

Opinion | Tarion proposal that would penalize pre-construction buyers is fatally flawed

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Construction sites near Dundas Street and Trafalgar Road. Deposit protection covers buyers in cases where a builder goes bankrupt or fundamentally breaches an agreement and does not return the deposit.

Toronto Star file photo



By **[Bob Aaron](#)** Contributing Columnist

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Tarion — Ontario’s consumer protection organization for newly built homes — wants to reduce the amount of deposit protection for buyers of pre-construction freehold homes who fail to register their purchase agreements with the program.

Deposit protection covers buyers in cases where a builder goes bankrupt or fundamentally breaches an agreement — such as by not completing the house before the final construction deadline — and does not return the deposit.

The stated intention of Tarion’s new proposal is to help combat illegal sales of new homes and ensure deposit coverage for current and future new-home purchasers.

In my opinion, the proposal is fatally flawed and a breach of the regulator’s obligation to protect the public. Consumers should not be forced to become the police for the industry regulators, and should not be penalized for failing to register their agreements.

Currently, deposits of up to \$60,000 are protected for a pre-construction freehold home priced at up to \$600,000. For homes priced over \$600,000, deposits are protected for up to 10 per cent of the purchase price to a maximum of \$100,000.

The new proposal would require purchasers to notify Tarion about their new-home purchase within a specific period of time after signing an agreement with a builder. The notice to Tarion would include providing information about the purchaser, the builder and the amount of the deposit paid. This will be a requirement for buyers in order to qualify for the maximum deposit coverage.

Since 2021, the regulation and licensing of new-home builders in Ontario are the responsibility of the Home Construction Regulatory Authority

(HCRA). All matters related to homeowner warranty protection remain the responsibility of Tarion.

Until now, Tarion and the HCRA have been tracking unlicensed builders and prosecuting them where appropriate.

Under the new proposal, purchasers will be tasked with policing the industry, and buyers who fail to register their contracts will be subject to an unspecified reduction in their deposit coverage.

In my experience, perhaps half of Ontario's new-home buyers do not have their contracts reviewed by a lawyer. Expecting those buyers to take the additional step of registering their contracts with Tarion is totally unrealistic.

Penalizing buyers for failure to register their agreements by reducing their deposit protection is a breach of Tarion's mandate to ensure buyers will receive the coverage to which they are entitled.

Tarion has an obligation to verify builders comply with their licensing requirements. It should not require consumers to police the industry so that it can mitigate losses on deposit claims and combat illegal marketing.

Based on my experience as a real estate lawyer, I think the proposal is bound to fail and will only end up reducing deposit protection to less sophisticated buyers.

Tarion's discussion guide on this proposal is available on the Tarion website at www.tarion.com. Feedback on the proposed changes may be sent to submissions@tarion.com by Nov. 25, 2024.

Todd McCarthy, Ontario's Minister of Public and Business Service Delivery and Procurement, is charged with oversight of Tarion. Let him know what you think at Todd.McCarthy@pc.ola.org.