.

6. MC

May 1 2012

I own a townhome in one of the developments affected by systemic HVAC deficiencies. Since I am the second owner and the home was more than 2 years old when I purchased it, I seemed to have absolutely no rights under the Tarion warranty, although some of the neighbouring homes have been repaired by Tarion and all the homes in the development had the same issues.

Multiple letters to various government ministries, the Ombudsman and the town proved futile. There is absolutely no protection and no support for a homeowner in these types of matters, particularly when you are a victim of “patch and run” by the previous owners.

Suing the former homeowners would have been expensive and, in my case, would have been problematic and distasteful as they were quite elderly.

Last year, I spent \$20,000 to have all components of the HVAC system replaced so I can live in my home comfortably and eventually sell it with a clear conscience.

The Tarion warranty is useless and the organization should be disbanded.

7. Elizabeth

May 1 2012

We need to have a “bad apples” list of builders who have short-cut consumers in the past, a sort of “Consumers Report” for new home-buyers.

Tarion cannot be relied upon to do this and have amply demonstrated this. They prefer to hand out “awards” to builders using our warranty money. Their interests are too closely allied with the building industry.

Ditto for the Ontario government and the municipal authorities. It’s about jobs, jobs, jobs in building-related industries at all cost.

The court system cannot handle a greater load of the cases that Tarion is supposed to be dealing with.

We need to provide a disincentive to builders to use short-cutting building practices and cheat consumers.

8. AK

May 2 2012

My boyfriend and I leased a home with this kind of high velocity system. As a result, we are experiencing identical problems as the people you mentioned.

We moved in only on April 15, two weeks ago, and we haven’t been able to get a proper sleep due to the extreme loudness of the system. We are constantly awoken everytime the heat kicks on.

In addition, we are unable to maintain the appropriate level of heat within the house.

Since the temperature of the water is also determined by the system, the level of hot water in any given tap is unpredictable. Sometimes it is exruciatingly hot and sometimes nothing but cold.

My 8-year-old daughter burned her hands twice in the powder room within 5 hours of living here. I had to place a note on that sink for it not to be used at all. I feared that someone would burn their hands again.

I have spoken with my landlord and advised we cannot live here comfortably. He is not likely going to assist us.

We are now facing potential legal battles, financial constraints and long drawn out court battle. Not to mention, disturbing sleep patterns.

9. RF

May 2 2012

It sounds like new home warranties are as much as a rip-off as many warranties.

I think two years is too short. Some things in a new home might fail within the two years because of a problem with installation of some sort, a faulty component, etc. But surely, anything major should be expected to last more than two years.

In the case of the heating and cooling systems in these houses, I do not understand, morally, how the warranty could ever expire.

The problem doesn't seem to be that anything wore out. The problem seems to be that the original design was seriously flawed.

As far as I'm concerned, it doesn't matter who is at fault: the builder, the manufacturer of the equipment or the installer. It certainly isn't the homeowner's fault and someone should be responsible for fixing the problem, warranty or no warranty.

The system didn't fail. It never worked as it should have.

How was a buyer of a new home to know? Depending upon when they moved in, the problems may not have been apparent.

Depending upon the weather, even in winter or summer, it may not have been noticed. And some people are more tolerant of temperatures than others.

I have a neighbour, a petite woman who has her windows open even in the dead of winter and her air conditioners going full blast in summer.

I've done some winter camping and don't particularly notice the cold, except at night. So I have no air conditioning, except on the very hottest summer nights. And I sleep under the same four wool blankets winter and summer.

So if we looked at one of these homes, if either of us felt the temperature was too hot or too cold, we'd probably just assume that is how the owners liked it.

And I suspect that most home inspectors would think the same, unless they had experience with other homes the builder had built.

Who would ever suspect that something as basic as the design of the system would be so flawed?

Why didn't anyone notice that the ducts were too small? Wouldn't the suppliers of the equipment have specified a minimum duct size?

