

Temporary Relocation Warranty to be Implemented by Tarion

March 29, 2023

Tarion, the consumer protection organization which oversees builder warranties for new homes built in Ontario, is formalizing a Temporary Relocation Warranty (“TRW”). The TRW will provide mandatory compensation for owners of newly built homes that become uninhabitable due to a breach of the new home warranty within the warranty period.

The TRW has not been included in the statutory warranty, but in some cases, Tarion has been providing homeowners with compensation for their out-of-pocket expenses when they are required to temporarily relocate from their home while warranted items are being repaired. The TRW is the result of lengthy public meetings and consultation which commenced in the spring of 2021 and wrapped up in November of 2022. The regulations under the Ontario New Home Warranties Plan Act will be amended to formalize the TRW in the legislation effective July 1, 2023.

Coverage

Once the new regulation is effective, if a newly constructed home or a material portion thereof becomes uninhabitable because of a condition that is warranted, the vendor/builder is required to pay the homeowner CAD\$150 per day for the period the home or a material portion thereof is uninhabitable, up to a maximum of \$15,000 per home.

The payment is a flat amount regardless of the particular situation of the homeowner. This means that compensation for an individual homeowner will be the same as for a family of six, for example. The compensation is meant to contribute to the cost of alternative accommodations and is not meant to provide complete reimbursement to the homeowner for expenses incurred.

Definition of “Uninhabitable”

At what point a home, or a material portion thereof, qualifies as being “uninhabitable” is not set out in the regulations; however, in the Tarion Discussion Guide, Tarion indicates that it will consider a home “uninhabitable” if:

“[T]he home or an essential part of the home cannot be used for the purpose for which it was intended. A home may be determined to be uninhabitable if, for example, the warranted item or the repair or remediation of that item has the following impact for more than one day:

- renders the kitchen unusable;
- renders all toilets and/or all bathtubs/showers unusable;
- renders the staircase to the upper floor unusable or unsafe;
- adversely affects the structural integrity of the home;
- involves remediation of mold or another harmful substance; or
- renders all or an essential part of the home unusable because an occupant of the home has a disability.”^[1]

This will likely need to be assessed on a case-by-case basis depending on the circumstances.

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It does not appear that a homeowner will be required to submit receipts or records to be eligible for compensation under the TRW and instead compensation will be determined by multiplying the number of days the home is uninhabitable by the daily compensation rate of CAD\$150.00, up to the maximum compensation limit per home. This is meant to simplify administration of the warranty. If there are repeated occurrences of a home or a portion thereof being uninhabitable, a homeowner may make repeated claims under this provision, up to the maximum compensation limit per home.

Vendors/builders maintain the ability to provide a reasonable alternative accommodation for the displaced homeowner in lieu of per diem compensation. What constitutes “reasonable alternative accommodation” will be an issue for interpretation once builders and homeowners try to navigate this new warranty. Depending on where the home is located, this will be more feasible in certain areas of the province than others.

Effective Date

The warranty will apply to homes sold or constructed under agreements and contracts entered into on or after July 1, 2023. Any agreements entered into prior to July 1, 2023, will not be subject to the TRW.

Limitation

It will be available to homeowners during the seven-year period following the date of possession. Homeowners have up to one year from the date the home became uninhabitable to make a claim under the TRW. If they fail to make the claim in the provided time, they presumably lose their claim.

Tarion will be monitoring the TRW for a two-year period and will thereafter reassess the particulars of the TRW, including the compensation amount, compensation caps, and other issues that arise during that time period.

Please note that the information in this article is based on information made available by Tarion as of the date written and does not account for any amendments to the Ontario New Home Warranties Plan Act or its regulations or Tarion policies that may be made in respect of the TRW. This article does not constitute legal advice. Please do not hesitate to reach out to the author with questions or for further information.

[1] Tarion, **Tarion Consultation on Consumer Protection Initiatives – Discussion Guide** (November 2022), online: Tarion- Public Meetings and Consultation, page 7.