

BRD-GC-01: Code of Conduct & Governance Practices Confidentiality & Conflict of Interest Policy

Scope

This Code applies to all members of the Board of Directors (“Directors”) of Tarion Warranty Corporation (“Tarion”), or the Corporation.

Introduction

This Code of Conduct and Governance Practices, Confidentiality and Conflict of Interest Policy (“Code”), summarizes a number of important business conduct and corporate governance policies that apply to all Directors. The Corporation administers the Ontario New Home Warranties Plan Act (“the Act”) and as such is responsible for providing protection pursuant to the Act for all consumers who purchase a new housing unit in Ontario.

The Board has approved this Code as a supplement to any legal requirements for Directors including those contained in relevant statutes or in the Corporate By-Laws, in order to assist Directors in understanding and performing their duties and responsibilities to the Corporation with appropriate discipline and dedication.

1. Compliance with Laws and Policies

Each Director shall:

- a) Comply with all laws applicable to their role as a Director of Tarion.
- b) Comply with all policies applicable to the Directors.
- c) Comply with any Minister’s Orders.
- d) Promptly report to the appropriate authority within Tarion, according to Tarion’s policies, any observed illegal, fraudulent or other suspected misconduct by a Director or employee or officer of Tarion.

2. Duties and Responsibilities of Tarion’s Directors

The fiduciary duty of each Director is to act in the best interests of the Corporation at all times. Each Director shall act in accordance with the Director’s fiduciary duty to Tarion. In carrying out such duty, each Director has a responsibility to understand and balance appropriately the legitimate interests of a number of stakeholders, including, in no particular order and without limitation: purchasers of new homes in the Province of Ontario; new home vendors and builders; the Government of Ontario; and employees of the Corporation.

Director shall neither act in self-interest nor in the interests of any individual Tarion stakeholders. Directors are not “representative of any stakeholder, nor is their duty or obligation in any way to be beholden to any stakeholder.” The fiduciary duty of each Director is to the Corporation as a whole, which is to act with the view to Tarion’s best interests. From time to time, a duly taken decision made by the Board may be believed by a particular Director or Directors to be adverse to one or more stakeholders of Tarion. Such a belief may be honest and reasonable in the view of that Director. Nonetheless, regardless of their personal opinion or individual vote, each Director must support and not undermine the decisions of the Board at all times.

3. Conduct of each Director

To enable the Board to discharge its collective responsibilities for stewardship, including oversight and strategic leadership, each Director shall:

- a) Conduct themselves honestly, fairly, ethically and with integrity;
- b) Maintain a positive reputation in the business community and with the public;
- c) Demonstrate a good understanding of, and a willingness to learn current corporate governance practices;
- d) Take all reasonable steps to ensure that they and the Board, as a whole, acts in the best interests of the Corporation, rather than in the interests of any individual or group;
- e) Bring to the attention of the Board a perspective based on their background or experience;
- f) Assist the Corporation in the achievement of its corporate strategic objectives and business plans;
- g) Declare in a full, true and plain fashion any potential conflict promptly to the Corporate Secretary and Committee or Board Chair, as the case may be, leave the room for the deliberations concerning the matter, and not vote or, influence the vote on any such matter; and
- h) Monitor their continued ability to meet the foregoing expectations.

4. Functions of the Board and Committees of the Board

The Board and each Committee of the Board (Committee) have regularly scheduled meetings announced prior to the beginning of each calendar year. The Board and each Committee, and each Member of the Board and Member of each Committee are expected to perform a number of regular duties and functions each year in keeping with each of the Board of Director Guidelines, Committee Charters, calendars of responsibilities, and Position Descriptions, as well as several specific functions including the following:

- a) Evaluating, compensating, selecting and, if or when necessary, terminating the President & CEO;
- b) Overseeing succession planning of the President & CEO and other senior Management;
- c) Reviewing and approving the financial condition of the Corporation to ensure that effective financial and capital management practices are being followed, including

monitoring the design, implementation and testing of the internal controls of the Corporation;

- d) Identifying, assessing and approving the material financial and non-financial risks of the Corporation, reviewing the internal controls for their mitigation, and reviewing the independent assurance of the foregoing internal control effectiveness; and
- e) Reviewing, providing input on, and approving the strategy of the Corporation, including the key performance indicators to measure the implementation of the strategy.

