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Bill 169

**An Act to amend the Ontario New Home Warranties Plan Act
to provide for competition in the delivery of new home warranties**

Mr. T. Rakocevic

Private Member's Bill

1st Reading December 12, 2019

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill amends the *Ontario New Home Warranties Plan Act* to discontinue the Ontario New Home Warranties Plan that is currently operated under the Act by the Tarion Warranty Corporation, being the only provider of new home warranties in the Province. The Bill would replace this single-provider system of new home warranties with a multi-provider system of new home warranties that would introduce competition in this sector. Under the revised legislation, new home warranties may be provided only by insurers under the *Insurance Act* or any other persons holding prescribed qualifications.

The Bill provides for an administrator to be appointed to assume control of the Corporation in order to transition to the multi-provider system. Six months after the administrator is appointed, an agency is established to wind down the Plan and to take over responsibility for the Plan until all warranties under the Plan have expired.

**An Act to amend the Ontario New Home Warranties Plan Act
to provide for competition in the delivery of new home warranties**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 The short title of the *Ontario New Home Warranties Plan Act* is repealed and the following substituted:

New Home Buyer Protection Act

2 The Act is amended by adding the following section:

Purpose

0.1 The purposes of this Act are:

- (a) to protect new home buyers and owners;
- (b) to promote the construction in Ontario of properly built new homes; and
- (c) to enable and administer a multi-provider system for new home warranties that is responsive to the interests of new home buyers and owners.

3 (1) Section 1 of the Act is amended by adding the following definitions:

“administrator” means the administrator appointed under section 1.1; (“administrateur général”)

“Agency” means the ONHW Plan Transition Agency established under section 16; (“Agence”)

“Director” means the Director appointed under section 17.6; (“directeur”)

“new home” means a home that,

- (a) is not yet constructed or is under construction, or,
- (b) where construction is complete, is within 10 years of completion of the construction and has not been previously occupied; (“logement neuf”)

“new home warranty policy” means a warranty policy with respect to the construction of a new home that is provided by a warranty provider and contains the warranties required under this Act; (“police de garantie des logements neufs”)

“warranty provider” means an insurer licensed under the *Insurance Act* to sell and offer to sell new home warranties under this Act or any other person who holds the prescribed qualifications to sell and offer to sell new home warranties. (“fournisseur de garanties”)

(2) The definitions of “guarantee fund” and “Plan” in section 1 of the Act are repealed.

4 The Act is amended by adding the following sections:

Appointment of administrator to Corporation

1.1 (1) Promptly after section 4 of the *Home Warranties to Protect Families Act, 2019* comes into force, the Minister shall, by order, appoint an individual as an administrator of the Corporation for the purposes of,

- (a) assuming control of the Corporation and its activities;
- (b) winding down the affairs of the Plan and transferring responsibility for outstanding Plan warranties to the Agency established under section 16;
- (c) preparing for the transition to a multi-provider system of new home warranties under this Act; and
- (d) assuming and continuing the responsibilities of the Corporation with respect to the registration of vendors and builders by the Registrar and, subject to section 16, such other responsibilities of the Corporation under this Act as may be specified by the regulations.

Term of appointment

(2) The appointment of the administrator is valid until the Minister makes an order terminating the appointment.

Powers and duties of administrator

(3) The administrator has the exclusive right to exercise all the powers and perform all the duties of the directors, officers and members of the Corporation and shall exercise such additional powers and perform such additional duties as may be prescribed by the regulations.

Same

(4) In the order appointing the administrator, the Minister may specify powers and duties of the administrator and may specify any conditions for, or limitations on, the exercise or performance of those powers and duties.

Right of access

(5) The administrator has the same rights as the board in respect of the documents, records and information of the Corporation.

Public servant

(6) The administrator shall be a public servant employed under Part III of the *Public Service of Ontario Act, 2006*.

Report to Minister

(7) The administrator shall report to the Minister as the Minister requires.

Minister's directions

(8) The Minister may issue directions to the administrator about any matter within the administrator's jurisdiction, including the making, amending or revoking of any by-laws of the Corporation, and the administrator shall carry them out.

Review of decisions

(9) Shortly after being appointed, the administrator shall review the following decisions and disputes, with a view to ensuring a fair and timely result for the parties,

- (a) all decisions made by the Corporation under section 14 that, at the time of the review, are under appeal to the Tribunal under section 16, as those sections read immediately before they were re-enacted by sections 9 and 11 of the *Home Warranties to Protect Families Act, 2019*;
- (b) all disputes that, at the time of the review, are before the Corporation for the purposes of conciliation under section 17, as that section read immediately before it was re-enacted by section 11 of the *Home Warranties to Protect Families Act, 2019*; and
- (c) any decisions made by the Corporation under section 14, as that section read immediately before it was re-enacted by section 9 of the *Home Warranties to Protect Families Act, 2019*, that meet the prescribed criteria and any disputes between an owner and a vendor that meet the prescribed criteria.

