

# Tarion New Home Ombuds Office

## Terms of Reference

### 1. Background and Reporting:

Tarion shall make available, in accordance with the ONHWP Act, O.Reg 167-20, and the Administration Agreement made between Tarion and the Crown (AA), each as amended from time to time, (the “Prescribed Provisions”)] an ombudsperson (the “Ombuds”) to carry out the following duties:

- To inquire into and to respond to the administration of this ONHWP Act by Tarion.
- To make recommendations in respect of the administration of the ONHWP Act by Tarion
- To carry out the other duties prescribed by regulation

This document sets out the terms of reference (Terms of Reference) for the Ombuds and the New Home Ombuds Office (the “Office”), contemplated by the AA. These Terms of Reference supplement the Prescribed Provisions and if there is any conflict or inconsistency the Prescribed Provisions prevail.

The Ombuds controls their office and is responsible for its mandate subject to the Prescribed Provisions and these Terms of Reference. The Ombuds selects and is responsible for its staff (“Staff”) and manages its budget and operations. The Office’s budget is subject to the approval of the Board of Directors of Tarion (the “Board”). The Ombuds reports to the Board which is responsible for performance evaluation of the Ombuds. The Staff report to the Ombuds who is responsible for their performance evaluation.

The Office, which includes the Ombuds and the Office’s staff, functions within the governance framework established by the Board. The Office, through the Ombuds, reports to the Board and has its operational and administrative reporting line to the Stakeholder Committee (the “Committee”), which is a Standing Committee of the Board.

This Committee oversees (i) the stakeholder-related issues under its authorities as delegated by the Board; and (ii) new homeowner and industry concerns, consultations and feedback through the Consumer Advisory Council and the Industry Advisory Council, as established by the Board under the Committee’s oversight, thereby maintaining a single point of contact and direct line of sight on homeowner and industry matters.

## 2. Mandate

The Mandate of the Office generally is to receive complaints from owners and purchasers of homes (hereinafter termed “Homeowners”), who believe that Tarion has treated them unfairly, or outside the intent and spirit of the Ontario New Home Warranties Plan Act, its Regulations, Ministerial Orders, the Administrative Agreement (AA) or Tarion’s By-Laws.

More specifically the Office shall carry out the following (the “Mandate”):

- a) Receive, investigate, and respond to complaints from Homeowners regarding Tarion’s compliance with the ONHWP Act, the regulations, and the AA.
- b) Provide information to Homeowners regarding assistance or remedies that may be available under the ONHWP Act and the regulations.
- c) Identify, inquire into, and analyze,
  - i. trends in complaints from Homeowners, and
  - ii. policy matters and systemic issues involving Tarion.
- d) Develop and submit reports to Tarion or the board at any time regarding the activities, findings, or recommendations of the Office.
- e) Publish such reports under paragraph d) above as the Ombuds considers appropriate on the Office’s website and by any other means the Ombuds considers appropriate.
- f) Develop and publish on the Office’s website and by any other means the Ombuds considers appropriate an annual report that includes the following:
  - i. A summary of the activities of the Office over the prior year related to their duties under the ONHWP Act, including any relevant findings in respect of the trends, matters or issues referred to in paragraph c) above.
  - ii. Recommendations by the Ombuds in respect of the administration of the ONHWP Act by Tarion and Tarion’s progress in responding to them.
- g) Establish, maintain, and publish on its website a policy with respect to the collection, use, disclosure, and retention of information by the Office.
- h) Maintain independence, fairness, and impartiality in carrying out the Ombuds duties.

The Office may receive and request information upon, investigate, advise, and, as appropriate, recommend options or actions to Management to address complaints or concerns from Homeowners concerning alleged non-compliance with the ONHWP Act, regulations, or AA, together with the Office’s views as to whether such conduct accords with Tarion’s own policies, practices, and procedures. The Office may make recommendations to Management, to the Committee, or to the Board relating to specific homeowner cases.