Wouldn't whoever ordered the ducting wonder why it was smaller than other ducting they had ordered, especially if they had ordered ducting for similar sized houses using the same equipment? Wouldn't the installers have commented?

With any experience, they would certainly have a feel for what was suitable.

I think the warranty terms and conditions need some tweaking.

10. DVS

May 2 2012

Congratulations to Ellen Roseman for the article capturing the problems of HVAC systems & the poor response by Tarion.

We were among the few lucky ones, as Tarion agreed to fix our HVAC problems.

Over 7 years, there was much frustration in trying to get our problem solved. The residents of this subdivision have gone through a lot of 'pain & anguish'.

The problems have been identified and Tarion should admit that the same errors happened in all the homes in this subdivision. It should do the Right, Moral & Ethical thing – Settle this situation in the same way you would expect to be treated!

11. Bev

May 3 2012

Thank you to Ellen and CPBH for continuing to keep the light on this issue. Unfortunately, those who should be addressing the issue remain silent.

In his recent W5 interview, Howard Bogach, President and CEO of Tarion, in referring to claims of widespread problems with a particular brand of Hi-Velocity HVAC stated that “we” still don’t know what the problem is. Given that Tarion has been aware of problems with this system since before 2008, and in fact was involved in a very expensive remediation of 12 homes in Oakville, this is a rather stunning admission.

As the head of a consumer protection agency, you would think Mr. Bogach would want to get to the bottom of this so that future consumers are not victimized. You would think that would make good business sense: prevent future problems and limit future liability. Instead, Tarion goes after the easiest target, the individual homeowner, denying their claims, burying them in paperwork and procedural wrangling. If that doesn’t get rid of them, then they bring in the lawyers.

You would think that given the media attention on this issue, that Tarion would develop a comprehensive, fair plan, to fix the problems of homeowners with the same system and problem. Instead it’s more lawyers and duelling experts and each homeowner fending for themselves. Homeowners in the same development with the same problem are told contradictory things.

Meanwhile, these systems continue to be installed creating new homeowner victims. Meanwhile, resale home-buyers (as noted by a previous writer), face the agonizing choice of suing previous victims or paying for expensive and disruptive repairs. And the Ministry of Consumer Services staff sit stone-faced as homeowners tell their heartfelt stories of the the financial and emotional havoc this wreaks on their lives.

12. [mj](#)

May 7 2012

I was shocked when i learned about what I am going to tell you and I am sure you will be shocked as well.

My house and my neighbour's house were built in 2006 by Trico Homes here in Calgary. I am still here but my neighbour sold the house.

The new people living there once told us their house is unusually cold on ground floor compared to ours, while we kept the same settings.

After a while, I got news that they have a heating vent on the floor, but THERE IS NO DUCT CONNECTING THE VENT TO THE FURNACE!!!

I am amazed at such a huge error. Neighbours are a bit reluctant about complaining, but my guess is it's still the same.

Another problem these builders leave you is that there are different vendors for lighting, flooring, paint, etc. So when I had a basement leak, I had to go through their contractor and sort it out between two of us because the builder always says it's them, not us.

I had carpet coming off from the floor and the carpet guy tells me it's a quick fix. "Will cost you just \$500!"

Builders hire these guys for their own comfort, Then, you have to fight with people you wouldn't have chosen in the first place.

13. Sydney

May 7 2012

When you purchase a new home in Ontario you must purchase a warranty with the Tarion Warranty Corporation.

When you experience a problem with your home, you contact the builder. When the builder fails to help, you turn to Tarion Warranty. When Tarion Warranty fails to help, where do you turn?

If you think the municipality is going to help, think again. If the building permits are closed, the municipality will re-direct you to the builder and Tarion.

The Ontario Government would be the logical next step, perhaps the Ministry of Consumer Services? They should be interested, after all they are supposed to protect Ontario consumers. Sorry, to alarm you, but that is another closed door. Tarion Warranty is at arms length to the ministry, so they do not have jurisdiction over Tarion Warranty.

