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6. COMMON DEFINITION OF “OWNER”

General Background

The Home Construction Regulatory Authority (HCRA) is the regulator with responsibility to licence builders and vendors of new homes in Ontario under the New Home Construction Licensing Act (NHCLA). Tarion Warranty Corporation (Tarion) is the administrator of the warranty plan and is the financial backstop for warranty obligations of vendors under the Ontario New Home Warranties Plan Act (ONHWPA).

This advisory applies to the word “owner”. The following sections of this advisory provide information on how the word “owner” will be interpreted and applied by the HCRA and Tarion.

For purposes of this advisory, “licensing” refers to a builder or vendor licence under the NHCLA and “warranty coverage” refers to warranty protection under the ONHWPA, including deposit protection.

Legislation – Act and Regulation

The definition of owner in s.1 of the NHCLA is as follows:

- “Owner” has the same meaning as “owner” as defined in s.1 of the Ontario New Home Warranties Plan Act.

Under s.1 of the ONHWPA, owner is defined to mean “a person who first acquires a home from its vendor for occupancy, and the person’s successors in title.

The definition of “owner” is important for several reasons including:

- The NHCLA regulates builders and vendors who are constructing or selling a “new home” as defined. You cannot have a builder or vendor unless there is also an “owner”.
- The “vendor” of a (new) home requires that there be an “owner”, which in turn means the vendor is deemed to provide the statutory warranties and protections available for a home (as defined) under ONHWPA (as long as the definitions of vendor, builder and home are also satisfied).

“Owner” refers to the person who acquires the new home from a vendor if the home is built on land they do not own. If the home is being constructed under a contract with a builder, the owner refers to the person on whose land the home is being built.



ADVISORY

An owner can be an individual or another legal entity such as a corporation.

A reference to “owner” includes the person who first acquires the home and their successors in title. If a home is sold during the warranty period, warranty coverage continues to apply and is available to the subsequent owner. This is discussed in more detail in the section titled [“Summary Reference Guide – When is a person an owner for purposes of the NHCLA licensing and the ONHWPA warranty coverage?”](#)

For a home that is a condominium dwelling unit, the home includes the common elements. However, it is not the owner of the unit who deals with warranty coverage in respect of the common elements. Instead, section 15 of the ONHWPA deems the condominium corporation to be the owner of the common elements for purposes of warranties in respect of the common elements.

Determining whether a person is an owner for purposes of the ONHWPA is critical as it will determine whether warranty coverage is engaged such that the person is entitled to receive payment for damages resulting from a breach of warranty. Ss. 14 (3) of the ONHWPA provides that a person is entitled to warranty coverage for damages only if:

- a) The person becomes the owner of the home through receiving a transfer of title to it or through the builder substantially completing the construction of the home on land owned by the person; and
- b) The person has a cause of action against the vendor or builder as applicable.

Different ownership interests or rights in a home and how they are acquired

One or more than one person may have an interest or right in a home.

If more than one person has an interest or right in the home, that interest or right may take a variety of forms. They may, for example, hold title to property as joint tenants or as tenants in common.

One or more persons may have a leasehold interest in the land on which a home is built. With leasehold, the ownership interest in the home is separate from the ownership of the land.

An individual may have a life-interest in land or in a home.

A person may be a member of a housing co-operative, hold shares in the co-operative corporation and have a right to occupy a unit in that co-operative housing.

A home may be owned by a corporation with one or more persons owning shares in that corporation.

An interest or right can be acquired in different ways. Most commonly, an ownership interest is acquired by way of a purchase and sale transaction, with the vendor and the soon-to-be owner entering into an agreement of purchase and sale followed by a



ADVISORY

transfer of title. The ownership interest in the land brings with it ownership of property that is permanently affixed to the land.

An ownership interest or right might be gifted to someone. An exchange of money is not a precondition to a home being eligible for warranty coverage.

An ownership interest or right might arise under a will, with the testator leaving the home to a named beneficiary. Again, an exchange of money is not necessary for the home to be eligible for warranty coverage.

For corporate ownership of a home, the home would be owned by the corporation and the shareholders would hold shares in the corporation.

Ownership of a home may be separate from the ownership of the land.