### 3. Operating Principles

#### 3.1 Independence

- i. The Office is independent of Management and all other departments of Tarion. The Ombuds and Staff shall hold no other position within Tarion or have any working relationship or engage in any activity with Management that might compromise, or be seen to compromise, the Ombuds' and Staff's independence from Management.
- ii. The Ombuds and Staff may not have membership in any external consumer advocacy or building industry organization or engage in any activity that can reasonably be seen to diminish the independence of the Ombuds or Staff.
- iii. The Ombuds and Staff shall strive at all times to be impartial, fair, and objective in the treatment of Homeowners and the consideration of complaints. The Office shall engage in fair process and not advocate on behalf of any Homeowner, Management, or any other interest or party.
- iv. The Ombuds exercises discretion, without undue influence from Management or the Board (consistent with these Terms of Reference), over whether or how to proceed in addressing a Homeowner's concern or complaint, a trend, or concerns or complaints of multiple Homeowners over time. The Ombuds shall advise the Chair of the Committee of any unusual or sensitive situation, or undue influence or pressure, by a Homeowner, Management, or any other party. and, if or as necessary, the Chair of the Board.
- v. The Ombuds may request and receive information from a Homeowner and Management, conduct investigations as appropriate, and make recommendations to Management concerning a case-related or systemic issue or cause within Tarion. These recommendations shall be shared with the Board through the Committee.
- vi. Management shall cooperate fully with requests for information made by the Ombuds and other Staff, in respect of a case-related or systemic issue or cause within Tarion. Any material or persistent non-cooperation by any member of Management shall be promptly brought to the attention of the Stakeholder Committee and Board by the Ombuds.
- vii. The budget and work plan for the Office shall be submitted annually, no later than September 30, to the Committee for the Committee's review and recommendation to the Board for review and approval. The Ombuds will manage Staff, the budget, and the operations of the Office in a manner consistent with these Terms of Reference and the work plan approved by the Board.
- viii. The Ombuds will have private and confidential In Camera sessions with the Committee at least quarterly. The Ombuds shall have direct access to the Board and can request: (a) an attendance at a Board meeting by communicating with the Corporate Secretary before the board agenda is finalized; (b) a special meeting, either with the Chair of the Board or Chair of the Stakeholder Committee, in the event of an emergency or a sensitive situation; and (c) an In Camera session with the Board.

### **3.2 Impartiality**

The Ombuds and Staff shall review all information in an objective manner and without real or perceived bias or conflict of interest. Each of Ombuds and Staff must remain impartial and unaligned, in fact and perception, and act only to identify and address fairness concerns.

### **3.3 Confidentiality**

- i. The Office will not disclose information provided by a Homeowner to Management or the Board that is otherwise not public without the Homeowner's express consent, except in connection with: (i) access or disclosure of such files as required by law; or (ii) as may be reasonably required for the Board to exercise its obligations to review and approve the Ombudsperson's budget and conduct appropriate performance review, provided such access by the Board shall not extend to homeowner files relating to complaints concerning Tarion.
- ii. In cases where consent is sought the Office will seek consent of the Homeowner to disclose only the information necessary to facilitate resolution of a complaint of the Homeowner. The Office will report on the resolution to the Committee. In cases where the consent to disclosure of some or all information of the Homeowner to Management or to the Board is required and is not given, such information shall not be disclosed to Management or the Board, as applicable, and the Homeowner will be advised that the response of Management or the Board, as applicable, may be affected by lack of such disclosure.
- iii. The identity of the Homeowner, or any other identifying facts of a complaint or concern provided to the Ombuds by a Homeowner, will be kept confidential if the Homeowner requests such confidentiality. Under these circumstances, the Office will take all reasonable steps within the scope of the Office's investigation, given the information that can be disclosed by the Office to Management. The effectiveness of the investigation may or may not be limited as a result.
- iv. Without limiting i) and ii) above, the Office shall make every effort to protect information collected by it. As such, it is the Ombuds' responsibility to ensure that all files will be secured, and access is limited to person's entitled to access and that appropriate cyber security measures are in place.

### **3.4 Information, Timeliness, Accessibility and Non-Retaliation**

- i. The Office shall take all reasonable steps to resolve complaints in a timely and effective manner, at the most immediate level within Management.
- ii. The Office may make recommendations regarding a Homeowner's complaint to Management. If a recommendation is not acted upon to the Ombuds' satisfaction, having regards to the interests of fairness the Ombuds shall escalate the recommendation through either the senior Management, the Committee, or the Board.
- iii. The Office shall have unrestricted access to all information in Tarion's records reasonably related to matters within the Ombuds' mandate but for greater certainty

excluding Board records and Tarion employee personnel files. Management shall cooperate fully with any requests for information from the Office.

- iv. The Office does not replace any formal Tarion complaint processes in place. Assistance by and use of the Office by a Homeowner is voluntary and is not a required step in any complaint process.
- v. The Office does not make warranty decisions, claim settlements, mandate policies, or formally adjudicate issues for Tarion.
- vi. The Office has the authority to investigate complaints it receives by Homeowners and make recommendations in accordance with the Mandate. The Office may also be used if a Homeowner 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. Anyone who contacts the Office or cooperates in an Ombuds investigation, whether complainant or Tarion staff, shall be protected from reprisal on the part of Tarion and shall not be denied any rights, privileges, or benefits as a result.