Perhaps the Ontario Ombudsman will get involved, after all they help people get their lottery winnings back. Sadly, they too have no jurisdiction over Tarion. That office claims that they do not have enough complaints from consumers about the Ministry of Consumer Services.

Is it just me, or do you see something wrong with this picture? Why in Ontario, Canada is there no fair, unbiased warranty to protect a consumer?

Some argue we get better warranty protection when we buy a toaster!

If you have construction defects in your home, you are encouraged to write to the Ombudsman of Ontario about the Ministry of Consumer Services. Changes are needed to ensure that consumers are protected.

14. JG

May 8 2012

First, we would like to thank Dr. Karen Somerville of Canadians for Properly Built Homes and Ellen Roseman! It is both reassuring and encouraging that these two ethically minded public figures support our right to be protected from inefficient and inadequate HVAC systems. Also, thanks to MPP Ted Chudleigh for calling for an investigation into this issue.

We also are not the original homeowner in a complex of Fernbrook homes, where all the homes have issues with the heating, cooling and noise generated from the small diameter vents.

After countless letters to the Premier, several MMPs, the Ontario Ombudsman, etc., and feeling like we were getting nowhere, we decided to spend a significant amount of money to have the HVAC modified to a point where it is at least moderately bearable.

I should also point out that we had a home inspection performed at the cost of \$450 before buying. It proved completely useless.

15. Trevor

May 8 2012

First of all, thanks to Ellen Roseman for taking up the argument with respect to faulty HVAC systems. At least somebody gets it because Tarion and the Ontario Government don't.

Premier Dalton McGuinty obviously can't see how dysfunctional his government and ministers are with respect to protection for consumers (among other things).

Thanks also to Karen Somerville of Canadians for Properly Built Homes, who has done a great job of staying on top of this issue and galvanizing support to try and right the many wrongs.

Further thanks also to Dara Bowser, who has supported those of us affected by HVAC problems and who has a great understanding of the problems with the high velocity HVAC systems.

I could go on for some time about the injustices by the builder, the municipality, the numerous Ministers of Consumer Affairs and Housing and Tarion — but enough is enough.

It is time for the government and Tarion to step up and take action to right the wrongs and provide protection for the consumer.

16. CM

May 8 2012

On Tarion's website, it states:

“Tarion is responsible for administering the Ontario New Home Warranties Plan Act, which outlines the warranty protection that new home and condominium builders must provide, by law, to their customers.

The primary purpose of Tarion is to ensure that builders abide by this legislation, and to step in to protect consumers when builders fail to fulfill their warranty obligations.”

If the above statement was indeed true, then I would not still be in the appeals process right now. Tarion has finally agreed to me that it is a warranted defect, but instead of trying to help reach a compromise to fix my HVAC system, they appear to complicate matters even further and have amply demonstrated this. Other homeowners in my same development with the exact same HVAC problems are being told contradictory things.

Perhaps we were too naive to reasonably presume that when we purchased a new home, that the HVAC equipment would be capable of heating and cooling our homes properly.

The process of buying a new home should be a dream come true – instead it is a nightmare come true!

Thank you to Ellen and CPBH for continuing to bring awareness and keep the light on these inefficient, inadequate and faulty HVAC systems.

Additional thank you to Dara Bowser who has a great understanding of the problems with hi-velocity HVAC systems.

17. Anne Clark

May 9 2012

It is shocking to find out that in Canada people can buy homes that don't work, subjecting it's occupants to months, even years, of discomfort, anxiety and costly repairs. Where are the government agencies to ensure things like this don't happen? It seems that Tarion has known about this for years. Shame on them. A full investigation into how this continues to happen is needed.

18. Dara Bowser

May 9 2012

Reading these posts confirms my observation that the organizations that are in place ostensibly to protect consumers do not seem to actually work when something goes wrong.

The secondary problem is that there does not seem to be any political will on the part of government or regulatory agencies to correct the problems.

