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Tarion registration is not an option for homebuilders

One of the biggest challenges facing the new home industry today is the problem of illegal construction and sale of houses. In Ontario, it is illegal for a homebuilder to enter into an agreement of purchase and sale or a construction contract with a purchaser if the builder is not registered with the Tarion Warranty Corp.

It is also illegal to begin construction of a home or condominium without first enrolling the home itself with Tarion.

Investors who resell unoccupied new homes or condominiums are also caught by the legislation. It's against the law to resell a new home or condominium unit purchased from a registered builder unless the unit has been occupied or reregistered with Tarion by the new seller.

As a past board member of the Tarion Warranty Corp. and current chair of its Consumer Advisory Council, as well as in my real estate law practice, I have seen a number of builders who attempt to circumvent the protections provided to buyers of new homes by the warranty program.

There are many reasons that unscrupulous builders fail to register with Tarion. Some operate as part of the underground economy and avoid paying Tarion fees, and — no doubt — income tax on the profits from their activities. Others do not register so they can avoid charging and paying HST.

Sometimes a builder will tell a buyer that he or she intended to use a home as a personal residence, but then decided otherwise. The story becomes unbelievable when the same builder repeats the process over and over again.

Builders may not register because they fail to meet the financial qualifications, or do not have sufficient background knowledge or construction experience to meet Tarion's rigid consumer protection guidelines.

Builders who try to circumvent registration often find themselves the subject of Tarion investigations and charges under the legislation.

Tarion employs a team of seasoned investigators to uncover builders and vendors in Ontario who fail to register and/or to enrol new homes.

Ontario municipalities now share information on building permits with Tarion. When Tarion investigators compare the lists of new permits to the names and registrations of Tarion builders, it is relatively straightforward to identify unregistered builders or those who have not enrolled their new homes.

Tarion's investigators, located across the province, are using increasingly sophisticated tools to keep pace with builders who are active in the underground economy. Search warrants, surveillance and undercover operatives are utilized to build cases against some of the offenders.

In the first quarter of 2011 alone, the Tarion enforcement team discovered 36 unenrolled homes and identified 40 unregistered builders. In the same period, the courts levied \$66,025 in fines based on 29 convictions. A total of 46 new investigations were begun, and 29 new charges were laid province-wide.

Over the past two years, Ontario municipalities have collected more than \$1.3 million in court-imposed fines from unregistered builders across the province.

Some of the higher fines handed down in this period were the Residences of Georgian Green Inc. in Parry Sound, which was convicted of four offences and fined more than \$100,000. Passion Homes in Scarborough, along with the officers and directors of the company, were convicted of 12 counts resulting in fines of \$240,000.

Since 2004, investigations by the Tarion enforcement department have resulted in jail terms for three people, one each in Lindsay, North Bay and Orillia. Jail sentences are usually reserved for cases of repeat offenders who have caused extreme hardship for the victims. In the North Bay case, the illegal builder failed to complete a home, forcing an elderly couple to live in their garage over the winter.

Buying an unregistered home from an unlicensed builder is a risky venture and compromises the legislated protections to which buyers are entitled.

Before you buy, visit the Tarion web site at www.tarion.com to ensure your builder is registered. The fact is, registration is not an option. It is mandatory and it's the law.

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