

New Home Ombuds Office

Terms of Reference

1) Mandate

The mandate of the New Home Ombuds Office is to receive complaints from homeowners who believe that they have been treated unfairly, or improperly, or outside the “intent and spirit” of the Ontario New Home Warranties Plan Act, and/or its Regulations.

The New Home Ombuds:

Receives, investigates and resolves complaints from homeowners about Tarion’s conduct and whether it accords with Tarion’s own practices and procedures. The Ombuds may make recommendations to Tarion and/or Board of Directors relating to specific homeowner cases.

Acts as a source of information, referral and education to assist homeowners in accessing existing channels of assistance and redress within Tarion.

Identifies complaint trends, policy matters and systemic issues and makes recommendations for improvements. The Ombuds may make recommendations about any rule, policy, regulation or procedure which he/she deems appropriate.

2) Operating Principles

2.1) Independence

- i) The New Home Ombuds Office (The Office) is independent of all other Tarion departments. The Ombuds holds no other position within Tarion which might compromise his/her independence. The Ombuds cannot have membership in any consumer advocacy or building industry organizations.
- ii) The Ombuds strives to be impartial, fair and objective in the treatment of people and the consideration of complaints. The Ombuds advocates for fair processes and does not advocate on behalf of any individual or organization.
- iii) The Ombuds exercises sole discretion over whether or how to act regarding an individual’s concern, a trend, or concerns of multiple individuals over time.
- iv) The Ombuds may, on his or her own initiative, identify, investigate and make recommendations on case-related or systemic issues within Tarion.

- v) The Ombuds reports to the Board of Directors through the Stakeholder Committee on a quarterly basis. The budget for the Ombuds Office is negotiated through the Stakeholder Committee. The Ombuds will select staff and manage the budget and operations of the Office.
- vi) The Ombuds will have private and confidential *In Camera* sessions with the Stakeholder Committee of the Board of Directors quarterly. The Ombuds has direct access to the Board of Directors and can request *In Camera* sessions with the Board.
- vii) Communications to the Office will not be considered as notice to Tarion for any of its warranty processes, including Warranty Form submission, requests for conciliation inspection, or requests for a decision letter. This information will be prominent on the website, literature and communication from the Ombuds.

2.2) Impartiality

- i) The Ombuds reviews all information in an objective manner and without bias. He/she remains impartial and unaligned, in fact and perception and acts only to identify and address fairness concerns.

2.3) Confidentiality

- i) The Office will not divulge information provided by complainants without their consent, except in cases of imminent danger or as compelled by law. The Office will seek consent to divulge information necessary to work to resolve a complaint and to report on the resolution to Tarion. In cases where the consent is not given, the complaint will be kept confidential.
- ii) Complaints to the Ombuds will be kept confidential if the complainant requests confidentiality. Under these circumstances the scope of the investigation will be limited to that information that can be obtained in a confidential manner. Reporting to complainants may also be limited as a result.
- iii) Communications between the Office and others are intended to be privileged. This privilege belongs to the Ombuds and the Office, not to any other party including the complainant.
- iv) The Ombuds and staff will assert privilege to avoid testifying in any internal process, before the Licence Appeal Tribunal, in any external legal process unless compelled by law. (Such privilege is not yet recognized as law and may or may not be accepted.).
- v) The Office makes every effort to protect information collected by it. As such, all files are secured, and access is limited to the Office's staff only.