In fact, it seems that we are going in the wrong direction.

An example of this is a recent change to the Ontario Building Code (effective Jan. 1, 2012), which quietly removed the requirement that the HVAC system be installed, operating and inspected by a municipal building inspector prior to occupancy.

19. Karen Somerville, President, CPBH

May 9 2012

Thank you to everyone who has posted thus far. Far too many Canadians are suffering because of HVAC construction defects and the lack of adequate consumer protection!

Dara Bowser has raised a very important issue in his May 9 post about a recent regressive change in the Ontario Building Code. Many Ontario consumers and CPBH have been raising these issues of HVAC construction defects and the lack of adequate consumer protection to the McGuinty government for almost a decade now. So, it is incomprehensible that the McGuinty government is regressing in this area by eliminating this HVAC inspection.

CPBH agrees with Anne Clark's post calling for an Investigation. Ontario MPP Ted Chudleigh has also been a leader in this area by calling for an HVAC investigation for years now.

HVAC victims – and other Canadians who are concerned about this – are encouraged to call for a full, independent HVAC investigation. Here is a link to the CPBH site with information about this:

http://www.canadiansforproperlybuilt homes.com/html/whatsnew/2012/jan/Jan_2012_On-HVACissues-invest_req.pdf.

Canadians in other parts of Canada who feel that an investigation is required can follow this Ontario model that has been established in the above link.

Let's work together and create positive change for Canada's purchasers of newly built homes!

20. Barbara

May 9 2012

It is exactly right as some readers have put it, that the circle of blame is dizzying for consumers who discover a defect in their new homes. The current system is a paradise for short-cutting, profit-maximizing new home builders.

New homeowners are forced by Ontario law to purchase the Tarion new home warranty. When you discover a complicated defect such as an HVAC-related one, Tarion tells you “too late” in reporting it, you’re past the 2-year deadline.

Then you spend over 100 hours representing yourself against the builder and Tarion at the License Appeal Tribunal for Tarion appeals; then you find you’re not covered under the archaic “major structural defect” clause (your problem is not “structural”).

Then you proceed to another Ontario court, prepare another 70 hours or so, wait another year for a trial date, file court documents, prepare witnesses, to fight your builder’s lawyer, after having fought Tarion’s legal team.

Municipalities say “it’s not our responsibility, it’s the builder”; the Ministry of Consumer Services says “it’s your builder”, Direct Energy says if rental equipment has been misapplied, “it’s your builder”; Enbridge gas inspections were not done pre-delivery, “it’s your builder”....

But who will force the builder to take responsibility for the defects he has built into your new home? Does our government leave it to us now as homeowners to police the industry?

All roads lead back to the builder, but he is on to his next project, having figured out exactly how to work the system to maximize his profits.

Mr. McGuinty, Mr. Marin, Minister Best: Don’t say you were not warned. The current system leaves part of the “policing” of the new home building industry on the shoulders of the weakest party, the new homeowner.

Isn’t this why Tarion was created in the first place? How did we move from “protecting new home-buyers” to protecting new home builders?

21. Roberta

May 9 2012

Are you considering buying a home in Ontario? Be warned:

Neighbours will not want to disclose what problems there are in the area, it may decrease the value of their home.

Tarion Warranty's website does not provide a complete list of homes built by a builder. A builder can create a new company name for one complex and close it afterwards, thus making it "inactive".

The list of chargeable conciliations and dollars paid out in claims on Tarion's website is not always accurate.

The Tarion New Homeowner Satisfaction Survey is misleading. Only those who had recently purchased their homes were allowed to participate in the survey. For example, in 2007 only those who had purchased a home in 2006 were allowed to participate.

As others posted, a home inspector may miss an HVAC problem.

Buying second hand has no guarantee either, as others said above, they were victims of "patch and run".

I agree with the others, if you want to see changes, you should write to your MPP, Minister Best, Mr. McGuinty and the Ombudsman of Ontario.

