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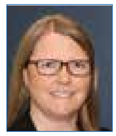
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Tarion

New Warranty Coverage for Conversion Condos

Prior to January 1, 2018, Tarion (Under the Ontario New Home Warranties Plan Act – "ONHWPA") Provided No Warranty Coverage for These Conversion Projects

Many condominiums are constructed in repurposed buildings. They have been constructed in old mills, office buildings, warehouses, school, churches etc. The results can be spectacular, with heritage aspects of the original building highlighted in the new Condominium. Unfortunately, some of these conversions have also put the unit-owners in spectacularly difficult financial positions because they have required very expensive repairs within a few years of turn-over; long before any significant funds could accumulate in the reserve fund.

Prior to January 1, 2018, Tarion (under the Ontario New Home Warranties Plan Act – "ONHWPA") provided no warranty coverage for these conversion projects. Warranties were limited to the contractual warranties provided by the vendor/builder. Sometimes no warranty would be provided on the common elements. Extensive statutory warranty coverage has now been extended to many conversion projects, provided the first arm's length agreement of purchase and sale for the project was signed on or after January 1, 2018. Projects with unit sales prior to this date do not benefit from any statutory warranty protections.

Eligible Residential Condominium Conversion Projects (RCCPs)

Not all condominium conversion projects are provided warranty coverage. The warranty protections only extend to conversions from non-residential uses to residential uses (i.e. such as from commercial, institutional, hotel and office uses). Conversions of rental residential buildings are not eligible for warranty coverage. This is because many conversions from rental to condominium have historically been made simply to save on property taxes, and because the province does not want to reduce the availability of rental properties.

The ONHWPA and the Building Code Act have been amended so that a building permit cannot be issued for an RCCP unless the vendor/builder are registered with Tarion. As well, the Condominium Act now provides that an RCCP will not be accepted for registration as a condominium corporation unless Tarion has confirmed that:

- the project and units have been enrolled under the ONHWPA; and
- the vendor and the builder have been registered by Tarion;

Scope of Coverage

New elements get the same warranty coverage as new condominiums. Pre-existing elements, meaning the old building elements that have been incorporated into the new building, receive all the warranty coverage of new elements, except that they are not covered by the portion of the first-year warranty that requires the home to be constructed in a workmanlike manner, free from defects in materials. Pre-existing elements do benefit from the other first year statutory warranties including being fit for habitation and constructed in accordance with the Building Code as well as the full benefits of the two and seven-year Tarion warranties.

Registration by Vendor/Builders

A rigorous process has been put in place

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so that Tarion can review the intended conversion before agreeing to provide it with warranty coverage. The vendor/builder must prepare and submit several documents to Tarion:

1. Property Assessment Report (the "PAR"): This report focuses on the overall property and building. It includes a general description of the components to be retained and converted, information about the condition of the property and particulars about the intended conversion.

2. Capital Replacement Plan (the "CRP"): The Capital Replacement Plan deals with the condition of the pre-existing elements. It describes the pre-existing components of the building, identifies the key risks associated with the project and contains a description of any heritage status or attributes applicable to the building. The results of mandatory testing of the pre-existing elements are also provided. The Capital Replacement Plan also includes two schedules:

(i) a schedule of forecasted major repairs to the pre-existing elements that are expected to occur within 45 years after the registration of the condominium corporation (which is like a reserve fund study, but without the cash flow analysis); and
(ii) a schedule showing the major repairs which are expected to occur within the seven-year period following registration of the condominium corporation. This is a sub-set of the 45-year schedule.

3. *The Pre-Existing Elements Fund Study (the "PEFS"):* This report provides a plain-language overview of the project and forms part of the disclosure package delivered to all purchasers. It contains much of the same information already covered in the Property Assessment Report and the Capital Replacement Plan such as a list of the pre-existing elements of the project, a general description of the additions, alterations and/or extensions to the pre-existing elements as well as the 45-year major repair schedule and expected major repair schedule for the first seven years found in the Capital Replacement Plan. The study also calculates the amount that the vendor is required to contribute to a pre-existing elements fund.