2.4) Informality & Accessibility

- i) The Ombuds functions informally. The Ombuds seeks to resolve complaints in a timely and effective manner, at the most immediate level within Tarion.
- ii) The Ombuds will make recommendations regarding a complaint to appropriate officials, ideally at the most immediate level within Tarion. If a recommendation is not acted upon to the Ombuds' satisfaction, the Ombuds may escalate the recommendation through management, or the board of directors.
- iii) The Ombuds has access to all information and all individuals in Tarion.
- iv) The Ombuds does not replace any formal complaint processes. Use of the office is voluntary and is not a required step in any complaint process.
- v) The Ombuds does not make warranty decisions, mandate policies, or formally adjudicate issues for Tarion.
- vi) The Office has the authority to investigate complaints and make recommendations; however, it may also be used if an individual needs assistance in identifying how to resolve a complaint; would prefer to discuss a problem with an impartial third party; or has already gone through established channels without satisfaction.
- vii) Complainants and individuals who participate in any way in an investigation will be free from reprisals, and will not be denied any rights, privileges or benefits because of such actions.

2.5) Fairness

- i) The Ombuds promotes and protects fairness within Tarion.
- ii) The concept of fairness can be complex. It does not necessarily mean that everyone is treated equally and may require that standards of equity are reconsidered. The test of fairness used by the Ombuds encompasses three aspects:
 - (1) Procedural Fairness
 - (2) Relational Fairness
 - (3) Substantive Fairness

The Ombuds will ensure that the office conducts its work in a fair way. It will respect the right to fairness of those who complain, and those responding to complaints. During a review or investigation and in making recommendations, the Office will observe the principles of natural justice, and administrative and procedural fairness.

2.6) Reports

- i) The Ombuds shall publish an annual report outlining cases handled, general trends in caseload, recommendations issued and any other relevant information concerning the activities of the Office. The published report shall be publicly available.
- ii) The Ombuds will periodically provide reports and statistical summaries to Management and the Board of Directors. Reports may include statistics, case studies of complaints, investigation reports, summaries of recommendations made by the Office, and Tarion's response to recommendations.
- iii) The Ombuds may issue reports to Tarion and the Board of Directors, concerning any investigation, on the implementation of any recommendations, or any other matter within the mandate of the Ombuds.

2.7) Limits

- i) The Ombuds shall not pursue any matter where the subject matter of the complaint is involved in legal proceedings with Tarion and/or his/her builder including proceedings in court, the Licence Appeal Tribunal, or other formal dispute resolution forum.
- ii) The *Ontario New Home Warranties Plan Act* enforces specific warranties deemed to be given by the builder on new homes. If a complaint relates to requests for relief outside of the Warranty Plan, it is outside the mandate of the Ombuds.
- iii) Complaints that relate to privacy concerns regarding Tarion will be directed to the Tarion Privacy Officer.
- iv) Allegations of Tarion employee impropriety will be directed the Tarion Human Resources department.

3) Ombuds Complaint Process

Each complaint will be assessed when it is received to determine how and where the complaint can best be addressed. Generally, complaints fall into one of three categories.

- Complaints outside the Ombuds mandate
- Complaints within the Ombuds mandate, but premature
- Complaints within the Ombuds mandate and not premature

i) **Complaints outside the Ombuds Mandate**

When complaints are outside the mandate, the office will inform the complainant, and where possible refer complainants to an appropriate resource.

ii) Complaints within the Ombuds mandate, but premature.

The Office requires that complainants try first to resolve the complaint by working within Tarion's complaint process. Complaints received by the Office under these circumstances are redirected to the appropriate manager.

(a) Items not addressed by the department

If a complainant has already been to a manager, but they did not specifically address one or more of the concerns, the Office may ask the department to address them first.

(b) New issues raised by the complainant

If a new issue is raised, then the Office will assess the complaint, and determine the most appropriate process to resolve the concern.

(c) Obvious Errors

If there is an obvious error, the Office will contact the department to make the correction.

Premature complaints may be resubmitted to the Ombuds if complainants are dissatisfied with the department's handling of the concerns.

iii) Complaints within the Ombuds mandate and not premature.

(1) Fairness Review

(a) Fairness review involves intake and documentation of complaints, identification and clarification of issues, research and analysis. It includes review of Tarion documents and interviews with Tarion staff. Fairness issues identified may be resolved using a variety of conflict resolution techniques and strategies. If appropriate, the Office will use a fairness review process to deal with complaints that can be resolved without a formal investigation.

