



Common Definitions for “Home”, “Builder”, “Vendor”, and “Owner” as used in the New Home Construction Licensing Act and the Ontario New Home Warranties Plan Act

Introduction to the Home Construction Regulatory Authority

On February 1, 2021, the Home Construction Regulatory Authority (HCRA) will become the regulator of new home builders/vendors in the province. The HCRA will be responsible for licensing the people and companies who build and sell new homes in Ontario.

Once the HCRA launches its operations, it will be responsible for enforcing professional standards for competence and conduct, promoting and supporting a fair, safe and informed marketplace, and enhancing new home buyers’ confidence in one of the biggest purchases of their lives. It will also provide educational information for consumers, including an enhanced Ontario Builder Directory, the official source of information about Ontario’s builders and vendors.

The HCRA will take over Tarion Warranty Corporation’s registration function, which will become licensing by the HCRA under the [New Home Construction Licensing Act \(NHCLA\)](#). Currently, Tarion is responsible for both registration of builders/vendors and warranty administration. Tarion will continue to administer Ontario’s new home warranty and protection program, backstopping the statutory warranty coverage provided to purchasers of new homes by vendors, under the [Ontario New Home Warranties Plan Act \(ONHWPA\)](#).

For additional information about the HCRA, please visit the interim website at <http://hcraontario.ca/>. As the HCRA’s launch date of February 1, 2021 approaches, more information about the HCRA’s services and processes will be provided.

Explanatory Note

As part of preparation for launch of operations, the HCRA has developed interpretations for the definitions of “builder,” “home,” “owner” and “vendor.” All terms are used in both the NHCLA and the ONHWPA.

The information contained in this document is intended for posting on the HCRA’s website. Each bulletin will be provided as a separate document.

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Common Definition of “Home”

General Background

The Home Construction Regulatory Authority (HCRA) is the regulator with responsibility to license builders and vendors of new homes 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 guideline applies to the definition of “new home” in the NHCLA and the definition of “home” in the ONHWPA. It is to be read in conjunction with the guidelines for [“builder,”](#) [“vendor,”](#) and [“owner.”](#)

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

- The NHCLA regulates builders and vendors who are constructing or selling a “new home” as defined.
- The ONHWPA extends statutory warranty coverage to a “home” as defined.
- A person cannot enter into an agreement of purchase and sale for a (new) home unless that person has received confirmation from Tarion that the home qualifies for enrolment under the ONHWPA.
- The builder of a (new) home cannot commence construction of the home until it has enrolled the home with Tarion under ONHWPA.
- The “vendor” of a (new) home is deemed to provide the statutory warranties and protections available for a home (as defined) under the ONHWPA (as long as the definitions of vendor, builder and owner are also satisfied).

Legislation – Act and Regulation

The NHCLA refers to a “new home” and the ONHWPA refers to a “home” but both have the same meaning. The term “new home” in the NHCLA is defined as having the same meaning as the word “home” as defined in s.1 of the ONHWPA.

S.1 of the ONHWPA defines “home” to mean:

- a) A self-contained one-family dwelling, detached or attached to one or more others by one or more common walls;
- b) A building composed of more than one and not more than two self-contained, one-family dwellings under one ownership;
- c) A condominium dwelling unit that is a residential dwelling, including the common elements in respect of which the unit has an appurtenant common interest as described in the condominium declaration of the condominium corporation; or
- d) Any other dwelling of a class prescribed by the regulations as a home to which this Act applies, and includes any structure or appurtenance used in conjunction therewith, but does not include a dwelling built and sold for occupancy for temporary periods or for seasonal purposes.

For condominium homes, a new definition for “common elements” in s.1 of the ONHWPA is aligned with the definition in the NHCLA and provides that:

- “Common elements” means all the condominium property except the condominium units.

Quick Reference Guide – What is a home and what is not a home for licensing and warranty purposes

The chart below provides some general rules that apply for determining whether what is being constructed meets the definition of “home”. For additional information, reference the more detailed discussion that follows.

Home for Licensing and Warranty Purposes	Not a Home for Licensing and Warranty Purposes
<p>A home is:</p> <ul style="list-style-type: none"> • A self-contained single-family dwelling capable of occupation year-round and that has not been previously occupied • One of two self-contained single-family dwellings in the same building under common ownership capable of occupation year-round and that has not been previously occupied • A condominium unit that is a residential dwelling unit that is capable of occupation year-round and that has not been previously occupied <p>For a condominium dwelling unit, the home includes the common elements that go with the unit, as described in the condominium declaration of the condominium corporation. These are referred to as a unit’s appurtenant common interests.</p> <p>Included as part of the home generally, is any structure that is used in conjunction with the home.</p> <p>A dwelling that meets the conditions of one of the three categories of home described in the first three bullets above,</p>	<p>A unit in one of the following is not a home:</p> <ul style="list-style-type: none"> • Hotel, including a residential dwelling in a hotel condominium • Motel • Dormitory • Post-secondary education residence • Care facility, including a retirement home and a long-term care facility • Psychiatric facility • Detention facility <p>A home does not include a dwelling built or sold for occupancy for temporary periods or for seasonal purposes including:</p> <ul style="list-style-type: none"> • A residential dwelling with fractional ownership or time-share interest • A seasonal residential dwelling not capable of year-round occupancy (seasonal home) • A life lease of residential dwelling unit <p>The following dwellings are not included in the definition of home under the NHCLA and the ONHWPA:</p> <ul style="list-style-type: none"> • A residential dwelling on First Nations reserve lands

Home for Licensing and Warranty Purposes	Not a Home for Licensing and Warranty Purposes
<p>may continue to meet the definition of home even if the dwelling is:</p> <ul style="list-style-type: none"> • Sold with identified surface defects • Built for a charitable purpose • Built as a coach or laneway home • Built for educational or training purpose • Built on all or part of a pre-existing foundation • Rented out by the owner • Purchased under a lease to own agreement • A condominium dwelling unit that is part of a leasehold condominium corporation • Attached to an industrial or commercial building • Built using logs as an integral part of the structure and building envelope • A mobile home on a permanent foundation • A modular home on a permanent foundation • A “tiny home” on a permanent foundation • A panelized or kit home on a permanent foundation • A “shell” home • A contracted home • Built under contract (contracted home) and is first occupied by landowner • Used for personal and business purposes (work/live) • Transferred in a non-arm’s length transaction 	<ul style="list-style-type: none"> • A dwelling first occupied by vendor/builder

Foundations, including a pre-existing foundation

A foundation is defined as an arrangement of various “foundation units” through which the loads from a building are transferred to supporting soil or rock. A “foundation unit” refers to any one of the structural parts of a permanent foundation, such as footings, foundation walls, block, piers and pier type foundations constructed of cement products such as concrete, concrete block or constructed of wood or any other approved material.

A foundation does not include non-load bearing partition walls, weeping tiles, damp proofing, waterproofing, and parging and does not encompass load bearing structures that form part of the above ground construction such as columns, beams, posts and above ground load bearing walls.

Special considerations apply if a dwelling is being constructed on all or part of a pre-existing foundation. Decisions on whether licensing is required and whether warranty coverage is available to the dwelling will depend on the circumstances.

Importantly, local building officials undertake a footing and foundation inspection, and the foundation, even if incorporating elements of a pre-existing foundation, must still meet the requirements of the Ontario Building Code.

For contract homes, even if warranty coverage extends to the dwelling if pre-existing foundation elements of the home are found to be deficient, warranty coverage would not extend to those elements based on ss.13(2) of ONHWPA, which excludes coverage for an element supplied by the owner.

Breaking down the key characteristics of a new home:

The dwelling must be a new dwelling.

- The title of the ONHWPA has the word “new” in it. The ONHWPA deals with “new” homes. To be a “new” home, the dwelling that is being built must be more than just a renovation to an existing building. A particular construction may incorporate some pre-existing elements into the construction and might still be considered a new home for licensing and warranty purposes. When the construction includes pre-existing elements and is a condominium, special rules will apply for purposes of determining if it is a residential condominium conversion project (RCCP) that qualifies as a new home for licensing and warranty purposes. The NHCLA and the ONHWPA Registrars should be contacted for additional information about RCCPs.

The dwelling has not been previously occupied.

- One aspect of a being a “new” home is that the dwelling has not been previously occupied. Some short-term, temporary use for a purpose such as a sales office does not necessarily constitute “previous occupation” of the home. Both the NHCLA Registrar and the ONHWPA Registrar will have an interest in whether there has been any prior use of the home. It may be relevant to what information

a vendor or builder needs to provide to a purchaser. It may also be relevant to a determination of whether the use was a previous occupation of the home impacting whether the statutory warranties and protections apply to the dwelling.

The new dwelling must be self-contained.

