

# Tarion Warranty Corporation (Ontario New Home Warranty Plan)

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## Application

**Tarion regulations relate to all new “homes for sale” including single, multiple and condominium** (excluding conversions of existing structures).

It might be asked why this subject is dealt with under Construction Contract Administration. While some issues might be dealt with during production of Construction Documents, most of the tasks take place during construction. It also can be seen from the commentary below that the Architect must perform extra services on any project regulated by Tarion. This should obviously be a consideration in determining the scope and value of the Client/Architect Agreement. The Architect should attempt to be fully conversant with his/her required role in the Tarion process and preferably define that role in the client/consultant contract. Some roles are essential to the process, some may be done by the Architect and some cannot. Extra fees for additional services should be defined at this stage.

While it is not an issue for this article, the Architect should understand that a “Field Review Consultant” (FRC) must be engaged for each project as a third party by the Owner(s). It should be noted that the regulation specifically states that **“the Prime Consultants for the project shall not perform Builder Bulletin 19R services or conduct a performance audit for the same project.”**

## Bulletin 19R Requirements

The architect of new residential for sale projects should particularly be fully conversant with the myriad of regulations in [Tarion Bulletin 19R](#) - everything from responsibilities to quality issues to the methods of measurement. The link to the overall Tarion site is <http://www.tarion.com>.

The main issue that the Architect must deal with at the beginning of the project is the "Design Certificate" which "the vendor/builder must submit...to Tarion at least 30 days prior to commencement of the work..."

### 1. The Design Certificate

The Certificate should be dealt with before construction commences as it should define "who does what" and it has significant liability connotations. The requirement for the Certificate should be initiated by the Bulletin 19 Consultant so that all requirements of the Bulletin can be followed. Unfortunately the Architect may actually become involved because timing is forgotten by others and pressure is brought to bear on the Architect with resulting serious responsibility and liability consequences.

The Tarion DESIGN CERTIFICATE form contains the following preamble:

"This form must be submitted to the Tarion's Condominium Group not less than 30 days prior to the commencement of construction of the relevant part(s) of the project and must be accompanied by:

1. A copy of the professional's Certificate of Authorization or Practice as applicable (see note 1 below) **AND**
2. Proof of current professional liability insurance in keeping with the requirements of his/her professional association."

It also contains the following preamble (note 1) to the signature by an Architect and signing officer of the firm. **Note the important reference to the requirements of Pro-Demnity insurance.** Tarion is effectively adding those exclusion issues to their own requirements.

"Prime Consultants who are architects shall adhere to the requirements of the annual practice professional liability insurance policies issued by Pro-Demnity Insurance Company for architects domiciled in Ontario and the requirements of any excess insurance provider's insurance policy respecting the insurability of exterior above-grade walls. For greater certainty, **Prime Consultants who are architects shall avoid any design of an exterior above-grade that would be excluded from professional liability insurance coverage respecting water ingress or ingress of precipitation by the Pro-Demnity Insurance Company annual practice policies issued to Ontario architects including any endorsements thereto.** Designs shall conform to the insurability requirements of the Pro-Demnity policies respecting water ingress or ingress of precipitation regardless of who may be the provider of the Prime Consultant's insurance, and it shall be the Prime Consultant's responsibility to ascertain the full content of the Pro-Demnity policies and any relevant endorsements." (**bold** is our emphasis)

Often the consultant and/or client will demand that signatures be sealed even though there is no request or place on the form for such a seal. In fact a Tarion guide specifically says that the OAA seal is NOT required. The following wording is taken directly from it:

The Tarion Design Certificate... "Must bear ORIGINAL Signature; OAA Stamp NOT required: Certificate of Practice (Photocopy acceptable) Proof of Liability Insurance Coverage (Photocopy of Certificate is acceptable)."

Another important aspect is related to timing. We have been requested by the Tarion Consultant and/or the client to sign the design certificate during or even after construction even though the Certificate itself says that it is to be submitted not less than 30 days prior to commencement of construction.

Finally we would warn about taking responsibility for elements for which Architects are not responsible. For example, the categories “Balcony Railings”, “Windows”, “Precast Concrete” should probably be revised to note “excluding structure”. We have been involved in actual liability mediation where the wording of the Design Certificate has had consequence for whether the architect could reasonably be included in a specific issue.

## 2. Other Forms

There are a number of application documents to be completed by the Client (Builder) and by the Bulletin 19 Consultant. The Architect may be asked to participate in this work even though he/she has no responsibility for it nor is paid for what may be a significant amount of time. For example “Module 2A – Scope of Work Proposal” to be completed by the Bulletin 19 Consultant has detailed questions about the project such as exterior cladding breakdown by percentage area statistics etc.

The Builder and/or Consultant will often ask that the Architect provide much of the information rather than taking it off the documents available at that time. This is not the responsibility of the Architect and is onerous both financially and potentially with respect to liability. The Architect may be prepared to assist with such work but should clearly indicate that it constitutes extra service.

## 3. Close Out

The Architect has few Tarion related obligations during the construction process although, during regular reporting, the Tarion Consultant may point out discrepancies between construction and the contract documents. These may require the Architect’s review and acceptance or correction.

However the “Final Report” to be submitted by the Tarion Consultant must include copies of “as built” project drawings etc., filed review declarations and “final clearances” from the Architect, Site Work Engineer, Structural Engineer, Mechanical Engineer, Electrical Engineer and Acoustical Engineer. Note the requirement for the involvement of specific consultants

## Bulletins 22 And 42

Two other Tarion bulletins (also available at <http://www.tarion.com>) which have relevance to the Architect are **#22 – “Floor Area Calculations”** which defines how you must calculate saleable areas and **#42 – “Customer Service Standard”** which deals in some detail with warranties.

### Areas:

Tarion provides a very specific method of calculating saleable areas which by regulation must be used for agreements of purchase and sale, media advertising and sales materials. A tolerance of only 2% is permitted on the total area and the following statement must be included: “Actual usable floor area may vary from the stated floor area.”

### Warranties:

More detailed information may be obtained with respect to those items covered by the one, two and seven year warranty periods from information on the web site. The Architect should be familiar with those requirements if warranty requirements are included in the project manual. The Vendor/Builder will be particularly concerned that the contracted warranty periods, including start dates, match the requirement of Tarion.

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