### **3.5 Fairness**

A Homeowner shall be confident that the Homeowner and any concern or complaint brought forward to the Office by the Homeowner will be treated in a fair manner by the Office. This means:

- i. That the complaint or concern of the Homeowner will be addressed by the Office in a timely manner;
- ii. That the complaint or concern of the Homeowner will be addressed by the Office without conflict of interest or reasonable apprehension of bias on the part of the Ombuds or Staff;
- iii. That information provided by the Homeowner will be kept in confidence by the Office and not disclosed to Management or the Board except as noted in subsection 3.3(i);
- iv. That the Homeowner will be afforded adequate opportunity to be provided with the criteria or rationale upon which a decision on the Homeowner's complaint or concern is, will be, or was made;
- v. That the Homeowner will be afforded adequate opportunity to provide all relevant and complete information in advance of a decision;
- vi. That a decision on a Homeowner's complaint or concern is reasonable, applies criteria to facts, is based on all relevant and complete information, and is not arbitrary;
- vii. That the Homeowner will receive if possible reasons in writing for a decision, including the application of criteria to the Homeowner's facts (if written reasons cannot be delivered to the complainant then a written record of the decision and reasons informing the communication to the complainant will be maintained); and
- viii. The Office shall take all reasonable steps to ensure that the foregoing elements of Fairness are carried out in addressing a complaint or concern by a Homeowner.

### **3.6 Reports**

- i. The Ombuds shall prepare a written Annual Report outlining the number, nature, and resolution of Homeowner complaints general trends in caseload; the nature of root causes and systemic issues addressed; the nature of recommendations issued; recommendations by the Office in respect of the administration of the Act by Tarion and Tarion's progress in responding to the Office; and other information concerning the addressing of Homeowner complaints and the performance of the Office. Management and the Board will be given an opportunity to review the report in draft and provide a response. Once completed, including Tarion response, the Annual Report shall be accessible by Homeowners on the Ombuds website.
- ii. The Ombuds shall establish, maintain, and publish on its website a policy with respect to the collection, use, disclosure, and retention of information by the Office.
- iii. The Ombuds shall provide, as requested by the Committee or the Board, anonymized information relating to complaints or issues addressed by the Office including for example, statistics, qualitative narratives, case studies of complaints, investigation reports, resolving of complaints, root causes and system issues, recommendations made by the Office, and Management's response to any of the foregoing.
- iv. The Ombuds shall report periodically to the Board through the Committee on a quarterly basis, or as often as requested by the Committee or needed for the conduct of business.

### **3.7 Limitations**

- i. The Ombuds shall not consider complaints made by builders or vendors.
- ii. The Ombuds shall not make findings or recommendations in relation to a Homeowner's complaint if the Homeowner has initiated an alternate proceeding to address some or all of their issues with Tarion. This includes, but is not limited to, court proceedings, appeals to the Licence Appeal Tribunal, and requests for formal dispute resolution, including mediation. This limitation continues to apply until the alternate proceeding has concluded.
- iii. The Ontario New Home Warranties Plan Act, R.S.O. 1990, c. O.31, enforces specific warranties deemed to be given by the builder of new homes. If a Homeowner's complaint relates to requests for relief outside of the Warranty Plan, it would be considered as outside the Mandate of the Ombuds.
- iv. A complaint that relates to privacy concerns regarding Tarion shall be outside the Mandate of the Ombuds, and the person referred to the Tarion Privacy Officer.
- v. A complaint alleging impropriety on the part of a Tarion employee, shall be outside the Mandate of the Ombuds and the person referred to Tarion's Human Resources department.
- vi. A complaint regarding staff performance on the part of a Tarion employee shall be outside the Mandate of the Ombuds and the complainant shall be referred to the staff person's manager.

#### **4. Ombuds Complaint Process**

Each complaint from a Homeowner will be assessed by the Office when it is received to determine how and where the complaint can best be addressed.

The Ombuds may decide not to act upon a Homeowner's complaint if, from a reasonableness standard and supported by evidence:

- i. The complainant has not afforded Tarion an opportunity to remedy the concern.
- ii. The subject-matter of the Homeowner's complaint is trivial;
- iii. The Homeowner's complaint is frivolous, vexatious or is not made in good faith;
- iv. The Homeowner does not have sufficient personal interest in the subject-matter of the complaint;
- v. Too much time has passed (generally more than one year) between the alleged unfairness, and the submission of the Homeowner's complaint;
- vi. A material portion of the record pertaining to the complaint no longer exists;
- vii. During the course of the investigation by the Office, it appears that:
  - a. The Homeowner has an adequate remedy or right of appeal under the Ontario New Home Warranties Plan Act; or
  - b. Having reviewed all the circumstances of the case, the Office determines that further investigation is unnecessary.