- The self-contained aspect of the residential dwelling considers whether the ordinary aspects of living such as eating, sleeping, waste management and heating are provided for as part of the home. Consideration may be had to whether the building includes the elements necessary to satisfy the requirements for an occupancy permit under [Ontario's Building Code Act](#).

The new dwelling must be constructed as a family dwelling.

- A family dwelling is a dwelling that is used for residential purposes.

The new dwelling must be one that can be occupied on a year-round basis and not just seasonally.

- S.9.5.1.1 of Ontario's Building Code (OBC) refers to year-round occupancy. It applies to dwelling units intended for use on a continuing or year-round basis. See: <https://www.ontario.ca/laws/regulation/120332>.
- S.9.5.1.1. also requires that the year-round occupancy be intended to be used as the principal residence of the occupant. This principal residence obligation is not a requirement for the statutory warranty to apply. What is important for the statutory warranty is not what was intended, but that the dwelling is capable of year-round use.
- Zoning by-laws are not relevant to whether a home is capable of year-round occupancy for warranty purposes. It is the physical characteristics of the home and not the legality of occupying it year-round that are relevant.
- A good indication of whether or not a home was designed and built for year-round occupancy is if it contains the key elements listed in the OBC necessary to grant an occupancy permit. These key elements include things such as the provision for heating, insulation, electricity (on or off-grid), potable water supply, plumbing (or means of waste disposal), sleeping and cooking areas.

Interpretation Examples of "Home"

Home sold with identified and accepted surface defects

Description: A home that is sold with identified surface defects is a home that has been constructed by a builder and sold by the vendor to a purchaser on the understanding that the purchase price represents acceptance of the home subject to identified surface defects.

Licensing: Required

Warranty Coverage: Covered

With the limited exception of specific surface defects that are disclosed in writing to the purchaser, included in the Agreement of Purchase and Sale (APS) and accepted by the purchaser. Those surface defects are excluded from warranty coverage.

Discussion: A vendor cannot simply sell a home “as is” to avoid warranty coverage. Similarly, intending to have or including a term of “sold as-is” in an APS does not exempt a person from having to be licensed as a vendor nor does it exclude the home from warranty coverage.

The ONHWPA contemplates the possibility of a new home being sold with some surface defects and excludes coverage for those surface defects. S.13(2)(l) expressly excludes from warranty coverage: “(l) surface defects in work and materials specified and accepted in writing by the owner at the date of possession”.

For example, where there has been some permitted use, a result of which is that some surface defects have occurred, a home may be sold subject to those pre-existing and specified surface defects. If a purchaser agrees to purchase the home subject to the disclosed specific surface defects those defects will be excluded from warranty coverage.

To clearly establish that certain defects were accepted by the purchaser, vendors are expected to disclose the defects to the purchaser, either in the agreement of purchase and sale or a schedule or appendix to that agreement.

[Home built for charitable purpose](#)

Description: A home built for a charitable purpose is a home that is built for or given to a registered charitable organization for the purpose of fund-raising or to provide low- or no-cost housing to one or more specified individuals.

Licensing: Required

Warranty Coverage: Covered

Discussion: The fact that a home is built for a charitable purpose does not mean that licensing is not required or that it is not eligible for warranty coverage. An example of a charitable purpose is where a builder donates a home to a registered charity for a lottery. The successful bidder or lottery winner can choose to take title to the home. The builder and vendor must be licensed, and the home must be enrolled.

Note that a builder cannot be its own ‘charity’. A builder or vendor cannot avoid licensing obligations and the requirement to enrol a home by electing to raffle off or give away a home for promotional purposes. A key consideration is whether the dwelling was constructed for residential occupancy.

Coach or laneway home

Description: Coach or laneway homes are homes built on a lot, which already contains an existing, fully detached (and typically larger) home, making the coach or laneway home a secondary home. The construction is on the same lot as the main home. It is not constructed on a separate lot.

Typically, these secondary homes do not have independent service connections but rather, connect to the main house services for utilities such as electricity, gas, domestic water, and sewage.

Licensing: Required

Warranty Coverage: Covered

Discussion: The fact that the home is small or is built on land that already has an existing home on it does not affect warranty eligibility.

Provided that the dwelling has the components of a new home (e.g., self-contained) and is constructed in accordance with the year-round requirements of Part 9 of the OBC, it will be eligible for warranty coverage if it is constructed by a builder (i.e. is not an owner-built dwelling).

For a coach or laneway home that is not on a separate building lot, the “owner” of the lot will have contracted with a licensed builder to build the home (i.e. a contract home). The home typically relies upon the ‘main’ (larger) home for supply of water or other services. This does not disqualify the home from warranty coverage. However, if a warranty claim is made concerning any such items, the source of the problem will need to be identified to determine if it is: (a) a defect pertaining to work/materials in the coach/laneway/tiny home – which may be covered, as opposed to, (b) a defect in the ‘main’ home – which would not be covered.

Sharing a lot or sharing services does not remove the obligation to be licensed nor does that fact alone exclude the home from warranty coverage.

“Tiny” Home

Description: A “tiny home” can be described as a small, self-contained dwelling unit intended for year-round use, has living and dining areas, kitchen and bathroom facilities, and a sleeping area. A tiny home can be one that is built on-site or built in a factory then brought to the property.

Licensing: Required

Warranty Coverage: Covered

Discussion: A tiny home can be a primary home or a separate structure on a property that already has an existing house. For the purposes of licensing and warranty coverage, a tiny home must be affixed to a permanent foundation.

Campers, recreational vehicles, cottages and other structures used on a seasonal basis do not fall within the category of “tiny home”. Different municipalities may have minimum and maximum size requirements. However, in all cases, a tiny home cannot be smaller than 17.5 m² (188 ft²), the minimum size required by the OBC.

The Ministry of Municipal Affairs and Housing has issued a guide about tiny homes, that applies to newly built, stand-alone tiny homes that are separate buildings from existing structures on a property. The guide is available at: [Tiny Home Guide MMAH](#).

Home built for educational or training purpose

Description: An educational home is a home that is built as an educational or training tool for persons/students that may be considering the construction trades as a future career and when completed, is subsequently sold.

Licensing: Required

Warranty Coverage: Covered

Discussion: The fact that a home is built for an educational purpose does not mean that licensing is not required, nor does it disqualify the home from warranty coverage. Builder and vendor licensing are required, and the completed home is eligible for warranty coverage so long as it otherwise meets the definition of “home” and is being sold or built for an owner for residential occupancy. The additional purpose for which the home is built (i.e., educational) is not relevant to the issues of licensing and warranty coverage. The builder and vendor must be licensed, and the home must be enrolled (as long as there is also a vendor, builder and owner as defined).

Time-share interest in a residential dwelling without title ownership

Description: A time-share arrangement without title ownership is a contractual arrangement under which an interest in the property has been acquired by contract but the right to use the dwelling is shared among more than one purchaser of a contractual interest to occupy.

Licensing: Not required

Warranty Coverage: Not covered

Discussion: Warranty coverage does not extend to dwellings where the purchaser only acquires a right to occupy the dwelling for a temporary period as distinct from a title interest in the property.

With time-sharing, a user agrees to a lease arrangement that gives the user a right to occupy the property for specified time periods. The user does not receive an ownership interest in the property and warranty coverage does not apply (see discussion of “owner” below).

Fractional or co-ownership interest

Description: A dwelling purchased through a fractional or co-ownership interest may be acquired for occupancy by each fractional owner for temporary periods. It may also be acquired by more than one person, for full-time occupancy. With a fractional or co-ownership interest, there is an ownership interest in the title to the property. For example, with tenancy in common ownership, all tenants in common have an undivided fractional share of the whole.

Licensing: May be required depending on the terms of the co-ownership and fractional agreements

Warranty coverage: May be covered depending on the terms of the co-ownership and fractional agreements

Discussion: Fractional and co-ownership interests may require licensing and may be covered by warranty. The fact that purchasers may have some title interest as opposed to only a contractual interest, is not sufficient to require licensing or to have warranty coverage. Where multiple sequential occupancy by the various owners of title is hardwired into the agreement of purchase and sale, it may give rise to a conclusion that the occupancy is temporary and therefore not covered by warranty. The legal

arrangements, including the terms of the co-ownership arrangements and the management agreements, will be considered in determining whether what is constructed meets the definition of “home”.

Residential dwelling on First Nations reserve lands

Description: A home that is built on First Nations lands is one that is built on a tract of land that has been set aside for the use and benefit of a First Nation. Legal title to the land remains vested in the federal Crown.

Licensing: Not required

Warranty Coverage: Not covered

Discussion: The lands on which the homes are built are within the jurisdiction of the federal government.

Home rented out by the owner

Description: A home rented out by an owner is one that is constructed and rented to a tenant after title has transferred from the vendor to the purchaser (homeowner).

