

Tarion New Homebuyers Ombudsperson Office Terms of Reference

1) Mandate

The mandate of the New Home Buyer Ombudsperson 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 Buyer Ombudsperson:

Receives, investigates and resolves complaints from homeowners about Tarion’s conduct and whether it accords with Tarion’s own practices and procedures. The Ombudsperson may make recommendations to the CEO 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 Ombudsperson may make recommendations about any rule, policy, regulation or procedure which he/she deems appropriate.

2) Operating Principles

2.1) Independence

- i) The Office of the Ombudsperson (The Office) is independent of all other Tarion departments. The Ombudsperson holds no other position within Tarion which might compromise his/her independence. The Ombudsperson cannot have membership in any consumer advocacy, or building industry organizations.
- ii) The Ombudsperson strives to be impartial, fair and objective in the treatment of people and the consideration of complaints. The Ombudsperson advocates for fair processes and does not advocate on behalf of any individual or organization.
- iii) The Ombudsperson 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 Ombudsperson may, on his or her own initiative, identify, investigate and make recommendations on case-related or systemic issues within Tarion.

- v) The Ombudsperson reports to the Board of Directors through the Consumer Committee. For administrative purposes, the Ombudsperson reports to the CEO. The budget for the Ombudsperson Office is negotiated through the Consumer Committee. The Ombudsperson will select staff and manage the budget and operations in the Office.
- vi) The Ombudsperson will have private and confidential *In Camera* sessions with the Consumer Committee of the Board of Directors at each meeting of this Committee. The Ombudsperson 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 Ombudsperson.

2.2) Impartiality

- i) The Ombudsperson 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 required by law. The Office will seek consent to divulge information necessary to work to resolve a complaint. In cases where the consent is not given, the complaint will be kept confidential.
- ii) Complaints to the Ombudsperson 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 Ombudsperson and the Office, not to any other party including the complainant.
- iv) The Ombudsperson 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 Ombudsperson functions informally. The Ombudsperson seeks to resolve complaints in a timely and effective manner, at the most immediate level within Tarion.
- ii) The Ombudsperson 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 Ombudsman's satisfaction, the Ombudsperson may escalate the recommendation through management, or the board of directors.
- iii) The Ombudsperson has access to all information and all individuals in Tarion.
- iv) The Ombudsperson 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 Ombudsperson 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 Ombudsperson promotes and protects fairness within Tarion.
- ii) Ombudsperson will articulate standard of fairness to act as the basis for its assessment of fair processes, and as an educational tool.

The Ombudsperson 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 an inquiry 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 Ombudsperson 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 Ombudsperson 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 Ombudsperson may issue reports to the CEO and the Board of Directors, concerning any investigation, on the implementation of any recommendations, or any other matter within the mandate of the Ombudsperson.

2.7) Limits

- i) The Ombudsperson 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 Ombudsperson.
- iii) Complaints that relate to privacy concerns will be directed to the Tarion Privacy Officer.
- iv) Allegations of employee impropriety will be directed the Tarion Human Resources department.

3) Ombudsperson Complaint Process

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

- Complaints outside the Ombudsperson's mandate
- Complaints within the Ombudsperson's mandate, but premature
- Complaints within the Ombudsperson's mandate

i) Complaints outside the Ombudsperson's Mandate

(1) 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 Ombudsperson's 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 Ombudsperson if complainants are dissatisfied with the department's handling of the concerns.

iii) Complaints within the Ombudsperson's mandate.

(1) Early resolution

(a) Early resolution involves intake and documentation of complaints, identification and clarification of issues, research and analysis. It includes resolving complaints using a variety of conflict resolution techniques and strategies. If appropriate, the Office will use an early resolution process to deal with complaints that can be resolved without a formal investigation.

(b) The Ombudsperson 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 Ombudsperson Office will review the information available and determine if the complainant has been treated fairly. If the complainant has been treated fairly, then the Ombudsperson office will communicate the findings to the complainants, and no further investigation will be done.

(2) Investigation

- (a) The Ombudsperson may investigate a complaint using all the information available – including information provided by the homeowner, and Tarion. The Ombudsperson 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 Ombudsperson 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 Ombudsperson 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) or Otherwise unfair
- the Ombudsperson will, subject to confidentiality and privacy requirements, communicate the findings, and any recommendations to the complainant, and relevant department. If the Ombudsperson finds that the complaint is unfounded, he/she will provide reasons to support the finding.

(3) Procedure after investigation

- (a) The Ombudsperson shall report his/her opinion, and the reasons, to Tarion, and may make appropriate recommendations. The Ombudsperson 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) Ombudsman's report and recommendations

If the Ombudsperson finds that a situation is unfair, the Ombudsperson 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. To improve communication;
- vi. Make changes to services;
- vii. Provide reasons for decisions;
- viii. To make changes to policies or general practice.

4) Terms of Reference

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

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

5) The Tarion Way

5.1) Tarion has instituted a customer service program called "The Tarion Way." The program emphasises five principles: Fairness, Logical, Listening, Caring and Team Work. Staff in the Ombudsperson office will be trained in the Tarion Way, and will incorporate the principles into its complaint resolution, and outreach activities.

6) Complaints about the Ombudsperson

6.1) The Ombudsperson will develop a complaint policy for the Ombudsperson office.

6.2) The policy will be clearly posted on the website for the Office.

6.3) The Ombudsperson will report on complaints about the office to the Consumer Committee of the Board of Directors.

6.4) Allegations of impropriety in respect to the Ombudsperson shall be brought to the attention of the Chair of the Consumer Committee of the Board of Directors through the Corporate Secretary. Each allegation shall be investigated. The means and methods of the investigation shall be at the discretion of the Chair.

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