No personal liability

(10) No action or other proceeding shall be instituted against the administrator for an act done in good faith in the execution or intended execution of a duty or power under this Act, the regulations, a Minister's order or the appointment under subsection (1), or for an alleged neglect or default in the execution in good faith of that duty or power.

Crown liability

(11) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (10) does not relieve the Crown of liability to which it would otherwise be subject.

Liability of Corporation

(12) Subsection (10) does not relieve the Corporation of liability to which it would otherwise be subject.

Replacement of board

1.2 (1) On the appointment of the administrator under section 1.1, the members of the board cease to hold office.

Same

(2) Despite subsection (1), the Minister may provide in an order made under subsection 1.1 (1) that one or more of the members of the board may continue to exercise such powers or perform such duties as may be specified in the order.

Compensation

(3) The administrator shall pay to members who cease to hold office under subsection (1) the compensation, severance or other amounts, if any, that may be required in accordance with the regulations.

No personal liability

(4) No action or other proceeding shall be instituted against a member or former member of the board for anything done by the administrator or the Corporation after the member's removal under subsection (1).

Crown liability

(5) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (4) does not relieve the Crown of liability to which it would otherwise be subject.

Liability of Corporation

(6) Subsection (4) does not relieve the Corporation of liability to which it would otherwise be subject.

Regulations

1.3 The Lieutenant Governor in Council may make regulations relating to anything necessary or advisable for the appointment of an administrator under section 1.1, including,

- (a) governing the powers and duties of the administrator;
- (b) relating to anything that the Corporation may do by by-law under section 23;
- (c) respecting the termination of office of the members of the board;
- (d) respecting the winding down of the Plan and any related transitional matters;
- (e) respecting any transitional matters relating to the establishment of a multi-provider system for new home warranties.

5 Subsections 2 (2) and (3) of the Act are repealed and the following substituted:

Objects

(2) The objects of the Corporation are to uphold the purposes of this Act and to do anything that is prescribed by the regulations.

6 Section 5.1 of the Act is amended by adding the following subsection:

Administrator**Application**

(0.1) This section and sections 5.2 and 5.3 only apply after the appointment of the administrator under section 1.1 has been terminated by order of the Minister under subsection 1.1 (2).

7 The Act is amended by adding the following section:

Information about registrants

7.1 The Registrar shall maintain a website on the Internet on which the following information about builders and vendors who are registered under this Act is published:

- 1. Any warranty claims under this Act that have been made with respect to new homes built or sold by the builder or vendor.
- 2. Any past conduct of the builder or vendor relevant to warranties under this Act.
- 3. Any prescribed information.

8 The heading immediately before section 11 is repealed and the following substituted:

PROTECTION FOR NEW HOME OWNERS
(MULTI-PROVIDER NEW HOME WARRANTY SYSTEM)

9 Sections 11, 12, 13 and 14 of the Act are repealed and the following substituted:

Mandatory new home warranty**Vendors**

11 (1) No vendor shall sell or offer to sell a new home unless the home is covered by a new home warranty policy provided by a warranty provider.

Disclosures upon sale

(2) When a vendor enters into a contract for the sale of a new home to an owner or for the construction of a new home for an owner, the vendor shall deliver to the owner a copy of the new home warranty policy and such other documentation as is prescribed by the regulations.

Builders

(3) No builder shall commence to construct a new home unless the home is covered by a new home warranty policy provided by a warranty provider.

Mandatory warranty for renovations

12 (1) If the regulations so provide, no person shall undertake to renovate an existing home or to sell an existing home that has been renovated unless the renovation is covered by a renovated home warranty policy provided by a policy provider.

Same

(2) The warranties, conditions and requirements of a renovated home warranty policy shall be prescribed by the regulations.

New home warranty policy

13 (1) Every new home warranty policy provided under this Act shall include the following warranties from the vendor to the owner of the new home:

1. That the new home,
 - i. is constructed in a workmanlike manner,
 - ii. is fit for habitation, and
 - iii. is constructed in accordance with the Ontario Building Code.
2. That the new home,
 - i. is free from defects in materials and labour and shall remain free of such defects for a period of at least two years after the date on which the warranty takes effect,
 - ii. is free of defects in the building envelope, including defects resulting in water penetration and shall remain free of such defects for a period of at least five years after the date on which the warranty takes effect, and
 - iii. is free of major structural defects as defined by the regulations and shall remain free of such defects for a period of at least 10 years after the date on which the warranty takes effect.
3. Such other warranties as are prescribed by the regulations.