Licensing: Required

Warranty Coverage: Covered

Discussion: Even though the purchaser does not occupy the home, the person still becomes the “owner” of the home. The ONHWPA provides that an “owner” is “a person who first acquires a home from its vendor for occupancy” and includes a successor in title. The fact that the purchase of the home initially may be characterized as “for investment purposes” (i.e., to rent out) is not relevant. Nor is it relevant that the home is not being occupied by the original purchaser. A home may be purchased “for occupancy” but the occupancy is through the purchaser’s tenant, or a licensee such as a family member. This arrangement does not exclude the purchaser from being an “owner” under the ONHWPA.

Residential dwelling in a hotel condominium

Description: A “hotel condominium” consists of privately and separately owned suites that are rented out on a short term/nightly basis to guests, similar to a hotel. The terms of ownership and use of a hotel condo may vary. In some cases, the unit owner is

specifically precluded or restricted from using the suite for personal use, whereas in other cases, the unit owner may use the suite for a certain number of days per month or per year.

Licensing: May be required depending on the construction of the dwelling and the terms of the sales related agreements, including the Agreement of Purchase and Sale. Licensing may not be required if the hotel condominium falls within the exclusions contained in the definition of “home” for dwellings “built and sold for occupancy for temporary periods or for seasonal purposes.”

Warranty Coverage: May be covered depending on the construction of the dwelling and the terms of the sales related agreements, including the Agreement of Purchase and Sale. A hotel condominium may not be eligible for warranty coverage if it falls within the exclusions contained in the definition of “home” for dwellings “built and sold for occupancy for temporary periods or for seasonal purposes.”

Discussion: The definition of “home” under the ONHWPA excludes from warranty coverage dwellings “built and sold for occupancy for temporary periods or for seasonal purposes”.

Decisions on whether licensing is required and whether warranty coverage applies will depend on decisions made as to whether one or both of the following apply:

1. The physical structure of the dwelling is such that it is apparent that it was “built” for temporary or seasonal use.
2. Either or both of the sales agreement and the Description and Disclosure indicate that the dwelling unit is “sold” for temporary or seasonal use.

Regarding the physical structure, the dwelling unit must be:

- Constructed to OBC requirements for year-round occupancy;
- A self-contained household including eating, sleeping and accommodation for other day-to-day needs for the individuals occupying the dwelling; and
- Capable of use as a single-family dwelling if the owner so chooses. The fact that the owner agrees to rent out the unit or allow it to be used as a short-term occupancy unit does not in and of itself make it ineligible for warranty coverage.

Regarding the Agreement of Purchase and Sale, it cannot oblige the purchaser to make the unit available for others to use on a temporary or seasonal basis for more than 50 percent of the time. That is, it cannot be sold on the basis that it will be subject to that limitation.

For example, a sale arrangement that requires the purchaser to turn over occupancy of the unit for a rental pool for 6.5 months out of the year would make it ineligible for

warranty coverage on the basis that it was sold for occupancy on a temporary or seasonal basis.

The declaration and disclosure documents may be referred to for purposes of clarifying the temporary or seasonal nature of the occupancy.

[Home attached to an industrial or commercial building](#)

Description: An industrial/residential or commercial/residential arrangement refers to a situation where a home is attached to either an industrial or commercial building. Examples include a residential dwelling attached to a manufacturing plant or commercial space.

Licensing: Required (with respect to the residential dwelling unit portion of the structure)

Warranty Coverage: Covered (with respect to the residential dwelling unit portion of the structure)

Discussion: A home that otherwise qualifies for warranty coverage does not become disqualified simply because it is attached to a non-residential building. Warranty coverage does not extend to the commercial or industrial parts of the structure to which it is attached.

[Home purchased under lease to own arrangement](#)

Description: A lease to own arrangement is one in which there is an agreement that provides for title to be transferred at some future date following first occupancy. Under this arrangement, the potential purchaser pays lease payments, a portion of which is applied towards the down payment. At a predetermined point in time, the potential purchaser has the option of purchasing the property.

To be an arrangement that requires a builder and vendor licence and one to which warranty coverage applies, the lease to own agreement must include:

- A clear statement of the total purchase price.
- Details of the terms of the lease including the lease payment, the future value of the accrued down payment, and a precise date of when the sale transaction is intended to close and title to be transferred to the lessee.

Generally, the question regarding warranty eligibility is: Are the lease and other agreements relating to use and acquisition of the home in effect an agreement to eventually acquire the dwelling outright?

The construction and sale of the lease to own dwelling will not require builder and vendor licensing and the residential dwelling will not be eligible for warranty coverage if the lease to own agreement includes a provision that allows the lessee or lessor to opt out of the purchase of the unit.

The lessee is one or more persons who have entered into a lease to own agreement, have occupied the unit, but have not yet purchased or taken title to the unit.

Licensing: Required (so long as title transfer is for a date certain and addressed in the Agreement of Purchase and Sale, and occupancy is not temporary)

Warranty Coverage: Covered (so long as title transfer is for a date certain and addressed in the Agreement of Purchase and Sale, and occupancy is not temporary)

Discussion: So long as the title transfer is certain and contemplated in the agreement, and occupancy is not temporary, a “lease to own” agreement is considered to meet the definitions of “home”, “owner”, “vendor” and “builder” as set out in the Act.

Title does not actually have to be transferred before a warranty claim can be satisfied. This raises the potential for claims to be paid out to the lessee in a situation where title ultimately is never actually transferred (i.e., the lessee never becomes an “owner”).

The possession date (i.e., the start of the lease to own period) will be the date of possession for purposes of calculating time periods for warranty coverage eligibility.

[Condominium dwelling unit in a leasehold condominium corporation](#)

Description: A leasehold condominium corporation (LCC) is built on leased land. The LCC has a leasehold interest in the land. The purchaser of a condominium dwelling unit in the LCC acquires a ‘leasehold interest’.

A leasehold interest is an interest in the land for a set period of time. Title to the land does not transfer to the LCC or to the person with an interest in the condominium dwelling unit. A person’s interest in an LCC dwelling unit is a leasehold interest that will end when the LCC’s lease term, including any renewals of the original term, expires. Ss.165 (3) of the Condominium Act requires that for a leasehold condominium corporation, the initial leasehold term (before renewal) must be not less than 40 years less a day and not more than 99 years as specified in the declaration for the condominium.

Licensing: Required

Warranty Coverage: Covered

Discussion: Tarion and HCRA consider the transfer of a leasehold interest in this situation to be like a transfer of title in all important respects. For example, the leasehold condominium “owner” can mortgage, lease and/or transfer his/her interest without the consent of the landlord or the condominium corporation. The leasehold condominium owner is therefore, considered to be an “owner” under the ONHWPA.

Life lease of residential dwelling unit

Description: In a life lease agreement, the life lease holder or purchaser is purchasing a right to occupy a life lease residential dwelling unit until they sell the life lease (if permitted), return the lease with or without a payment from the lessor, the fixed maximum term is reached, there is no provision for next of kin to continue to occupy the unit, or the life lease holder passes away. Some life lease arrangements set a fixed term, e.g., 49 years.

Life lease arrangements allow for independent living with fewer personal care supports than might be found in a retirement home or long-term care facility. A life lease gives the life lease holder a right to occupy a unit, not ownership of a unit. Eligibility criteria typically include a minimum age and the ability to live independently.

Licensing: Not required

Warranty Coverage: Not covered

Discussion: A life lease arrangement does not have an “owner”, “vendor” or “home” as defined in the ONHWPA. It has a lessor, lessee, and a contractual right to occupy a specified unit – not an ownership right.

To qualify for warranty coverage under the ONHWPA there must be an “owner”, a “vendor” and a “home”.

- No “Owner”
The ONHWPA defines an “owner” as “a person who first acquires a home from its vendor for occupancy, and the person’s successors in title”. Implicit in this definition is the requirement that the “owner” obtain title and ownership of the home. In a life lease arrangement, the purchaser is not an “owner” as title and ownership are not transferred.
- No “Vendor”
Vendor is defined in the ONHWPA to be “a person who sells on his, her or its own behalf a home not previously occupied to an owner and includes a builder

who constructs a home under a contract with the owner.” The definition of vendor is therefore contingent on ownership (by virtue of the reference “sells...to an owner”) and, for the same reason as outlined above, the definition is not met in a life lease arrangement.

- Not a “home”

A life lease unit may also be excluded from coverage under the ONHWPA if it is a dwelling unit in a multiple unit residential building which is not a condominium. The definition of “home” in the ONHWPA is:

- a. A self-contained one-family dwelling, detached or attached to one or more others by one or more common walls;
- b. A building composed of more than one and not more than two self-contained, one-family dwellings under one ownership;
- c. A condominium dwelling unit that is a residential dwelling, including the common elements in respect of which the unit has an appurtenant common interest as described in the condominium declaration of the condominium corporation; or
- d. Any other dwelling of a class prescribed by the regulations as a home to which this Act applies, and includes any structure or appurtenance used in conjunction there with but does not include a dwelling built and sold for occupancy for temporary periods or for seasonal purposes.