Reasons for the Office not acting on a Homeowner's complaint, for any of the foregoing reasons, shall be provided to the Homeowner in writing by the Office, and shall be consistent with the principles of Fairness in section 3.5 of these Terms of Reference.

A brief summary of all Homeowner complaints not acted upon by the Office shall be provided for informational purposes to the Committee and the Board on a quarterly basis. This summary shall set out the nature of the complaint(s) and the reason for not acting.

##### **4.1 Categories of Homeowner Complaints**

Homeowner complaints fall into one of three categories:

- Complaints outside the Office's Mandate;
- Complaints within the Office's Mandate, but are premature; and
- Complaints within the Office's Mandate and not premature.

The recommended action set out below for each of the three categories of Homeowner complaints include the Office complying with the principles of Fairness in section 3.5 of these Terms of Reference.

##### **4.2 Complaints outside the Office's Mandate**

When complaints are outside the Mandate, the Office will inform the Homeowner, and, whenever possible, the Office shall refer the Homeowner to an appropriate resource.

### **4.3 Complaints within the Office’s Mandate but are Premature**

The Office requires that, where possible, a Homeowner attempts in first instance to resolve their complaint by working within Tarion’s warranty claim resolution processes. For premature complaints the Ombuds will refer the Homeowner in writing where possible to an appropriate manager and provide contact information.

### **4.4 Items not Addressed by Management**

If a Homeowner has already been to a member of Management and the Homeowner’s concern was not specifically addressed, the Office, with consent of the Homeowner to identify the Homeowner, may ask the member of Management to address the concern.

### **4.5 New Issues Raised by the Homeowner**

If a new issue is raised by the Homeowner, the Office will assess the Homeowner’s complaint, and advise the Homeowner of the most appropriate process to resolve the concern.

### **4.6 Obvious Errors**

If there is an obvious error, the Office will, with consent of the Homeowner to identify the Homeowner, contact Management to recommend a correction.

*Premature Homeowner complaints, above, may be resubmitted by the Homeowner to the Office if the Homeowner is dissatisfied with the Management’s handling of the Homeowner’s complaint or concern. The Homeowner shall be advised in writing to the fullest extent practicable of this prerogative by the Office.*

### **4.7 Complaints within the Office’s Mandate and are not Premature.**

#### **a) Early Resolution**

If appropriate, the Office will use an Early Resolution process to address a Homeowner’s complaint without a formal review process.

#### **b) Complaint Review**

Complaint review involves intake and documentation of Homeowner complaints, identification, and clarification of issues, investigation, and analysis. It includes review of Homeowner-provided and Tarion-provided documents, Tarion interactions with the Homeowner and relevant third parties, and interviews with the Homeowner and Tarion staff. Fairness issues identified may be resolved using a variety of conflict resolution techniques and strategies.

The Office may request information from the Homeowner, and or Management, to assess whether an investigation is warranted.

- i. The Office will review a complaint using all relevant information available – including information provided by both the Homeowner and Tarion. The Office may gather additional information or evidence as required to make a finding. The



objective of the review is to resolve the concern or complaint of the Homeowner and improve fairness in Tarion's processes and policies, not to lay fault.

- ii. The Office will determine the scope and methodology of the review. During the review, all potentially relevant issues, evidence, documentation, and witnesses will be identified and pursued. Analysis of the material gathered in this review phase shall be objective and based on the facts.
- iii. If, after investigating, the Ombuds finds the subject-matter of the investigation was:
  1. Contrary to the Ontario New Home Warranties Plan Act;
  2. Contrary to Tarion's own policies and procedures;
  3. Based wholly or partly on a mistake of law or fact;
  4. Based on improper exercise of discretionary power, or
  5. Otherwise, unfair,

the Office shall, subject to confidentiality and privacy requirements, communicate the findings, the Office's reasons for the findings, and any recommendations to the Homeowner, the relevant Tarion department, and as or if requested, the Committee and Board, in writing, and consistent with the principles of Fairness in section 3.5 of these Terms of Reference.