5. Chair of the Board

Unless the Minister has exercised its right to appoint a Chair under the Act, prior to the expiration of the Incumbent Board Chair's term, the Directors will select a Chair of the Board from among their number who will assume responsibility to chair meetings of the Board, fulfill all responsibilities within the Chair of the Board Position Description, and any other responsibilities that the Directors may delegate from time to time to the Chair.

In addition, the Chair will:

- a) Consult with the President & CEO prior to each regularly scheduled Board meeting and shortly after in-camera sessions of the Board as necessary;
- b) Administer the Board's relationship with Management, as directed by the Board and consistent with the Chair of the Board Position Description; and
- c) Oversee, in conjunction with the Governance, Regulatory Affairs & Nominations Committee, Board member conduct and compliance by each Director with the requirements of this Code. The Chair and the Governance, Regulatory Affairs & Nominations Committee will speak to individual Directors, or if necessary, the full Board regarding any non-compliance with this Code.

6. Preparation for, Attendance at, and Engagement within Board & Committee Meetings

Each Director is expected to devote necessary time to Board and Committee affairs, including the review of Board and Committee materials and attendance at all meetings of the Board and Committee of which they are a member. Each Director should arrive in person and in advance of the start of the Board or Committee meeting, as the case may be, and remain engaged and focused for the entirety of the meeting, without any distraction (including phone calls, emails, texts or the use of social media). All the foregoing forms of distraction should be avoided except in case of emergency or for Tarion-related matters.

Additional meetings beyond the regularly scheduled Board and Committee meetings may need to be scheduled from time to time on short notice. Certain Directors may not be able to attend meetings from time to time for medical reasons or due to other unusual circumstances. The Chair of the Board reviews the attendance of Directors each year, and the attendance of each Director is published every year in the annual report of the Corporation. Any Director

who does not, in two consecutive years, attend at least 75% of the regularly scheduled meetings of the Board and the Committees to which they are assigned, must tender a written offer to resign to the Chair of the Board for acceptance or rejection by the Board.

An application for temporary short-term leave by a Director for an unanticipated absence, for a period of three months at most, shall be reviewed by the Chair of the Board and Governance Committee, with a recommendation for acceptance or rejection to the full Board. It is expected that an application for a temporary short-term leave from the Board shall be approved only in unusual circumstances, given the need and difficulty to accommodate that Director's responsibilities, and be limited to three months. Any absence beyond three months would require a Director to resign from the Board.

7. Confidential Information

Each Director's obligation of confidentiality arises from the Director's fiduciary duty to the Corporation. Each Director also agrees to comply with Tarion's Confidential Information Policy as outlined in Appendix "A" of this Code.

8. Avoiding Conflicts of Interest

Each Director shall comply with Tarion's Conflict of Interest Policy as outlined in Appendix "B" of this Code.

9. Orientation of New Directors

The Corporation has an orientation and education program for new Directors. A new Director will be provided with a range of written materials including those which outline the organization of the Board and its Committees, the powers and duties of Directors, the required standards of performance for Directors, and this Code.

Management will also review the current business plan with each new Director and will arrange site visits as well as private meetings with members of management, as requested by the Director. The Director will also be provided with information on the business services provided by the Corporation, as well as a review of the financial statements of the Corporation.

10. Personal Liability of Directors for Breach of Duty

In discharging their duties, Directors of the Corporation are required by law to act honestly and in good faith with a view to the best interests of the Corporation, and they may incur personal liability if they breach such duties. Directors may incur personal liability if they fail to meet certain standards of performance - the general requirement being that Directors must exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. In addition, Directors have potential statutory liability under certain provincial statutes, such as the *Employment Standards Act, 2000*.

The Corporation purchases and maintains Director & Officer Liability Insurance to provide coverage for Directors against liability incurred in the discharge of their duties. However, the Not-for-Profit Corporations Act, 2010 provides that a corporation shall not indemnify an individual unless: (a) the individual acted honestly and in good faith with a view to the best interests of the corporation or other entity, as the case may be; and, (b) if the matter is a criminal or administrative proceeding that is enforced by a monetary penalty, the individual had reasonable grounds for believing that his or her conduct was lawful.