The only class of multiple unit residential building that might meet the definition of “home” is a condominium.

[Log home](#)

Description: Log homes use wood logs stacked horizontally to form an integral part of the structure and the building envelope.

Licensing: Required

Warranty Coverage: Covered

Discussion: The material used in the construction of the home does not determine whether a home has warranty coverage.

The main issue that arises in respect of log homes is whether a home is a “seasonal” dwelling in which case it would not meet the definition of “home” under the ONHWPA.

Provided that the home is constructed in accordance with the Ontario Building Code, the home will qualify for warranty coverage.

Mobile home on a permanent foundation

Description: A mobile home is a single-section or multiple-section, self-contained family dwelling, and built off-site. The mobile home will have a vehicle chassis and will be affixed to a permanent foundation.

A permanent foundation is a foundation that complies with the requirements of the OBC. The mobile home is affixed to the foundation by the same vendor of the mobile home or by a person or entity under contract with the vendor.

Licensing: Required

Warranty Coverage: Covered (where vendor arranges for dwelling unit to be affixed to permanent foundation)

Discussion: To qualify for coverage, the mobile home must meet two criteria:

- (1) It must meet the requirements of CSA A277 or CSA Z240 MH Standard and be capable of year-round occupancy; and
- (2) It must be installed on a permanent foundation (i.e. a foundation that complies with the requirements of the Ontario Building Code) and the vendor of the mobile home is responsible for the construction of the foundation and the installation/affixing of the mobile home to it.

Typically, the owner of the home will have title to the property to which the home is affixed. If the owner does not have title to the underlying land the analysis will be more complex.

Modular and manufactured home on a permanent foundation

Description: A modular home is a home that is made up of finished sections or modules that are built off-site, and which, when assembled together, form a complete, self-contained family dwelling.

Whether described as a modular or a manufactured home, the home is one that is almost entirely built in a factory, with attached walls, floor, ceiling, wiring, plumbing and interior fixtures in place in sections or modules before transportation to the site. The sections or modules are then assembled and affixed to a permanent foundation on site by the vendor. The vendor of the dwelling will be responsible for the construction of the

foundation and the installation of the home onto the foundation, or for contracting to have the foundation constructed and the home installed on it.

A permanent foundation is a foundation that is constructed in accordance with the requirements of the OBC.

Licensing: Required (where vendor is responsible for constructing the foundation and for affixing the dwelling unit to it)

Warranty Coverage: Covered (where vendor is responsible for constructing the foundation and for affixing the dwelling unit to it)

Discussion: To qualify for coverage, the modular home must be affixed to a permanent foundation. A permanent foundation is a foundation that is constructed in accordance with the requirements of the OBC and the home is affixed to the foundation by the same entity who sells the home to the owner.

Typically, the owner of the home will have title to the property to which the home is affixed. If the owner does not have title to the underlying land the analysis will be more complex.

Panelized or kit home

Definition: A “panelized home” or “kit home” means a complete, self-contained, one-family dwelling assembled on site using factory-built components and affixed to a permanent foundation.

The structural components of the home, walls, roof, and floor systems are constructed in a factory and delivered to the site to be assembled and the balance of the home finished. If the owner has control of the assembly and finishing, it is not defined as a home for purposes of licensing and warranty coverage. Though unlike a modular home, a panelized or kit home will typically involve more assembly and related work at the installation site which is generally completed by the owner. The result is that these homes will not necessarily be covered by the statutory warranty as there will not be a “builder” who has supplied all the work and materials for the home.

However, if a kit home intended for year-round occupancy is sold, assembly arranged for by the vendor and the vendor is also responsible for constructing the foundation and for affixing the kit home to it, this may be a home that both requires licensing and enrolment for warranty coverage.

Licensing: Builder and Vendor Licensing Required, where vendor is responsible for the assembly of the kit, the foundation and for affixing the finished dwelling unit to the foundation. Where vendor is only responsible for the sale of the kit and a builder assembles the kit on a permanent foundation, vendor is only a supplier of materials and therefore does not have to be licensed, however the builder who assembles the finished dwelling unit must be licensed.

Warranty Coverage: Covered where vendor and/or builder is responsible for all of the assembly of the kit, the foundation and for affixing the finished dwelling unit to the foundation.

Discussion: For licensing and to qualify for warranty coverage, there must be a builder who is supplying the work and materials, the panelized or kit home is intended for year-round occupancy, and must be installed on a permanent foundation that complies with the requirements of the Ontario Building Code. The vendor of the home will be responsible for constructing the foundation and for affixing the home to it.

Seasonal home – a home that does not meet year-round occupancy requirements of the OBC

Description: A seasonal home is one that does not meet the requirements of the Ontario Building Code for year-round occupancy (e.g., it has no insulation or provision for winter heat).

Licensing: Not required

Warranty Coverage: Not covered

Discussion: The definition of “home” in the ONHWPA and the NHCLA does not include dwellings that are built and sold “for seasonal purposes”. A home built for “seasonal purposes” (or a “seasonal home”) is one that is not constructed for purposes of year-round occupancy.

The intended seasonal use or how the home is actually occupied is not a relevant consideration (e.g., as a cottage or recreational property only during the summer months). Whether the home has been constructed for year-round occupancy is relevant.

The means of access to the property (such as by boat) and intended use as a principal versus secondary residence are not relevant considerations.

“Shell” home

Description: A “shell” home is a dwelling in respect of which a builder completes the exterior ‘shell’ of the building (i.e., structural elements) but does not finish the interior elements.

For a “shell” home to meet the definition of “home”, it must be one that meets the requirements for an occupancy permit as provided for in Division C, s.1.3.3.1 to s.1.3.3.6 of Regulation 332/12 made under the Building Code Act, as applicable.

Licensing: Required (where the shell home satisfies the Chief Building Official of the municipality of the minimum requirements for occupancy)

Warranty Coverage: Covered (where the shell home satisfies the Chief Building Official of the municipality of the minimum requirements for occupancy)

Discussion: The OBC has different rules that apply for purposes of permitting occupancy, depending on the type of building and the proposed use of the building.

Occupancy and temporary occupancy can be permitted for residential dwellings even though part of the interior of the dwelling remains unfinished. For example, for certain dwellings, the requirement is that “the building envelope, with respect to the dwelling unit to be occupied, is substantially complete including, but not limited to, cladding, roofing, windows, doors, assemblies requiring fire-resistance ratings, closures, insulation, vapour barriers and air barriers”, and “required plumbing fixtures in the dwelling unit to be occupied are substantially complete and operational”.

Depending on the construction, certain walls, partitions, and floor assemblies may be required to be fire separations. Completion of these components would be required for purposes of an occupancy permit.

Usual elements of the “shell” of a dwelling constructed as freehold or low-rise condominium:

In a freehold or low-rise condominium, the elements of the “shell” typically include:

- Footings/foundation
- Framing
- Exterior cladding
- Building envelope
- Heating distribution system (roughed in and capped)
- Electrical distribution system (roughed in)
- Plumbing distribution system (roughed in)

Usual elements of the “shell” of a dwelling constructed as a high-rise condominium:

In a high-rise condominium, the elements of the “shell” typically include:

- Building envelope
 - Floor assemblies constructed to the sub-floor
 - All installations with respect to the provision of water and sewage services (roughed in)
 - All installations with respect to the provision of heat, ventilation, and air conditioning (roughed in)
 - All installations with respect to the provision of electricity (roughed in)
-

Model or Show Home

Description: A model or show home is a home that has been constructed and used for the purposes of one or both of:

- a) Showcasing design features, construction details and finishing quality of a builder’s product; and
- b) A temporary business use such as a vendor’s sales office or décor centre.

Rather than sitting vacant, it is not uncommon for a model home to be used for business purposes (e.g., as a sales office) by the vendor prior to its eventual sale.

Licensing: Required

Warranty Coverage: Covered

Discussion: Use of a home as a model home whether to showcase aspects of the homes being constructed or as a temporary business use, such as a sales office or décor centre, does not remove the requirement for having a licensed builder and vendor, nor does it remove the obligation to enroll the home for warranty coverage. Like a new home sale that has pre-existing surface defects drawn to the purchaser’s attention, any pre-existing surface defects in a model home must be detailed in the agreement of purchase and accepted by the purchaser. Surface defects accepted by the purchaser in writing at the time of purchase will be excluded from warranty coverage.

A home that otherwise qualifies for warranty coverage does not become disqualified simply because it was used by the vendor on a temporary basis as a model/show home, sales office or décor centre. As with other warranted homes, the period of warranty coverage for a model home will begin on the date of possession by the purchaser.