Not all forms of ownership will require that the home be built and sold by an HCRA licensee. Similarly, not all forms of ownership will entitle a person with an interest or right in the home to warranty coverage on the home.

Each form of ownership must be assessed separately to determine whether the ownership interest or right is such that the person holding that interest or right is considered an “owner” within the meaning of both the NHCLA and the ONHWPA.

Owner of freehold interest

An interest in land is either freehold or leasehold. If the interest in land is freehold, it is most commonly a fee simple interest. A fee simple interest is the closest an owner of land can be to having absolute ownership. It is ownership in land that is indeterminate – does not have a fixed and determined period of ownership.

A freehold interest can be held on a co-ownership basis as a tenancy in common or joint tenancy. A freehold interest in land includes ownership of all property that is permanently affixed to the land such as buildings on the land. This is relevant to warranty coverage determinations, which require that homes be permanently affixed to a foundation.

Owner of a leasehold interest

A leasehold interest is a right given to a lessee to occupy land or property for a specified period of time. The lease is given by the person who owns the freehold interest in the land or property, the lessor. A leasehold right confers a right of exclusive possession on a tenant, which is enforceable against all, even the lessor.

A leasehold interest in land is different from a licence. A licence is given by the licensor to the licensee and allows a licensee to use the property in a manner specified in the licence contract. A licence situation does not provide an interest in the land as noted in the section titled “[Life interest ownership](#).”



ADVISORY

Whether a lessee is an owner for purposes of the NHCLA and the ONHWPA will depend in part on the length of the term of the lease.

Owner as tenant in common

A person who is a tenant in common will have a fixed, co-ownership interest in the property. The interests do not need to be identical. One tenant in common could have a 99% interest and the other a 1% interest. An owner's interest goes to their estate on their death. If more than one person takes title to property and the title document does not specify otherwise, they are assumed to be tenants in common. No one tenant in common can claim exclusive possession of part of the property.

Owner as joint tenant

In a joint tenancy situation, the interest of each joint tenant will be identical. If there are three owners, each will have a one-third interest. Their interests must also be for the same duration, so one could not have a life-interest while the other two had fee simple interests. No one joint tenant can claim exclusive possession of the property. On the death of a joint tenant, their interest passes to the surviving joint tenants.

Owner of shares in a corporation

An individual might choose to put ownership of a home in a corporation they control. The corporation owns the home and the individual would have an indirect interest in the home through ownership of shares in the corporation. This arrangement might be used, for example, to make it easier for one or more co-owners to transfer their interest in the home without the need to change the ownership on title. If a home is owned by the corporation, the corporation is the owner, and for purposes of warranty related matters, Tarion will deal with the person with authority to speak for the corporation.

Member of housing co-operative

With a housing co-operative, the co-operative is incorporated under the [Co-operative Corporations Act](#) and is owned by its members. The co-operative must carry on its business on a co-operative basis and its members have an equal say in controlling the co-op. It is the co-operative that owns the land, the buildings and all the units in the buildings. What a member of a housing co-operative will have is a right to occupy a designated unit. An interest or right in a housing co-operative does not give rise to an entitlement to coverage under the ONHWPA.

Life interest ownership

A person can have an interest in a home that lasts for the time they are alive. In some cases, this interest will be characterized as a licence, and in others a lease. If the



ADVISORY

person has a life interest in the land, then on their death that interest will either revert to the original owner or be transferred to another person depending on the terms of the document creating the life interest.

Summary Reference Guide – When is a person an owner for purposes of the NHCLA licensing and the ONHWPA warranty coverage?

To be considered an “owner” for purposes of the NHCLA and the ONHWPA, a person must have an interest or right in a proposed or existing new home. To be entitled to compensation for a breach of warranty under s.14(3) of the ONHWPA, a person must have become the “owner”, generally through receiving a transfer of title to the home or through substantial performance of a construction contract.