11. Interaction with the Media and Other Public Activities

The President & CEO, or other designated member of Management, rather than Directors have the responsibility to speak publicly on behalf of the Corporation. From time to time, Directors may be requested by politicians, the media, or stakeholders, to discuss issues related to the business of Tarion, including matters discussed at meetings of the Board of the Corporation. Any Director to whom such a request is made should review the request with the President & CEO or the Chair before responding.

The Director shall, in any public communication activity or use of social media, make clear in what capacity they are speaking or writing when doing so publicly, such that inferences are not drawn or allowed to be drawn that a Director may be speaking on behalf of the Board of Tarion or of Tarion.

12. Political Activities of Directors

Directors shall use all reasonable efforts to discharge their duties and responsibilities in a manner so as to not diminish the public's trust in the objectivity and impartiality of Tarion. Accordingly, Directors shall take all reasonable steps to ensure that Tarion does not, directly or indirectly, contribute to or participate in, or be seen to contribute to or participate in political fund raising or activities of any nature. The Director, in their capacity as Director of Tarion, shall not contribute to, or participate in, political fund raising or activities. However, nothing in this Code prevents a Director from contributing to or participating in, political fund raising or activities, provided that it is done so in their non-Directorial and personal capacities and this capacity is made clear to observers and members of the public.

13. Delegation of Management Authority

In accordance with the delegation of authority pursuant to the by-laws of the Corporation, and subject to the authority of the Board, the President & CEO shall have responsibility for the day-to-day general management and direction of the business and affairs of the Corporation. Board members are expected to understand and respect those responsibilities that have been delegated to Management.

14. Board and Director Evaluations

All Directors shall participate in a regular Board Evaluation administered by a third party under the supervision of the Governance, Regulatory Affairs & Nominations Committee. The results of the Board Evaluation will be confidential, except that they will be provided to the Chair who

may in turn review the results in general terms without attribution with the Director (including attributing any results or comments) with the duly appointed Governance, Regulatory Affairs & Nominations Committee.

The Board also has the option from time to time of arranging a peer review of the Directors. Each Director will be provided with the results of their peer review. Such results will be confidential except that individual reviews will be provided to the Board Chair, who shall review them with the Director in question and may review the results with the Governance, Regulatory Affairs & Nominations Committee or recommend coaching and development for a Director.

The Board Evaluation and any peer review will include an evaluation of the Board Chair. The results of such reviews shall be provided to the Board Chair and the Chair of the Governance, Regulatory Affairs & Nominations Committee or the Vice Chair of the Committee should the Committee Chair also be the Board Chair.

The scope of the Board Evaluation and any peer reviews will include determining compliance by Board members with this Code and with other policies of the Corporation applicable to Directors, and compliance by the Board generally with current best governance practices.

15. Relations with Tarion Staff

Directors are entitled to any information of the Corporation needed in order to carry out their duties as Directors, provided the information request is not overly onerous. All information requests by Board members will be channeled through the Corporate Secretary. The Corporate Secretary will then delegate the request to a member of the management team.

Any Director wishing to meet with management/staff must make the request through the Corporate Secretary with a copy to the CEO and Chair. The CEO will take into account the nature of the request balanced against the risk that there could be undue influence. Other members of management or the board may be asked to be present to control against such influence.

If the information requested is relevant to Board matters, the information will be shared with all Board members and not just the member who requested the information. If the information is requested or a meeting requested by a member of a committee, that information will be shared with the Chair of such committee.

In all dealings with Tarion staff, Directors shall treat staff fairly and with respect. Each Director shall refrain from exerting any pressure on any Tarion staff members that might reasonably be or reasonably be perceived as seeking favoured or unequal treatment for the Director personally or their related entities or family members.

16. Compliance with the Code

Any Director who requires clarification as to the application of this Code or has concerns as to compliance with this Code by another Director, should raise those concerns with the Board Chair. In resolving such concerns, the Board Chair may seek advice of other Directors and from legal counsel of the Corporation and will communicate their decision directly to the Director whose conduct is at issue. In the event of continuing with this Code, the by-laws of the Corporation provide that a Director may be removed by a special resolution of the Board.