Home transferred in a non-arm's length transaction

Description: A non-arm's length transaction is one in which a vendor transfers a home to a party to whom the vendor is related personally or professionally, such as where a vendor corporation sells a home to one of its shareholders or to an affiliated corporation.

Licensing: Required

Warranty Coverage: Covered

Discussion: The fact that the sale of the home is from the vendor to a non-arm's length party does not mean that the vendor does not need to be licensed, nor does it mean that the home is excluded from warranty coverage under the ONHWPA.

Home first occupied by the vendor/builder

Description: This is a home that is initially built for sale but subsequently occupied by the vendor/builder prior to it being offered for sale to a third-party purchaser or occupied by a third party.

Licensing: Required (will have been required when the home was originally being constructed)

Warranty Coverage: Not covered

Discussion: Enrolment of the home would have been required if being built for sale. If subsequently excluded from coverage because of the vendor/builder taking occupancy, it will not have warranty coverage as it becomes a home that has been previously occupied in this case by the vendor/builder or a third party occupying with their permission, prior to sale to a third-party purchaser.

A new home that is occupied by the vendor/builder of the home as a residential dwelling or by another third party, will not qualify for warranty coverage if subsequently sold, as it will have been "previously occupied" and no longer meets the definition of "home" and the seller of the home will no longer meet the definition of "vendor".

The definition of "vendor" is "a person who sells on his, her or its own behalf a home not previously occupied to an owner and includes a builder who constructs a home under contract with the owner. Thus, where a new home has been "previously occupied" before a sale to a third-party, the home will not qualify for coverage under the ONHWPA.

The test is whether there was genuine “occupancy” by the vendor/builder or whether it was made to appear as though there was occupancy for the purpose of disqualifying the home from warranty coverage.

Consideration will be had to whether there is evidence that the home was being built for purposes of sale. A subsequent decision might genuinely be made by the vendor/builder to elect to occupy the home as their residential dwelling or to rent it out, and having done so, remove it from warranty coverage. It is in this situation that clear evidence of genuine occupancy is required.

Each case will require a fact-specific determination of whether there was a genuine occupancy by the vendor/builder (v/b) or third party (e.g. tenant). The indicators of genuine occupancy include the following:

- The v/b changed the address on their driver’s licence to the new home.
- The v/b has various bills (e.g., utility, telephone, gas) delivered to the address of the new home.
- The v/b does not have another residence.
- The premises have been furnished and the appliances or utilities have been connected. The utilities are being used at a level that indicates genuine occupancy of the dwelling.
- The v/b is physically living in the premises – e.g., simply entering into a lease agreement without the lessee having physically moved into the property is not enough to constitute “previous occupancy” under the ONHWPA.
- The v/b is not just sleeping at the residence. There is an element of residency or tenancy – “simple possession” does not suffice.
- The v/b was not living in the house illegally – e.g., before it was completed and before occupancy was permitted by the municipality.
- The v/b has been living in the home for a not insignificant period of time (there is no cut off point, but in general, the longer the occupancy the more likely it is genuine occupancy).

Owner contracts to have home built on their lands

Description: An owner of land may contract with a licensed builder to build a home on the land intending to sell the home. If the owner sells the home without occupying it, the owner is acting as a vendor and must be licensed before signing the purchase agreement. In this case, the owner will also be responsible to the purchaser for the statutory warranties.

However, if the owner of the land chooses to live in the home, or keep it and rent it out, instead of selling it as originally planned, then the builder is deemed to be the vendor and is therefore responsible for the statutory warranties.

Licensing: Required (the builder of a contract home is deemed to be a vendor for warranty purposes)

Warranty coverage: Covered

Discussion: The fact that an owner intended to act as a “vendor” of a home built under contract with a builder, is not determinative of whether the home will have warranty coverage. A person who contracts with a builder to construct a home on the owner’s property is simply an “owner” and therefore no different than an owner whose home qualifies for warranty protection in a contract home situation – unless the owner proceeds to sell the home and acts as a vendor.

[Home used for Residential and business purposes \(live/work units\)](#)

Description: A live/work unit is a home used by the owner both as a residence and for business purposes.

Licensing: Required

Warranty Coverage: Covered

Discussion: Even though the home is being used for business as well as residential purposes, the definitions of “home” and “owner” in the ONHWPA may still be met.

A “home” is defined under the ONHWPA as follows:

- a) A self-contained one-family dwelling, detached or attached to one or more others by common wall;
- b) A building composed of more than one and not more than two self-contained, one-family dwellings under one ownership;
- c) A condominium dwelling unit that is a residential dwelling, including the common elements in respect of which the unit has an appurtenant common interest as described in the condominium declaration of the condominium corporation; or
- d) Any other dwelling of a class prescribed by the regulations as a home to which this Act applies, and includes any structure or appurtenance used in conjunction therewith but does not include a dwelling built and sold for occupancy for temporary periods or for seasonal purposes.

The fact that there is some business element to the dwelling such as a home office does not mean that licensing is not required or that there is no warranty coverage so long as the home meets the definition prescribed in (a) to (d) above and does not fall within the exclusion of one built for temporary use or seasonal purposes.

An “owner” is defined under the Act as “a person who first acquires a home from its vendor for occupancy, and the person’s successors in title”. Since the owner is using the home partly as a residence, then the home is acquired, at least in part, “for occupancy”, and this part of the definition is met.

Any defects in work done by the owner to modify the home for the business (e.g., wiring, plumbing, etc.) would be excluded from coverage by virtue of s.13(2)(a) of the ONHWPA which excludes defects in materials, design and work supplied by the owner.

For situations involving a residential unit attached to a commercial building, see the discussion under “[Home attached to an industrial or commercial building](#)”.

[Accommodation for detention, care and support, education, travel, and similar purposes](#)

Description: A range of living accommodation is provided for detention, care and treatment, education, travel, and similar purposes. Units in these facilities are not “homes” within the meaning of the ONHWPA either because they do not give rise to an ownership interest or because they are intended for occupancy for temporary periods.

This would include a unit in the following types of accommodation:

- Hotel
- Motel
- Inn
- Hostel
- Dormitory
- Post-secondary education residence
- Boarding house
- Work camp residence
- Care facility, including a retirement home and long-term care facility
- Psychiatric facility
- Detention facility

Licensing: Not required

Warranty Coverage: Not covered

[Contract home](#)

Description: A contract home is a home built under a construction contract between the owner of the land on which the home will be built and a builder who undertakes to

construct the home. A contract home can take the form of any one of the homes described in this guideline.

Licensing: Required

Warranty coverage: Covered (but with warranty coverage rules that are unique to contract homes)

Discussion: Ss.14 (2) of the ONHWPA provides that, “Subject to the regulations, an owner of land who has entered into a contract with a builder for the construction of a home on the land and who has a cause of action against the builder for damages resulting from the builder’s failure to substantially perform the contract, 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.”

The condition that must be satisfied for a contracted home to be entitled to compensation from the guarantee fund is that the owner of land must have a cause of action against the builder for damages resulting from the builder’s failure to substantially perform the contract. This substantial failure to perform the contract may give rise to a financial loss claim. If the contract is substantially performed it is the various construction defect warranties that may apply.

Common Definition of “Builder”

General Background

The Home Construction Regulatory Authority (HCRA) is the regulator with responsibility to license builders and vendors of new homes 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.

This guideline applies to the word “builder” as used in both the [NHCLA](#) and the [ONHWPA](#). It is intended to be read in conjunction with the guidelines for [“home”](#), [“vendor”](#), [“owner”](#), and owner-builder.

For purposes of this guideline, “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 word “builder” is defined in s.1 of the NHCLA as follows:

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

The definition of “builder” in s.1 of the ONHWPA is as follows:

- “builder” means,
 - (a) except in relation to a residential condominium conversion project, a person who undertakes the performance of all the work and supply of all the materials necessary to construct a completed home, whether for the purpose of sale by the person or under a contract with a vendor or owner, or
 - (b) in relation to a residential condominium conversion project, a person who undertakes the performance of all the work and supply of all the materials necessary to construct a completed home in the project, whether for the purpose of sale by the person or under a contract with a vendor or owner;

This bulletin provides information on who is a builder for purposes of the NHCLA and the ONHWPA.

The definition of “builder” matters under both the NHCLA and ONHWPA for several reasons including:

- Under the NHCLA, a person who proposes to build a new home must be licensed by the HCRA.
- A person cannot enter into a construction contract for a contract home unless and until the home is enrolled by the ONHWPA.
- The “builder” of a contract home is deemed to provide the statutory warranties and thus establishing that there is a builder is critical to eligibility for statutory warranty coverage.

- To be licensed as a builder under the NHCLA, a person must meet competency requirements. It is worth noting that builders who fail to meet the competency requirement and do not qualify for a licence, cannot act or hold themselves out as a builder, nor can they offer to construct a new home or construct a new home.