#### **4.8 Procedure after Homeowner Complaint Review by the Office**

The Office shall report their findings, and the written reasons to the Homeowner and Management, and may make an appropriate written recommendation(s) to address any root cause, systemic or fairness issue. For a recommendation to Management from the Office, the Office shall request that Management notify the Office, within a specified time, (i) whether the recommendation is accepted or not; and if accepted (ii) how Management proposes to implement the recommendation(s), and (iii) when the recommendation(s) has been implemented (or not).

If the Office finds that a situation is unfair, including not being consistent with section 3.5 of these Terms of Reference, the Office can recommend that Management:

- i. Suspend or postpone an action;
- ii. Reconsider or change a decision;
- iii. Expedite an action;
- iv. Provide an apology or financial reimbursement;
- v. Improve communication;
- vi. Make changes to services;
- vii. Provide written reasons for decisions;
- viii. Make changes to policies or general practice; or
- ix. Implement other recommendations that the Office considers appropriate.

## **5. Terms of Reference Review and Distribution, and Office Disclosure to the Public**

- 5.1 The Ombuds is responsible for taking all reasonable steps to ensure that the Office, including Staff, operate in a manner consistent with these Terms of Reference.
- 5.2 The Board remains ultimately responsible for maintaining, reviewing and approving these Terms of Reference.
- 5.3 The Committee will review these Terms of Reference with the Ombuds on an annual basis, for review and recommendation by the Committee to the Board for review and approval. These Terms of Reference shall be current and consistent with the Ontario New Home Warranties Plan Act, R.S.O. 1990, c. O.31, and the Administrative Agreement.
- 5.4 These Terms of Reference shall be distributed annually, upon review and approval by the Board, to the Ombuds, other pertinent Staff, the President & CEO, and other members of senior Management.
- 5.5 Tarion shall clearly communicate to the public about the role, mandate, scope, and how to access or contact the Ombuds and the Office.
- 5.6 Tarion shall publish on its website the progress that Tarion has made responding to any recommendation that the Office has published in any report.

## **6. Complaints by Homeowners or the Public**

- 6.1 A complainant who disagrees with the findings of the Ombuds office can follow the procedure outlined [here](#) to request a review of the decision.

A person who would like to make a complaint about the conduct of Ombuds staff or the Ombuds may do so by following the procedure outlined [here](#).

The Committee is not an appeal body for the Ombuds office and will only review complaints where there is an allegation of impropriety or inappropriate process. Complainants to the Committee can request that their name(s) not be disclosed to the Ombuds or the Office, complaints can also be made to the Committee anonymously.

- 6.2 Management and the Office shall not prejudice or reprise against individuals who make a complaint about the Office or who participate in any way in an investigation of the Office or the Ombudsperson.
- 6.3 The Ombuds will report in writing at each meeting of the Committee on complaints about the Office received by the Office by Homeowners or the Public since the preceding meeting. Such reporting shall include the nature, actions taken, and the outcome of each Homeowner's or a member of the Public's complaint.
- 6.5 Under no circumstances shall a complaint by a Homeowner or member of the Public result in adverse consequences to the Homeowner's or member of the Public's case,

complaint, or concern, as the case may be, by the Office or Management. Homeowners and members of the Public shall be made aware of this fact

## **7. Performance Review and Compensation of the Ombuds and Office**

7.1 The Board, upon recommendation of the Committee, shall review and approve, in writing annually, (i) the key performance indicators (KPIs) for the Ombuds and Office; (ii) the performance of the Ombuds and Office in meeting these KPIs; and (iii) the total compensation and benefits of the Ombuds.

7.2 Subject to 7.1, Management shall abstain from any role or involvement in evaluating or reviewing the performance, compensation, or benefits of the Ombuds or any employee within the Office.

## **8. Engagement of Independent Advisors and/or Service Providers**

8.1 The Ombuds, will retain independent advisors, consultants, or service providers (e.g., website provider, external performance evaluation firm, communication advisors) from time to time as needed or as advised by the Committee relating to operations of the Office (e.g., lease matters, technology). The retention of such independent advisors, consultants and service providers will be addressed as part of the budget and work plan discussions referred to in paragraph 3.1 (vii) above

8.2 The Office will work with the Committee in developing a Procurement Policy for the Office which, except if there is an overriding reason to deviate, will follow the terms and approach of the Tarion procurement policy. Approval will be to the Committee and the Board and will not include Management.

**MONITORING METHODOLOGY**

Reviewed by Stakeholder Committee	2021/09/13;2021/11/15; 2022/01/26; 2023/01/25; 02/05/24
Reviewed by Board of Directors	2021/10/07;2021/11/16; 2022/02/14; 2023/02/14; 2024/02/22
Approved by Board of Directors	2022/02/23; 2023/02/14; 2024/02/22