Prescribed exclusions

(2) The warranties under subsection (1) do not apply in respect of such defects, damages or other matters that are prescribed by the regulations.

Same, circumstances and limitations

(3) The warranties under subsection (1) do not apply in such circumstances as may be prescribed by the regulations and are subject to such limitations as may be prescribed by the regulations.

Term of warranty

- (4) A warranty under subsection (1) applies to claims made against a warranty provider within,
- (a) in the case of a warranty made under paragraph 2 of subsection (1), the relevant period of time set out in the paragraph; and
 - (b) in all other cases, the period of time prescribed by the regulations.

Application of warranties

(5) The warranties under subsection (1) apply where the construction of a new home is completed in accordance with the contract between the vendor and the owner, despite any agreement or waiver to the contrary, and the warranties are in addition to any other rights the owner may have and to any other warranty agreed upon.

Certificate of completion

(6) Upon completion of the construction of a new home, the vendor of the home shall deliver to the owner a certificate certifying the date upon which the construction was completed and the date upon which the new home warranties under subsection (1) take effect.

Privity of contract

(7) A warranty under subsection (1) is enforceable even though there is no privity of contract between the owner and the vendor.

New owner

(8) The warranties under this section are for the benefit of whoever is the owner of the new home from time to time until the end of the warranty period.

Same

(9) If the ownership of the new home changes during the warranty period, the previous owner shall transfer to the new owner the prescribed documentation and take the prescribed measures relating to the new home warranties in accordance with the regulations.

Warranties where construction incomplete

14 (1) Subject to the regulations, every new home warranty policy under this Act shall provide coverage for the circumstances described in subsections (2) and (3) in addition to the warranties provided under section 13.

Same, where no possession

(2) Subject to the regulations, a warranty provider under a new home warranty policy shall make warranty payments to a person who has entered into a contract to purchase a new home from a vendor if the person does not take possession of the new home in accordance with the terms of the contract as a result of,

- (a) the person exercising a statutory right to rescind the contract before closing; or
- (b) the title to the home not being transferred to the person due to the fact that the vendor has gone bankrupt or has fundamentally breached the contract.

Same, failure to substantially perform

(3) Subject to the regulations, a warranty provider under a new home warranty policy shall make warranty payments to the owner of land who entered into a contract with a builder for the construction of a home on the land where the builder has failed to substantially perform the contract.

Interpretation, substantial performance

(4) For the purposes of subsection (3), a contract is substantially performed if it is substantially performed within the meaning of subsection 2 (1) of the *Construction Act*.

Amount of payment

(5) The amount of a warranty payment under subsection (2) or (3) shall be determined in accordance with the regulations.

10 Section 15.1 of the Act is amended by striking out “for which the builder has complied with section 12 and has substantially completed the construction” and substituting “for which the builder has substantially completed the construction”.

11 Sections 16 and 17 of the Act are repealed and the following substituted:

Transition from Ontario New Home Warranties Plan

16 (1) In this section,

“guarantee fund” means the provision that was made by the Corporation for compensation under the Plan under this Act, as it read immediately before the day section 9 of the *Home Warranties to Protect Families Act, 2019* came into force; (“fonds de garantie”)

“Plan” means the Ontario New Home Warranties Plan continued under section 11 of this Act, as that section read immediately before it was re-enacted by section 9 of the *Home Warranties to Protect Families Act, 2019*. (“Régime”)

Agency

(2) No later than six months after the day the administrator is appointed under section 1.1, the Lieutenant Governor in Council shall, by regulation, establish a corporation without share capital to be known in English and the ONHW Plan Transition Agency and in French as Agence de transition du Régime GLNO.

Constitution

(3) The constitution of the Agency and its board of directors shall be in accordance with the regulations.

Objects

(4) The objects of the Agency are,

- (a) to assume the responsibilities of the Corporation for the maintenance, management and administration of the guarantee fund;
- (b) to assume the responsibilities of the Corporation for the payment out of the guarantee fund of claims by owners in respect of warranties that were given under the Plan before the day section 9 of the *Home Warranties to Protect Families Act, 2019* came into force;
- (c) to exercise such powers and perform such duties as may be assigned to it by the regulations; and

- (d) to carry out the responsibilities, powers and duties referred to in clauses (a), (b) and (c) until such time as all warranties given under the Plan have expired or are otherwise no longer valid.

Natural person powers

- (5) The Agency shall have the capacity, rights, powers and privileges of a natural person for the purpose of carrying out its objects, except as limited by the regulations.