The competency requirements for builder licensing purposes are set out in the NHCLA regulation under Section 5 O. Reg. 631/20. These core competency requirements are:

1. Business Planning and Management
2. Financial Planning and Management
3. Project Management and Supervision
4. Legal Issues in Housing
5. Customer Service and Requirements imposed by the warranty authority
6. Building Codes in Ontario
7. Construction Technology

Quick Reference Guide – Who is a “Builder”?

In connection with the construction of a residential dwelling that meets the definition of “home” a builder generally, is the person who:

- Undertakes, manages, or arranges for the coordination of trades and suppliers
- Undertakes, manages, or arranges for the necessary supplies and materials
- Undertakes, manages, or arranges for the completion of services infrastructure and hookup utilities
- Retains, manages the retention of or arranges for the retention of trades including in respect of tools and heavy machinery
- Develops, helps to develop, manages the monitoring of or arranges for the monitoring of the construction project schedule
- Completes, manages, or arranges for the sequencing of supplies of materials, work of various trades in accordance with the project schedule
- Develops, helps to develop, manages the monitoring of or arranges for the monitoring of the construction budget and payment of suppliers and trades
- Monitors, manages the monitoring of or arranges for the monitoring of suppliers and trades
- Monitors, manages the monitoring of or arranges for the monitoring of project scopes of work, work performance, and substantial completion of work
- Monitors, manages the monitoring of or arranges for the monitoring of supervisors and the hiring and management of any project staff
- Coordinates, manages the coordination of or arranges for the coordination of all the contributors to the construction of the home including designers, architects, and engineers
- Obtains, manages the obtaining of or arranges for the obtaining of building and other permits and for the necessary municipal, other governmental, and utility inspections

A person will be considered to have undertaken the performance of the work and supply of all the materials necessary to construct a completed home for purposes of meeting

the definition of “builder” regardless of whether the performance and supply is satisfied entirely by that person or a combination of having been undertaken directly by that person, managed by that person, or arranged for by that person.

Whether a person is a “builder” for purposes of the NHCLA and the ONHWPA does not depend on the title given to that person. In some cases, the person will be referred to as the builder, and in others may be referred to as the contractor, general contractor, or project manager.

Arrangements for Construction of Residential Dwellings Requiring a Licensed Builder

A person carrying out the tasks necessary to complete a residential dwelling that meets the definition of “home” must be a licensed builder and remains a builder whether the person intends to:

- construct the home on land owned by the builder, for the purpose of selling the completed home
- construct the home under a contract with the owner of the land on which it is to be built
- construct the home under a contract with a vendor
- construct the home that does not qualify for the owner-builder exemption from licensing

Where a person is constructing a home on their own behalf, on land that they own, for their personal use and occupation, they may be considered an owner who is acting as their own builder for purposes of constructing the home. These individuals are sometimes referred to as an “owner-builder”. The NHCLA does not consider an “owner-builder” to be a “builder” and accordingly, an “owner builder” does not need to be licensed as a builder.

Contract Home

With a contract home there is no agreement of purchase and sale. Rather, this is where an owner of land contracts with a builder for the construction of a home on the land. Determining whether a person is acting as a builder such as to require licensing, in a contract home situation, will depend on consideration of all the circumstances. ONHWPA amendments have introduced new requirements for builders who are seeking to contract with an owner of land to construct a home on the land. A new ss.10.2 provides that no builder shall offer to enter into a contract with an owner of land for the construction of a home on the land or offer to start construction, unless they are first licensed as a builder under the NHCLA.

A new ss.10.2 (1) of the ONHWPA prohibits a builder from offering to enter into a contract with an owner of land, for the construction of a home on the land, unless they are licensed under the NHCLA and meet any other prescribed requirements. This

subsection would not prevent a licensed builder, who meets other prescribed requirements, if any, from giving a quote to an owner.

Assessing When a Contractor is a “Builder” When Constructing a Home Under Contract with the Owner

General Principles:

Whether a contractor is a builder for purposes of the NHCLA and the ONHWPA is determined by considering whether the contractor has sufficient control of the construction of the home, including control over the work and of materials supplied to construct the home, and the degree to which the contractor is responsible for the essential elements of the home.

If the owner does not have a contractor who meets the definition of builder, the construction may qualify as owner-built. In that event, enrolment of the home is not necessary and statutory warranty coverage would not apply.

A builder is responsible for everything the builder has agreed to do. Once the home is enrolled in the warranty plan, the builder, who is considered to be a vendor for warranty purposes, remains responsible for the statutory warranty even though a contract may change, or responsibilities of who does what changes. However, if the contract changes are such that the builder is effectively no longer in control of the construction, warranty coverage may be jeopardized.

Under ss.13 (2) of the ONHWPA, there are exclusions from warranty coverage. Exemptions include defects in materials, design and work supplied by the owner and alterations, deletions and additions made by the owner. These matters may be addressed in the initial contract or in a subsequent amendment to the contract.

Determining Whether the Contractor has Necessary Degree of Control of the Construction to Meet the Definition of Builder

Assessing who has control over the construction of a home requires consideration of:

- The proposed contract between the owner and the contractor and any subsequent contractual undertakings or arrangements between the owner and the contractor;
- The work performed and materials supplied that were under the control of the contractor and the work performed and materials that were under the control of the owner during construction; and
- The nature, value and quantity of any work or materials controlled by the owner with reference to their significance in respect of the total construction

Evidence in respect of a range of factors set out in the chart following is to be gathered and each proposed contract home assessed on a case by case basis.

No one factor is determinative. The following three sections identify criteria relevant to a determination of whether the person constructing the home is a builder for purposes of the NHCLA and the ONHWPA or whether it is in fact an owner of land building the home for their own personal use. The criteria to be considered include responsibilities and control in the contractual arrangement, what work is ultimately done by the builder in the construction of the home, and the significance of work or materials supplied by an owner. These are reviewed in more detail in the table that follows.

Understanding the nature of the contractual arrangement will be important in determinations around the definition of builder. For example, different considerations will arise depending on whether the construction contract is a fixed-price contract or a design-build contract.

In the event that a dispute arises as to whether the person involved in the construction is a builder for purposes of any warranty liability, evidence will be obtained from both the owner and the person involved in the construction of the home. Independent third-party corroboration may be required.

Construction contract allocation of responsibilities and indicia of whether builder has control of the construction of the home

Owner-built Home	Builder Constructed Home
Owner to apply for and obtain building permit(s) and other required permits	Contractor to apply for and obtain building permit(s) and other required permits
Contractor undertakes to oversee, manage, direct, advise on specified services contracted for by the owner	Contractor undertakes the performance of all the work and supply of all materials necessary to construct a home
Owner to choose and contract with trades and suppliers or Contractor contracts with trades and suppliers but only as agent for owner and as approved by owner	Contractor to choose and contract with trades and suppliers on own behalf and without contractual obligation for final approval by owner
Owner to pay trades and suppliers directly or Contractor to pay trades and suppliers on owner's behalf out of funds advanced by the owner as disbursements incurred	Contractor to pay trades and suppliers directly out of funds paid to the Contractor by the owner as part of the overall contract price or payment schedule
Owner has right to pre-approve quotations from trades and suppliers or Contractor to provide interim cost projections	Owner has no right to pre-approve quotations from trades and suppliers or receive cost projections

Owner-built Home	Builder Constructed Home
Owner has right to pre-approve material purchases, equipment rental, and contracts	Owner has no right to pre-approve material purchases, equipment rental, and contracts
Contract provides that Contractor is not responsible for work and materials of specified trades or suppliers where it is the owner who has responsibility for contracting with those trades or suppliers	Contractor expressly or impliedly accepts responsibility for work and materials of trades and suppliers notwithstanding that owner has contracted with the trades or suppliers
Owner has right to review work / make changes in work, materials, and design	Owner has no right review work / make changes in work, materials, and design
Contractor required to consult owner before deciding on changes in work, materials, and design	Contractor not required to consult owner before deciding on changes in work, materials, and design
The contract provides that the statutory warranties under the Ontario New Home Warranties Plan Act (Plan) do not apply	The contract provides that the proposed home will be enrolled for warranty coverage in the Plan and the Contractor has sought and obtained confirmation from Tarion regarding eligibility for enrolment in the Plan for the proposed home

The above considerations and indicia need to be considered in their entirety and no one factor is necessarily determinative.