17. Annual Affirmation and Review

Each Director of the Corporation shall sign an annual affirmation that they understand and will comply with this Code. The Governance, Regulatory Affairs & Nominations Committee may recommend changes to this Code from time to time to enhance its effectiveness, and to ensure the achievement of good governance practices by the Board, and from each Director.

Monitoring Methodology

This Code will be reviewed no less than annually. Directors are required to sign the Code prior to the Board reorganization meeting held in April of each year.

Confidentiality Policy – Appendix “A”

Purpose

The purpose of this policy is to set out Tarion’s confidentiality requirements which are effective upon acceptance of appointment as a member of the Board of Directors of Tarion (a “Director”) and which continues in effect both during and after the member’s tenure as Director.

Non-Disclosure of Confidential Information

The relationship between Tarion and a Director is one of mutual trust and reliance. Directors have access to information and knowledge, including **Confidential Information**, (as defined below), relating to the affairs and business of Tarion, the disclosure of any of which may be highly detrimental to the interests of Tarion.

Accordingly, each Director shall not disclose nor allow disclosure of any Confidential Information to any person at any time before, during or after their tenure as a Director except to:

- Permitted Representatives, (i.e., agents, advisors, consultants and other representatives who have agreed in writing to be bound by the terms of this policy);
- As authorized expressly in writing by the President & CEO or Board Chair, and then only for the purpose of conducting the business of the Board of Directors of Tarion; or
- As required by law.

All Directors agree in all other respects to conduct themselves and require their Permitted Representatives who have reviewed Confidential Information or who know of its existence, to conduct themselves in such a way as to keep the Confidential Information confidential.

The provisions of this Confidentiality Policy continue to apply and bind each Director after the Director’s term of service has expired.

In the event that a Director ceases for any reason to be a Director, the Director must forthwith upon request return to Tarion every copy of any Confidential Information in the possession or under the control of the Director at that time.

Any real or apparent infraction of this Policy including inadvertent disclosure of Confidential Information by a Director, shall be promptly reported to the General Counsel and Corporate Secretary. Any such matters shall be documented in writing and retained in the Board records.

“**Confidential Information**” includes:

- a) any information regarding builders, homeowners and claimants that is not otherwise publicly available;
- b) any information, process or idea that is not generally known outside Tarion;

- c) all proprietary and financial information relating to Tarion and its employees, including without limitation all contracts and policies;
- d) such information as a senior employee of Tarion may from time to time designate to a Director as being included in the expression “Confidential Information”;
- e) any secret or trade secret or know-how of Tarion or any information relating to Tarion or to any person, firm or other entity with which Tarion does business which is not generally known to persons outside Tarion, including the identity of builders, homeowners and claimants;
- f) all computer programs including algorithms, specifications, flow charts, listings, source codes and object codes either owned by Tarion or to which Tarion has access and wishes to keep confidential; and
- g) all information relating to computer programs now existing or currently under development.

This list is illustrative and is not an exhaustive list. Other *Confidential Information* may currently exist or arise in the future. If a Director has any doubt whether information is *Confidential Information*, they should ask the President & CEO or Board Chair.

At the end of each Board meeting, the Directors will determine and declare what information is not considered *Confidential Information*. Material and discussions at Board meetings will be considered *Confidential Information* unless declared otherwise.

Confidential Information Disposal Guidelines

Confidential Information may be contained in several types of Tarion records that may need to be discarded by a Director from time to time in the ordinary course of business. To protect the confidentiality of the information in such records, they must be disposed of properly.

Directors agree that any record, physical or electronic, containing Confidential Information, shall be disposed of, deleted, destroyed or returned in a secure manner.

Conflict of Interest Policy – Appendix “B”

Purpose

The purpose of this policy is to set out Tarion’s Conflict of Interest Policy, which is effective upon your acceptance of appointment as a member of the Board of Directors of Tarion (a “Director”) and which continues in effect both during and after your tenure as Director.

Conflict of Interest

Directors must avoid placing themselves, their business interests, agents or associates, or their family members (any relation by blood, marriage or adoption) (“Director’s Interests”), in a position where such interests conflict with their duties and responsibilities as a Director (“**Conflict of Interest**”). A Conflict of Interest may be real or perceived and may exist whether or not a monetary advantage has been or may have been conferred upon a Director. A Director’s interest may include the activities of their family.