22. Adam

May 10 2012

I've been having constant problems with my HVAC system shortly after possession date. The system has a track record of yearly breakdowns. The most recent breakdown resulted in a flood in my mechanical room and since it gets so tropical hot in there, it resulted in mould growth! Both the builder and Tarion did absolutely nothing!

The warranty program is useless as when the builder fails to help, apparently so does Tarion.

The new home warranty fee you pay at closing is just a scam.

23. MC

May 28 2012

In response to one of the above comments regarding the “importance” of a home inspection, the inspector knew nothing about the HVAC system. All he could do is check that the fan came on when the correct button was pushed on the thermostat.

Inspection was in September “neither the heat nor the A/C was needed at that time. Even if he did understand what to look for, there is no way he could properly evaluate the operation of the HVAC system during the few short hours allowed for the entire home inspection.

The issue here is not the competence (or lack thereof) of the home inspector, but rather the lack of recourse for the homeowner when this type of builder-caused problem is discovered.

24. Larry

Jun 23 2012

I certainly empathize with those of you who have your heating and A/C problems and have experienced the “Tarion” problem. I have been to the Tribunal with Tarion twice and I am likely headed there for a third time relating to a defective repair that Tarion themselves contracted.

The problem with the Tarion program is very basic. The current warranty system places the onus of defect recognition on the homeowner. This is a preposterous, unfair and unworkable system.

First year items must be reported in the first year and second year items in the second year..and so on. The problem is a simple one. How is the layman to even know if there is a problem?

A homeowner may recognize a surface blemish and may report it as a surface blemish, but how is the homeowner to know if that surface blemish is indicative of a more insidious subsurface condition. How is a layman to know that something that looks “fine” on the surface is not built to code?

More likely than not, the improper build may not even show a surface defect for years, and may, in fact, NEVER show a surface defect.

I have experienced this over and over with Tarion. I have necessarily taken the steps to inform myself and successfully advocate my position.

For example, a few gaps in the oak floor planks were simply dismissed by Tarion as “seasonal expansion” of the wood and were determined to be non warranted. My flooring consultant established that the entire floor installation was defective, as the nailing spacing was inadequate and the floor had been installed “wet” and therefore cupped. The defect was then warranted.

Our driveway was improperly graded. We found out too late. How is a layman supposed to know the municipal requirements for driveway grading?

Our front steps “sunk”. Tarion took the position that these stairs were merely “landscaping” and the settlement was not warranted. It was a homeowner seasonal maintenance issue. The Toronto Building Department disagreed and the staircase was warranted and rebuilt by Tarion.

The problem, my friends, is very fundamental. The onus has been placed on the homeowner to identify and understand the defect and to have a Mike Holmes understanding of proper building process, building codes, gas codes, electric codes, plumbing codes and everything else that a builder must know.

The system is fundamentally flawed. A few newspaper articles will not solve the problem. The problem must be addressed at the grass roots.

The legislation is both faulty and misunderstood. Homeowners must also educate themselves or seek out appropriate guidance. New homes must be inspected by experts, so that visible and non visible defects are identified at the appropriate stages.

Tarion is manageable. You must remain vigilant, educate yourself and DO NOT accept “no” as an answer.

25. Elizabeth

Aug 11 2012

Hi, great to read your information on HVAC system concerns...but as a consumer, I think this warning is too late since we signed back in July last year.

Buying my first home from a builder has been extremely disappointing. The house has yet to be built and my frustration level with not being provided information on the actual costs of upgrades from the basic standard finishes is very upsetting.

If I knew the costs were 20 to 40 per cent higher than buying the upgrades on my own, I would not have bought a home directly from a builder.

Consumers are so afraid to talk and share the truth about their experience in fear of being sued by the builder.

26. Lyla Burns

Aug 24 2012

We are in the process of building our first home and since we have recently heard some horror stories of HVAC problems in new homes, we are being very cautious! Hopefully the company we've hired will do as good of a job as we've heard they do!!
