



Bob Aaron bob@aaron.ca

November 15, 2008

Tarion softens approach on vendors who sell newly built homes

Tarion Warranty Corporation, which provides new home warranty coverage to most Ontario houses and condominiums, has amended its registration requirements for purchasers who resell (or "flip") their homes without moving in.

The issue was first publicized in April when I wrote in this column (<http://aaron.ca/columns/2008-04-12.htm>) about two purchasers who bought a new house from Pinevalley Developments Corp. in Wasaga Beach. The house was properly registered by the builder under the Tarion warranty.

For various reasons, the purchasers decided not to move in and to resell the house. Six months after closing the couple received a visit from a Tarion investigator who told them they should have registered the house with the warranty program before selling it.

He pointed out that anyone who sells a new house in Ontario without registering it with Tarion is liable to a fine of up to \$25,000 or a sentence of up to one year in jail, or both.

The requirement of re-registering the house and possibly posting a \$10,000 performance bond applied even though the house was already covered by the builder registration.

Shortly after the column appeared last April, *Star* reporter Gail Swainson and I met with Howard Bogach, the newly-appointed and consumer-friendly Tarion CEO.

At the meeting, Swainson asked Bogach: "Are you going to look at the issue of whether buyers who purchase and flip should be required to reregister and post a performance bond on a resale?"

He answered, "Absolutely. It gets complicated from a number of different perspectives, but we are committed to looking at that issue."

"The policy needs to be revisited and reviewed," Bogach said.

Last week, Bogach emailed me to announce that Tarion had softened its policy on resales.

"Our first constraint," he wrote, "is that a reseller (i.e., a person who buys a new home from a builder but never occupies it and then sells it), is by definition a 'vendor' under the Ontario New Home Warranties Plan Act. Vendors must be registered under the Act.

"The reseller circumstance is an issue for not only the reseller but also the homebuyer who may not realize he or she is essentially buying a resale home.

"We sought to lessen the burden on resellers and take the opportunity to help purchasers of flipped homes."

Bogach outlined Tarion's new approach with these details:

- Resellers will be registered but they will pay only a nominal registration fee of \$350 (Tarion has no choice as they are "vendors" as defined under the legislation).
- There will be no financial review nor will they be asked to post security which is required of the builders.
- The usual detailed vendor/builder agreement will not be used.
- In resale cases, Tarion has introduced a simple letter agreement requiring that the reseller provide the ultimate purchaser with a disclosure page with information such as: a statement that the sale is effectively a resale, disclosure of the original warranty start-date, the status of the remaining warranty coverage, and contact information to enable the purchaser to check on the status of any claims made in respect of the home.

"This proposal," Bogach told me, "recognizes the statutory obligation to register a vendor (of a new unoccupied home) but adds two elements:

The obligations of resellers as vendors are minimized to promote compliance with registration; and

Registration leads to better disclosure for subsequent purchasers."

Although the solution to the resale problem is not perfect, it is probably the best that can be hoped for without amending the definition of the term "vendor" in the legislation.

Since the appointment last spring of Bogach as Tarion's CEO and the election of Toronto condominium lawyer Harry Herskowitz as chair of the Tarion board, I have noticed an outbreak of common sense at the warranty corporation.

If it's any indication, the volume of email complaints I have received about Tarion has slowed to a trickle. For consumers, this can only be good news.

Bob Aaron is a Toronto real estate lawyer. He can be reached by email at bob@aaron.ca, phone 416-364-9366 or fax 416-364-3818. Visit the column archives at <http://aaron.ca/columns/toronto-star-index.htm> for articles on this and other topics.