The following activities could be construed as a Conflict of Interest:

Acceptance of Gifts, Favours, Hospitality and Honours

To demand, accept, agree to accept or offer, directly or indirectly, present or future advantage, award, cash payment, discount, loan, services or benefits of any kind from an individual, corporation or other entity having dealings with Tarion, in favour of the Director or their Director’s Interest.

Alternative Employment/Business

To knowingly engage in any outside work or business undertaking in which the Director’s interests conflict with the interests of Tarion. This includes undermining the performance of their duties as a Director and where the Director or Director’s Interest has an advantage derived from their position as a Director.

Personal Influence

To derive personal benefit through personal influence.

Financial Interest

The Director or Director’s Interests derive a beneficial interest in any goods, services or properties that might be acquired by Tarion unless Tarion has expressly acknowledged and consented to such beneficial interest in writing after full written disclosure by the Director to Tarion of such interest.

Management or Auditor Interests

A Director, or an affiliate or family member of the Director or Officer, is, or has been, a member of senior Management of Tarion.

A Director, or an affiliate or family member of the Director, is, or has been, a partner of, or employed by, a current or former Internal or External Auditor of, or Consultant to, if or as the case may be, Tarion.

Close Relationship Interest

A Director or Officer, or an affiliate or family member of the Director, has a close personal relationship with a member of senior Management or another Director of Tarion.

Compensation Interest

A Director receives any form of remuneration from Tarion other than compensation and reimbursement of expenses for being a Director, respectively.

Board Interlock Interest

A Director who serves on a Board with another Director, other than on the Board of Tarion.

Arrangement or Relationship

The Director or Director's Interests enter into a contract, program relationship or other arrangements with Tarion where the Director or Director's Interests derive a benefit, financial or otherwise.

Profit from Access to Information

To use one's position, authority or knowledge acquired through the position as Director, to obtain a beneficial interest in any goods, services or properties, if the results would be detrimental to the interest of Tarion or unfair to the public.

Disclosure of Confidential Information

To disclose any Confidential Information (see Tarion's Confidentiality Policy), obtained by the Director in the course of their tenure as Director.

Fees for Public Appearance

To accept any fee for public appearances resulting directly from their position as a Director or their field of knowledge derived from the Director's position.

Builders or Vendors

A Director or Director's Interests are a Builder or Vendor or an officer, director or principal of any Builder or Vendor during their tenure as a Director, without making full disclosure to Tarion in writing.

Avoiding a Conflict of Interest

Each Director shall at all times:

- a) Seek to avoid, and if this is not possible, promptly disclose and report fully, any real or perceived conflict of interest of the above nature, without limitation, to the Governance, Regulatory Affairs & Nominations Committee and to the Corporate Secretary;
- b) Not seek to influence the foregoing conflict of interest;
- c) Absent themselves from the discussion pertaining to the foregoing conflict of interest; and
- d) Cooperate fully in the information pertaining to, and the management of, the foregoing conflict of interest, in accordance with the Corporate by-law with respect to conflict of interest and the provisions within this Policy.

Each Director must immediately take steps to resolve a real or perceived conflict of interest.

Reporting a Conflict of Interest

Any Director in a position of Conflict of Interest (either actual or potential), or who becomes aware of an actual or potential Conflict of Interest or of another Director, shall disclose the actual or potential Conflict of Interest in accordance with the procedures set out below. The disclosure of an actual or potential Conflict of Interest will be treated as confidential.

Director

If the disclosure is made by the Director, they will promptly notify either the Chairman of the Board or the President and CEO.

Both prior to being elected to the Board or being appointed as an Officer, and annually during the Director's term of office, each Director shall disclose to the Governance, Regulatory Affairs & Nominations Committee, financial interests and any perceived or real conflict of interest as soon as it arises or appears likely to arise. Please see Annual Review and Affirmation, above.

Third Party

If the disclosure is made by a third party or a Director concerning another Director, the person receiving the information will notify either the Chairman of the Board or the President and CEO.

Investigation and Resolution

Appropriate steps will then be taken to determine whether an actual or apparent conflict exists, and in accordance with statutory requirements, determine whether it is necessary for the Director to resign, or merely be excused from discussions by the Board on a particular subject matter.