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Check to see if home is under warranty

New construction must be covered

Yet some builders try to sneak by

The first question for a prospective homebuyer to ask at the builder's sales office should always be: "Are you registered with Tarion Warranty Corporation?"

Consider the fact that Tarion's enforcement team laid 993 charges against illegal builders last year.

Yet, some builders still think that they can sneak in under the radar and avoid participating in Ontario's new home warranty program.

A total of \$575,000 in fines was levied by the courts in 2004 and two repeat offenders received jail time.

The issue of unregistered homes is a serious problem for the entire industry.

And it's getting worse.

Last year, Tarion's enforcement team of retired police officers identified an astounding 5,792 homes, which had not been enrolled in the Tarion program.

This figure represents a 47 per cent increase over 2003.

Cumulative figures for 2005 are not yet available, but during the third quarter of this year alone, Tarion's enforcement team discovered 1,175 un-enrolled homes and identified 80 unregistered builders.

Every builder or seller of a new home in Ontario must be registered with Tarion and must enrol each new home prior to its construction.

Unfortunately, builders who fail to register with Tarion and enrol their new homes in the mandatory warranty program often do not inform purchasers of their right to statutory warranty coverage.

The courts do not take kindly to builders who fail to register.

A Cambridge-area homebuilder and company officer were recently convicted in Brantford provincial court on one count each of failing to enrol a unit with Tarion.

Frank Rocha Construction Ltd. got hit with a fine of \$31,250, and corporate officer Sally Rocha was fined a total of \$15,625.

Earlier this year, Toronto builder Alexander Boros was convicted of one count of failing to register with Tarion, one count of failing to enrol a unit, and a third count of furnishing false information.

The result: He was fined a total of \$75,000.

In announcing the conviction, Dave Roberts, director of enforcement at Tarion, explained, "Boros fraudulently tried to register and enrol a home under another builder's name, without that person's knowledge."

"Most Ontario builders work hard to provide quality homes and maintain a positive reputation. The extremely high fines that Mr. Boros received show that the courts recognize the damage his actions could have had on a legitimate builder's livelihood," Roberts noted.

The courts are doing what they can to remove the profit incentive from builders who ignore the warranty legislation.

In September, a Kanata-area numbered corporation was fined a total of \$184,375 on 29 counts of failing to register all 29 units in an Amprior condominium building.

Company officer Gurbakhshish Bal was fined \$3,125 on one count of furnishing false information.

North Bay homebuilder Roland Boissonneault, an officer of 840441 Ontario Inc. (operating as Modular Systems of North Bay), pleaded guilty in May of this year to five counts each of failing to register and failing to enrol a new home with Tarion Warranty Corporation.

Boissonneault received a jail term of five months on all counts.

The time is to be served concurrently with a six-month jail sentence he received in July 2004 for similar charges.

Modular Systems was also fined a total of \$7,500.

Homebuyers should be aware that it is illegal for a builder to enter into an agreement of purchase and sale or construction contract with a purchaser if the builder is not registered with Tarion.

It is also illegal to begin construction of a home (even a one-off home) or condominium without first enrolling it with Tarion.

But it is not illegal for a registered builder to sell a house from plans and later enrol it prior to construction.

Buyers can protect themselves from unregistered builders by exercising a little due diligence at the front-end of their search for a new home.

- * Ask for the builder's Tarion registration number and verify it with Tarion by phone. Or check on their website, <http://www.tarion.com>.
- * Check the builder's reputation. You can do this by talking to other buyers who bought from the same builder.
- * Make sure the agreement of purchase and sale has the required Tarion "addendum."
- * Look up the builder's registration, claims record, and record of chargeable conciliations on the Tarion web site.

In the long run, a homebuyer will not save money on an unregistered home.

To put it bluntly, buying a home without a warranty is simply too risky.

Under the Tarion legislation, however, some new homes are not eligible for registration and warranty protection.

There is no Tarion protection at all if the home is built using a remnant of a prior home on the site (such as a pre-existing foundation), or if it is a substantial renovation of an existing dwelling.

There may also be no protection if a builder personally moves into a new home and lives in it for a time before re-selling it, or if it is used for a busy sales office prior to re-sale.

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