(b) The Ombuds may decide not to act upon a complaint if:

- (i) The subject-matter of the complaint is trivial;
- (ii) The complaint is frivolous, vexatious or is not made in good faith;
- (iii) The complainant does not have sufficient personal interest in the subject-matter of the complaint.
- (iv) Too much time has passed between the alleged unfairness, and submission of the complaint.

(v) During the course of the investigation it appears that:

- 1. The complainant has an adequate remedy or right of appeal under the *Ontario New Home Warranties Plan Act*

2. That having reviewed all the circumstances of the case, further investigation is unnecessary.

- (c) The Office may request that information from the homeowner, and or Tarion departments, to assess whether an investigation is warranted.
- (d) The Ombuds Office will review the information available and determine if the complainant has been treated fairly. If the complainant has been treated fairly, then the Ombuds office will communicate the findings to the complainants, and no further investigation will be done.

(2) Investigation

- (a) The Ombuds may investigate a complaint using all the information available – including information provided by the homeowner, and Tarion. The Ombuds may gather additional information or evidence required to make a finding. The objective of the investigation is to resolve issues and improve Tarion's processes and policies, not to lay fault.
- (b) The Ombuds will determine the scope and methodology of the investigation. During the investigation, all potentially relevant issues, evidence, documentation and witnesses should be identified and pursued. Analysis of the material gathered in the investigation will be objective and based on the facts.
- (c) If, after investigating, the Ombuds finds the subject-matter of the investigation was:
 - (i) Contrary to the *New Home Warranties Plan Act*;
 - (ii) Contrary to Tarion's own policies and procedures;
 - (iii) Based wholly or partly on a mistake of law or fact; or
 - (iv) Based on improper exercise of discretionary power
 - (v) Otherwise unfairthe Ombuds will, subject to confidentiality and privacy requirements, communicate the findings, their reasons for the findings, and any recommendations to the complainant, and the relevant Tarion department. .

(3) Procedure after investigation

- (a) The Ombuds shall report his/her findings, and the reasons, to Tarion, and may make appropriate recommendations. The Ombuds may request that Tarion notify him/her, within a specified time, of the steps that it proposes to take to give effect the recommendations.

(b) Ombuds report and recommendations

If the Ombuds finds that a situation is unfair, the Ombuds can make the following recommendations:

- i. Suspending or postponing an action;
- ii. Reconsidering or changing a decision;
- iii. Reducing delays;
- iv. That Tarion provide an apology or financial restitution;
- v. Improving communication;
- vi. Making changes to services;
- vii. Providing reasons for decisions;
- viii. Making changes to policies or general practice.
- ix. Other recommendations as they considered appropriate

4) Terms of Reference

4.1) The Ombuds is responsible for ensuring the office operates in a manner consistent with the Terms of Reference for the Office.

4.2) The Ombuds will review the Terms of Reference for the Office with the Stakeholder Committee of the Board on an annual basis.

5) Complaints about the Ombuds

5.1) The Ombuds has developed a complaint policy for the Ombuds office, which is clearly posted on the website for the office.

5.2) The Ombuds will report on complaints about the office to the Stakeholder Committee of the Board of Directors.

Allegations of impropriety in respect to the Ombuds shall be brought to the attention of the Chair of the Stakeholder Committee of the Board of Directors by emailing stakeholdercmtechair@tarion.com and putting “confidential” in the subject line of the email.

5.3) Each allegation shall be investigated. The means and methods of the investigation shall be at the discretion of the Chair.

5.4) The allegation and the results of the investigation will be disclosed to the Ombuds, who shall be given the opportunity to respond to the allegation and the results of the investigation within a reasonable time established by the Chair. The matter will be taken before the Stakeholder Committee, who will make a recommendation to the Board of Directors on the disposition of the matter.