Person’s interest or right that is within definition of “owner”	Person’s interest or right that is not within definition of “owner”
Person has a fee simple interest in the land, which includes the home that is permanently affixed to the land	Person has a right to occupy the home but does not own the home and does not own the land or have a leasehold interest of at least 21 years in the land, to which it is permanently affixed
Person has a leasehold interest in the land on which the home is permanently affixed, which leasehold interest is for a term of at least 21 years, and owns the home permanently affixed to the land	Person has a leasehold interest in the land on which the home is permanently affixed but does not own the home permanently affixed to the land
Person owns the home constructed on and permanently affixed to land in respect of which the person has a leasehold interest, which leasehold interest is for a term of at least 21 years	Person owns the home constructed on and permanently affixed to land in respect of which the person has a leasehold interest, which leasehold interest is less than 21 years
Person exercises an option to purchase and takes title to the land and owns the home permanently affixed to the land	Person has an option to purchase that has not yet been exercised
Person owns the land on which the home is to be constructed	Person has an ownership interest in the land, which interest does not give the person authority to make decisions in respect of the use of the land

Warranty coverage when more than one person has an ownership interest or right in the home

For licensing purposes, the NHCLA does not distinguish between the construction of a home on land that is owned by one person or more than one person. The same applies to the purchase of a home sold by a vendor. The number of persons who might take ownership of the home is not a factor in decisions on licensing.



ADVISORY

For warranty coverage purposes, multiple ownership does not exclude warranty coverage but may give rise to operational considerations, including who can submit a claim for warranty coverage, who is the contact person for purposes of follow up, who can direct or instruct a builder in carrying out repairs in the home, who decides if the repair work is satisfactory on behalf of all owners, and similar matters.

Tarion may accept different arrangements such as allowing one joint tenant or tenant in common to obtain authorization and consent to act on behalf of all the owners on the warranty. Alternatively, an irrevocable power of attorney limited to warranty coverage matters might be asked for by Tarion.

If a warranty payment is being contemplated by Tarion, Tarion may ask for evidence of entitlement to receive the payment. This might arise, for example, where there is a dispute between two joint owners as to who is entitled to the payment.

A dispute between the persons with an ownership interest or right in the home, in respect of one or more warranty matters, might require the disputing parties to apply to court for an order clarifying who has authority to act and make decisions in respect of warranty matters.

When dealing with a warranty claim on a home that is tied to a leasehold interest, both the lessee and the lessor will have an interest in the home and any potential warranty coverage though their interests may be different. For example, a lessor will have an interest in elements of the home that are longer term such as foundations and windows given the lessor's reversionary interest when the term of the lease expires. As with other forms of co-ownership, Tarion will determine the form of authorization that is required for purposes of submitting a warranty claim. Where a decision has been made to make a payment on a warranty claim, Tarion may require additional detail to assist in confirming who is entitled to receive the payment.

Successor in title

Once a home is determined to be eligible for warranty coverage and enrolled in the warranty plan, and following the issuing of a certificate of occupancy and certificate of completion and possession, the owner will have certain obligations to satisfy at different times over the course of the warranty period. These obligations include submitting warranty documentation and identifying defects within specific time periods.

If ownership is transferred to a new owner during the warranty period, the new owner, the successor in title, continues to benefit from warranty coverage. The new owner is, however, bound by what a previous owner may or may not have done. If a claim period has expired and no claim was made during the claim period, an owner who succeeds the previous owner will be bound by what the previous owner did or did not do.



ADVISORY

For warranty coverage, it is the owner for the time being who is the owner able to advance and deal with a warranty claim. If a warranty claim had been made and the ownership of the home changes, the new owner steps into the shoes of the previous owner for purposes of carrying forward the claim.

Deposit protection when person is not an owner under the ONHWPA because title has not transferred or contract for construction of home not substantially performed

Deposit protection may be available in circumstances where a person does not become the owner of a home they agreed to purchase from the vendor.

S.14 of the ONHWPA provides deposit protection to the purchaser in circumstances where a person has entered into a contract to purchase a home from a vendor, has paid a deposit or other payment to be credited to the purchase price, and the person has either exercised a statutory right to rescind the contract before closing or has a cause of action against the vendor resulting from the fact that title to the home has not been transferred to the person because the vendor goes into bankruptcy or the vendor fundamentally breaches the contract.

S.14 of the ONHWPA also provides that for a contract home, where an owner of land has entered into a contract with a builder for the construction of a home on the land and has a cause of action against the builder for damages resulting from the builder's failure to substantially perform the contract, the owner is entitled to receive payment out of the guarantee fund of the amount by which the amount paid by the owner to the builder under the contract exceeds the value of the work and materials supplied to the owner under the contract.