Powers and duties

- (6) The Agency shall, subject to the regulations,
- (a) make payment out of the guarantee fund in accordance with section 14 of this Act, as that section read immediately before it was re-enacted by section 9 of the *Home Warranties to Protect Families Act, 2019*; and
 - (b) exercise the powers and perform the duties of the Corporation described in sections 16 and 17 of this Act, as those sections read immediately before they were re-enacted by section 11 of the *Home Warranties to Protect Families Act, 2019*, with respect to decisions it makes to pay out amounts from the guarantee fund and conciliating disputes between and owner and a vendor.

Use of revenues

- (7) The Agency shall apply its revenues to carry out its objects and duties and for no other purpose.

Crown agency

- (8) Subject to the regulations, the Agency is, for all its purposes, an agent of Her Majesty and its powers may be exercised only as an agent of Her Majesty.

Employees

- (9) The Agency may employ or otherwise engage persons for the proper conduct of its activities, subject to the regulations or, if the regulations so provide, employees may be appointed under Part III of the *Public Service of Ontario Act, 2006*.

Corporations Act and Corporations Information Act

- (10) The *Corporations Act* and the *Corporations Information Act* do not apply to the Agency, except as provided by the regulations.

Application

- (11) Sections 16 and 17 of this Act, as they read immediately before they were re-enacted by section 11 of the *Home Warranties to Protect Families Act, 2019*, shall continue to apply to any payments out of the guarantee fund that the Agency decides to make under clause (6) (a), an appeal from that decision or any conciliation or arbitration of a dispute between an owner and a vendor and for that purpose, any reference to the Corporation in those sections shall be deemed to be a reference to the Agency.

Agency as warranty provider

- (12) Nothing in this section shall prevent the Agency from obtaining the qualifications of a warranty provider and acting as a warranty provider under this Act.

Regulations

- (13) The Lieutenant Governor in Council may make regulations,
- (a) governing the establishment, governance and operations of the Agency;
 - (b) governing the constitution of the Agency and its board of directors;
 - (c) governing the objects, powers and duties of the Agency;
 - (d) respecting the limitations on the capacity, rights, powers and privileges of a natural person of the Agency for the purpose of carrying out its objects;
 - (e) respecting the status of the Agency as a crown agent and any limitations relating thereto;
 - (f) respecting anything in this section that is subject to the regulations or that is required or permitted to be provided by the regulations, to be done in accordance with the regulations, to be limited by the regulations or to be prescribed by the regulations;
 - (g) governing the transition of responsibility for warranties under the Plan from the Corporation to the Agency and any matters related to that transition as may be necessary for the efficient administration of the warranties.

12 Clause 17.2 (1) (c) of the Act is amended by striking out “have been enrolled in the Plan” at the end and substituting “are covered by a new home warranty policy under this Act”.

13 (1) Clause 17.3 (1) (a) of the Act is amended by striking out “are enrolled in the Plan” and substituting “are covered by a new home warranty policy under this Act”.

(2) Paragraph 2 of subsection 17.3 (2) of the Act is amended by striking out “qualifies for enrolment in the Plan” at the end and substituting “qualifies for coverage from a new home warranty policy under this Act”.

14 Clause 17.4 (2) (a) of the Act is amended by striking out “have been enrolled in the Plan” at the end and substituting “are covered by a new home warranty policy under this Act”.

15 The heading immediately before section 18 of the Act is repealed and the following substituted:

ADMINISTRATION AND ENFORCEMENT

16 The Act is amended by adding the following section:

Director

17.6 (1) The Minister may appoint a Director to exercise the powers and perform the duties of the Director under this Act.

Public servant

(2) The Director shall be a public servant employed under Part III of the *Public Service of Ontario Act, 2006*.

17 Subsection 18 (1) of the Act is amended by striking out “The Corporation” at the beginning and substituting “The Director”.

18 Subsection 19 (1) of the Act is amended by striking out “Corporation” wherever it appears and substituting in each case “Director”.

19 The Act is amended by adding the following section:

Same

22.2 The Lieutenant Governor in Council may make regulations with respect to anything necessary or advisable for the efficient administration and enforcement of this Act including,

- (a) governing renovated home warranty policies for the purposes of section 12;
- (b) governing the mediation or arbitration of disputes in relation to the building or selling of new homes.

Repeal of *New Home Construction Licensing Act, 2017*

20 The *New Home Construction Licensing Act 2017* is repealed.

Repeal of *Protection of Owners and Purchasers of New Homes Act, 2017*

21 The *Protection of Owners and Purchasers of New Homes Act, 2017* is repealed.

Commencement

22 (1) Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

(2) Subsection 3 (2) and sections 8, 9, 10, 11, 12, 13 and 14 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

23 The short title of this Act is the *Home Warranties to Protect Families Act, 2019*.