What was actually done and impact on whether Builder or Owner has assumed control of the construction of the home

Owner-built Home	Builder Constructed Home
Owner applies for and obtains building permit(s) and other required permits	Contractor applies for and obtains building permit(s) and other required permits
Contractor not licensed as a builder under the New Home Construction Licensing Act (NHCLA) / home not enrolled in the warranty plan under the Ontario New Home Warranties Plan Act (Plan) / no Certificate of Completion (CCP) and	Contractor is a licensed builder under the NHCLA / home enrolled in the Plan / Certificate of Completion (CCP) and Possession / Warranty Certificate (WC) (referred to as CCP/WC) completed and submitted to Tarion

Owner-built Home	Builder Constructed Home
Possession / no Warranty Certificate (WC) (referred to as CCP/WC) completed and submitted to Tarion	
Owner chose, contracted with, fired trades and suppliers or Contractor consulted owner when hiring, firing trades	Contractor chose, hired, fired trades and suppliers without consultation with Owner
Owner reviewed and approved quotes from trades and suppliers or Owner required interim cost projections	Contractor did not consult owner on quotes from trades and suppliers and not required to provide interim cost projections
Owner approved material purchases, equipment rental, and contracts	Owner did not approve material purchases, equipment rental, or contracts
Owner paid trades and suppliers directly or Contractor paid trades and suppliers on owner's behalf	Contractor paid trades and suppliers directly
Owner supplied work and/or materials	Owner did not supply work or materials
Owner on site regularly	Owner not on site regularly
Owner supervised or instructed trades	Owner did not supervise or instruct trades
Trades and suppliers understood they were under contract with the owner	Trades and suppliers understood they were under contract with the Contractor
Owner reviewed work / made changes in work, materials, and design	Owner did not review work / did not make changes in work, materials, and design
Contractor consulted and confirmed with Owner changes in work, materials, and design	Contractor did not consult or confirm with owner changes in work, materials, and design
Owner arranged for and attended inspections by municipality and other regulators	Contractor arranged for and attended inspections by municipality and other regulators

The above considerations and indicia need to be considered in their entirety and no one factor is necessarily determinative.

Significance of Work and Materials Supplied by Owner

An owner may undertake aspects of construction identified above such that the contractor did not control the quality of particular work or materials supplied by the owner. If this occurs, consideration must be given to the significance of the work or materials supplied by the owner in order to determine whether warranty coverage does not apply to that work or materials only, or whether it results in the statutory warranties under the ONHWPA not applying at all as the construction is no longer the builder's project but is now the owner's project.

The key is whether work or materials supplied by the owner are significant enough to result in the owner being in control. This will depend on the nature, value and quantity of the work or materials:

- Nature refers to the type or sort of work or materials supplied (e.g., an essential element or a finishing element).
- Value refers to the monetary worth of the work or materials supplied, particularly in relation to the overall worth of the construction of the home.
- Quantity refers to the amount of work or materials supplied, usually expressed as a percentage of the overall construction of the home.

The nature, value and quantity of the work or materials supplied by the owner must each be considered to determine whether that work or materials is sufficiently significant that the contractor is no longer in control of the construction of the new home and the statutory warranty provisions of the ONHWPA are not engaged. For example:

- An owner may choose, hire, pay, supervise, and instruct all the trades and suppliers for the interior finishes of the home. But the contractor's control over the work and materials of the essential elements of the home, without those finishes, may be sufficient to result in the contractor continuing to meet the definition of "builder". The home would remain entitled to warranty coverage though the interior finishes supplied by the owner would be excluded from warranty coverage under s.13 (2) (a) of the ONHWPA which excludes from warranty coverage "defects in materials, design and work supplied by the owner".
- An owner may hire, pay, supervise, and instruct a trade to supply the work and materials for an essential element of the home. Owner control of a single essential element may not be sufficient to effectively remove control from the contractor who controlled all other aspects of the construction of the home. The home may remain entitled to warranty coverage and the essential element supplied by the owner excluded from warranty coverage under s.13 (2) (a).
- However, if the contractor is responsible for and has control over construction of all the essential elements of the home, that will be sufficient for the contractor to be a builder within the meaning of the NHCLA and the ONHWPA.
- The ONHWPA does not define "essential elements". Though not defined in the ONHWPA, the question of whether a contractor is a builder has been considered by the courts. In those cases, the courts have provided guidance on the meaning of the expression "essential elements" and while different construction forms may have different essential elements, typically essential elements will include the foundation, framing, electrical system, roughed in plumbing system, heating, ventilating and air conditioning systems ("HVAC"), and the building envelope.

Construction of home completed by more than one builder – when is the builder no longer the builder?

Situations may arise where construction of a new home is not completed by the first builder. Another builder may step in to complete the construction. This may occur, for example, if there is a bankruptcy or insolvency. The ONHWPA offers protection in the form of protection for financial loss (difference between amounts paid and value of work and materials supplied) but it does not include a guarantee of completion.

As a practical matter, and where the situation is brought to the attention of the HCRA, the HCRA will engage with the parties to ensure necessary licensing is in place, and Tarion will engage with any new builder in assessing the extent to which the statutory warranty coverage will apply, and which builder will have responsibility for what aspects of the construction.

Tarion will consider matters such as how responsibility for the construction is assumed by the new builder and the degree of completion of the home at the time the new builder steps in. Tarion will typically engage with the parties, and if practicable assist with a view to the completion of the construction project.

Substantial performance of a contract to construct a home

Ss.14 (5) of the ONHWPA ties eligibility for compensation in a contract home situation to the contract having been substantially performed. What constitutes substantial performance for the purposes of the ONHWPA is defined by reference to ss.2 (1) of the [Construction Act](#). That subsection provides that a contract is substantially performed:

- a) when the improvement to be made under that contract or a substantial part thereof is ready for use or is being used for the purposes intended; and
- b) when the improvement to be made under that contract is capable of completion or, where there is a known defect, correction, at a cost of not more than:
 - i. 3 per cent of the first \$1,000,000 of the contract price
 - ii. 2 per cent of the next \$1,000,000 of the contract price, and
 - iii. 1 per cent of the balance of the contract price

If the contract is not substantially performed due to the builder's default then, rather than construction defect warranties, the protection for the owner will involve an assessment of the work done at the time work stopped. The amount, if any, that is payable to the owner out of the guarantee fund, will include consideration of the amount paid by the owner to the builder under the contract and of the value of the work and materials supplied to the owner under the contract.

Common Definition of “Vendor”

General Background

The Home Construction Regulatory Authority (HCRA) is the regulator with responsibility to license 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.

This guideline applies to the word “vendor” as used in both the NHCLA and the ONHWPA. It is intended to be read in conjunction with the guidelines for [“home”](#), [“builder”](#) and [“owner”](#) as well as the explanatory note for “owner-builder”.

Legislation – Act and Regulation

The word “vendor” is defined in s.1 of the NHCLA as:

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

S.1 of ONHWPA defines “vendor as:

- “Vendor” means:
 - a) except in relation to a residential condominium conversion project, a person who, on the person’s own behalf, sells a home not previously occupied to an owner and includes a builder, as defined in clause (a) of the definition of “builder”, who acts as such under a contract with the owner; or
 - b) in relation to a residential condominium conversion project, a person who, on the person’s own behalf, sells a home in the project to an owner and includes a builder, as defined in clause (b) of the definition of “builder”, who acts as such under a contract with the owner.

This bulletin provides information on how the word “vendor” will be interpreted for purposes of the NHCLA and the ONHWPA.

Quick Reference Guide – Who is a “vendor”?

In connection with the sale or transfer of a home, the vendor is the person who:

- On the person’s own behalf, sells or transfers a home not previously occupied to an owner.
- On the person’s own behalf, sells or transfers a unit in residential condominium conversion project, which unit has not been previously occupied, to an owner.
- Is the builder, if the builder is acting under a contract with an owner to construct a home.

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

- The NHCLA regulates “vendors” and requires that they be licensed.

- A vendor cannot enter into an agreement of purchase and sale for a (new) home unless that person has received confirmation from Tarion that the home qualifies for enrolment under the ONHWPA.
- The builder of a (new) home (under contract with a vendor) cannot commence construction of the home until it has enrolled the home with Tarion under ONHWPA.
- The “vendor” of a (new) home is deemed to provide the statutory warranties and protections available for a home (as defined) under ONHWPA (as long as the definitions of home, builder and owner are also satisfied).

When a third-party is engaged to act as the vendor on behalf of someone selling a new home, that third party must be licensed as a vendor. It is not unusual for a project to involve several corporations, one of which will be licensed as the vendor. For example, a large-scale development may be planned that will move ahead in phases. At each phase, there will need to be a vendor who is licensed and who is responsible for warranty coverage.

Vendor core competencies for licensing purposes

To be licensed as a vendor under the NHCLA, a person must meet competency requirements. It is worth noting that vendors who fail to meet the competency requirement and do not qualify for a licence, cannot act or hold themselves out as a vendor.

The competency requirements for vendor licensing purposes are set out in the regulation made under the NHCLA.