The PEFS is updated annually by the vendor/builder prior to registration of the condominium to reflect any changes made during construction. For example, an element that was perhaps going to be retained gets removed, or alternately, an element that was going to be demolished gets retained. The amount in the fund is adjusted to reflect the forecasted expenditures in the first seven years after registration.

Pre-Existing Elements Fund

Perhaps one of the most important protections provided is the creation of the pre-existing elements fund.

Vendor/builders of RCCPs are required to establish and fund a separate trust escrow account for the benefit of future purchasers and the condominium corporation. The amount to be contributed is equal to the value of expected major repairs to the pre-existing elements for the initial 7-year period following registration, as indicated in the PEFS.

This fund, which benefits future owners, gives the builder a strong incentive to fix any major problems that can be expected to occur in the first seven years, and to notify purchasers of major expenditures they should be aware of beyond the seven-year period. We expect that most builders would rather make the repairs than deposit cash into the trust, so this should encourage them not to leave any components that are near end-of-life in the building.

This fund, which benefits future owners, gives the builder a strong incentive to fix any major problems that can be expected to occur in the first seven years, and to notify purchasers of major expenditures

The trustee is required to hold the pre-existing elements funds in the trust escrow account. The trustee is required to release funds according to a complex set of rules.

Specific wording will need to be reviewed in each case, but in plain English:

To the Vendor:

Prior to registration of the condominium, money can be released to the vendor after the vendor has made the expected major repairs, whether to the common elements or a unit, as described in the expected major repair schedule for the project. This allows the vendor to change their mind. For example, they thought the roof had five years of remaining life, so they funded it rather than fixing it, but during the conversion, discovered that it did not. The vendor can replace the roof and be reimbursed only the amount they put in the fund related to the roof replacement.

To the Condominium Corporation:

Prior to the turn-over meeting, payment can be made to the condominium only after the condominium has carried out the expected major repairs to the common elements, as described in the expected major repair schedule for the project.
After a post-turn-over board has been elected, any amount related to the common elements will be released to the corporation when the trustee has received a written request for release and confirmation in a prescribed form that the turn-over meeting has been held.

To a unit owner:

If the amount allocated to a unit is less than $10,000, it will be released to the unit owner when the trustee has received a prescribed certificate, from either the vendor or the unit owner confirming that the unit-owner is the first purchaser in good faith who has received a transfer of title and who paid fair market value.

If the amount allocated to a unit is greater than $10,000, funds will be released to the owner after the owner has made the expected major repairs to the unit, as described in the expected major repair schedule for the project. This is intended to prevent a unit owner from withdrawing the fund balance and then selling the unit to another purchaser without completing the related repairs.

Funds will also be released to a unit owner who, on or after the day that is seven years after the project registration date, requests the release of the money; and who is the first person in relation to the unit who has requested the money.

Use of Funds

The funds, whether allocated to the common elements, or allocated to a unit, are intended to be used only to complete the work identified in the pre-existing elements fund study. If the work also has warranty coverage, Tarion should be notified before any work is completed. The amount in the fund will be used first, and any residual covered by warranty. If the work does not have warranty coverage (for example, replacing the roof in year five), then the amount in the fund is all that the corporation will be provided. They cannot recover any shortfall from the builder or Tarion (except if they decide to use the courts to pursue more). The protection this relies on the integrity of the Architect or Professional Engineer authoring the pre-existing elements fund study. Like a reserve fund study, the amount they predict is not a quote; the corporation will need to come up with any shortfall and will benefit from any excess.

The corporation's reserve fund study provider will have a copy of the pre-existing element fund study when they prepare the corporation's first study. This will help them understand which components in the building are older, and when they are expected to require repair. It will also allow them to plan for any shortfall they anticipate between the amount in the pre-existing element fund and what they think the project will cost. Hopefully, this difference will be minimal, but we do expect that some pre-existing elements funds will understate the cost. This is not ideal, but at least the new corporation is only funding the shortfall, not the full amount.

Disclosure Statement

As of January 1, 2018, the disclosure statement for a RCCP must include a copy of the pre-existing element fund study, and explanations about the extent of warranty coverage related to the pre-existing elements.