These core competency requirements are:

1. Business Planning and Management
2. Financial Planning and Management
3. Project Management and Supervision
4. Legal Issues in Housing
5. Customer Service and Tarion Requirements

A vendor is typically the person who will do one or more of: acquire land, arrange for the design and construction of a home (including contracting with designers and builders), and complete the sale of that home.

When must a person be licensed as a vendor under the NHCLA?

A vendor licence is required if a person wants to act as a vendor or hold themselves out as a vendor of a new home. S.37 (1) of the NHCLA provides that:

- “No person shall act or hold oneself out as a vendor, offer to sell or transfer a new home, including as prescribed, or sell or transfer a new home, including as prescribed, unless the person is licensed as a vendor and meets the other prescribed requirements, if any.”

This prohibition on acting as or holding out that the person is a vendor without first being licensed under the NHCLA has a corresponding provision in the ONHWPA. S.10.1 of the ONHWPA provides that:

- “A vendor shall not sell or offer to sell a home unless the vendor ...is licensed as a vendor under the New Home Construction Licensing Act, 2017.”

These prohibitions also apply to a contract home insofar as the builder constructing the home under contract with the owner is deemed to be the vendor for purposes of licensing and warranty coverage. This is reflected in the latter part of the NHCLA and the ONHWPA definitions of “vendor” which refer to builders of contract homes.

When is a person acting or holding themselves out as a vendor such as to require licensing?

If a person intends to act or hold themselves out as a vendor, then the NHCLA requires that the person be licensed.

A person acting as a vendor or holding themselves out as a vendor of a home such as to require licensing under the NHCLA, includes a person who communicates that they have authority to offer to sell or transfer or to sell or transfer a home that meets the definition of “home” under the NHCLA and the ONHWPA.

The terms of the business arrangement or contract between an owner of land on which a new home is constructed and the person they are in business with or have contracted with to carry out the responsibilities of a vendor would be relevant considerations in determining whether a person was holding themselves out as a vendor.

The content of advertising and other promotional material, depending on the content and nature of the advertising and promotional material, would also be relevant considerations, as would the taking of deposits, for example, as part of a reservation agreement allowing the person to make an offer to purchase at a future date.

Meaning of sell or offering to sell, and transfer or offering to transfer

S.1 of the ONHWPA defines “sell” as including entering into an agreement to sell. For a person to be engaged in the act of selling a home, it is not required that the actions necessarily conclude with an agreement to sell.

Selling would include:

- a) An actual sale that has closed – could be the transfer/deed of land evidences the sale.
- b) Entering an agreement to sell that has not yet closed.
- c) Offering to enter an agreement which is not yet accepted by the prospective purchaser.
- d) Marketing or advertising that falls short of an offer but that might be characterized as an “invitation to treat.”

Selling or offering to sell is not restricted to situations where there is an agreement to sell or negotiations for such an agreement. The NHCLA will also apply to other activity that has a similar outcome to selling, namely transferring the interest or right in the home, such as gifting the interest or right, or negotiations to gift the interest or right. A transfer might also, for example, result from a bequest under a will or a lottery or raffle win.

In the case of a contract home (built under contract with an owner of land), “selling” would include offering to enter an agreement to build a contract home, and entering the agreement.

What constitutes an interest or right in the home is discussed in the guideline on the Common Definition of “[Home](#).”

Sale or transfer by person completed by person other than the licensed vendor

To ensure warranty coverage is not compromised if a home is sold or transferred by someone other than the licensed vendor, s.48 of the NHCLA and s.15.1 of the ONHWPA clarify that, assuming other conditions are met, the vendor of a new home who is responsible for warranty coverage will continue to be the vendor even if the home is actually sold or transferred by another person.

This matter is referred to in s.48 of the NHCLA which provides that:

- “For purposes of this Act, a person, who at any time is licensed as a vendor and who acts as the vendor of a new home to which a warranty described in ss.13 (1) of the Ontario New Home Warranties Plan Act or in ss.47 (1) of the Protection for Owners and Purchasers of New Homes Act, 2017 applies, continues to be the vendor of the home even if another person sells or transfers, as prescribed, the home to an owner or completes a transaction to sell or transfer, as prescribed, the home to an owner.”

It is also referred to in s.15.1 of the ONHWPA, which speaks to the liability of the vendor. This section provides that:

15.1 For the purposes of sections 13 and 14, a person shall be deemed to be a vendor of a home if the following conditions apply, even if another person sells the home to an owner or completes a transaction to sell the home to an owner:

1. The person at any time has registered as a vendor under this Act with respect to the home or at any time has been licensed as a vendor under the *New Home Construction Licensing Act, 2017* with respect to the home.
2. The Registrar has confirmed that the home qualifies for enrolment in the plan or that the home has been enrolled in the plan, or the builder of the home has complied with section 12, as it read before it was repealed, as the case may be.
3. The builder of the home has substantially completed the construction of the home.

The above provisions address the problem faced in the case of an insolvency where a home may be transferred by a court appointed receiver, who is acting as an officer of the court in selling the home on behalf of the creditors. The court appointed receiver is not required to be licensed as a vendor, and the insolvent vendor remains the vendor for purposes of warranty coverage. See further, the discussion under the section titled [“Sale or transfer by receiver or trustee of licensed vendor.”](#)

Acting as vendor without being licensed under the NHCLA

Both the NHCLA and the ONHWPA describe a vendor as a person who sells or transfers a home as defined in those two acts. A person who fails to apply for or receive a licence may still meet the definition of vendor if they sell or transfer a home as defined.

Regardless of whether a person is licensed as a vendor under the NHCLA, they are the person who, under the ONHWPA, warrants to an owner:

- a) That the home,
 - i. Is constructed in a workmanlike manner and is free from defects in material
 - ii. Is fit for habitation, and
 - iii. Is constructed in accordance with the OBC
- b) That the home is free of major structural defects as defined by the regulations; and
- c) Such other warranties as might be provided for in the regulations (There are several other warranties in the regulations and other protections in the ONHWPA such as deposit protection, financial loss protection for contract homes, and delay compensation)

Acting as a vendor without the necessary licence when a licence is required is an offence under both the NHCLA and the ONHWPA.

Acting as a vendor without being licensed does not relieve the person of the obligation to warranty to the owner that the home is constructed in a workmanlike manner and free from defects in materials, is fit for habitation, and any other warranties that may be provided for in the regulations under the ONHWPA.

If Tarion is required to respond to a warranty claim, a vendor, even though unlicensed, is liable for the amounts paid out under the warranty by Tarion.

Sale or transfer by receiver or trustee of licensed vendor

Circumstances may arise where a new home is sold by a receiver or trustee. This might happen if a vendor or builder is involved in bankruptcy or insolvency proceedings. In some circumstances, a private receiver or trustee will be appointed, and it is the private receiver or trustee who then completes the sale with the purchaser. Unlike a court

appointed receiver, a private receiver or trustee is generally expected to be licensed as a vendor. Given that licensing as a vendor may be required, parties are encouraged to contact the HCRA Registrar.

Sale under power of sale or foreclosure following default of vendor

If a mortgage is in default, the lender may give notice to the borrower, in this case the vendor, that the mortgaged property will be sold under power of sale. The borrower has an opportunity to bring the mortgage into good standing. If unable to bring the mortgage into good standing, the property is sold. Proceeds are used to pay the mortgage and other encumbrances and the costs of sale.

The power of sale transaction is regulated under separate legislation. The lender is not acting as a vendor within the meaning of the NHCLA or the ONHWPA.

Though a private power of sale transaction is regulated under separate legislation, the lender is acting as a vendor within the meaning of the NHCLA and the ONHWPA and would need to be licensed, if the other applicable definitions of “home”, “builder” and “owner” are met.

Licensing may not be required where a court official is involved in the power of sale transaction or the transaction is court supervised.

Given that licensing as a vendor may be required, parties are encouraged to contact the NHCLA Registrar of licensing.

Although used less frequently, if a mortgage is in default, the lender can foreclose on the property – move to take title to the property and become the owner, with no obligation to sell the property. The borrower, in this case the vendor, has some rights to seek a judicial sale of the property and has an opportunity to bring the mortgage into good standing. The foreclosure process requires the lender to sue the borrower. The result of a successful foreclosure process is that title to the property is transferred to the lender.

As with power of sale proceedings, though foreclosure proceedings are regulated under separate legislation, the lender is nonetheless acting as a vendor within the meaning of the NHCLA and the ONHWPA and must be licensed if the lender subsequently sells the property and if the other applicable definitions of “home”, “builder” and “owner” are met. The home may have already been enrolled by the vendor who went into default. If the home were not complete and required additional work and materials before an occupancy permit is issued, the lender, now the vendor, would need to engage a licensed builder to complete the work.

If the dwelling in question does not meet the definition of home – for example, has not been completed to the point of occupancy being permitted – licensing as a vendor may not be required.

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.

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

For purposes of this guideline, “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.

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 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](#).”

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 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.

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.

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.