

**HOMES**

# A new home builder is insolvent; what does it mean

BY HOWARD BOGACH

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**Home buyers affected by insolvency or bankruptcy proceedings should retain legal counsel so that they are aware of their legal options.**

— Howard Bogach is president and CEO of Tarion Warranty Corp., a private corporation established in 1995 to protect the rights of new homebuyers and to regulate new home builders. For more information, visit [www.tarion.com](http://www.tarion.com)

Builder insolvencies typically occur when people or companies cannot meet their financial obligations as the

Insolvency is not the same as bankruptcy, insolvent companies may be able to successfully restructure and still obtain new money in the form of equity, loans or proceeds from asset sales.

With a strong housing market in Ontario and building activities climbing over the years, builder failures like this have thankfully not been commonplace. But they do happen.

The reasons for a builder's failure will vary. It may be driven, for example, by the market, inability to get needed financing, rapid expansion, or construction cost overruns.

What is clear, is that its impact can be tremendous; on lenders, the trades, local business and most notably, on home purchasers.

Indeed, as I write this there are numerous customers of a well-known builder group — Urbancorp — who are impacted by this builder's insolvency.

Tarion has spoken to over a hundred of these buyers who have called in wanting to know how this impacts them. We've also created a microsite for Urbancorp customers to provide up-to-date information and answer frequent questions. Court-appointed officers in Urbancorp's insolvency proceedings have set up their own websites as well. This is not the first time a builder in Ontario has had financial problems where buyers could rely on Tarion to

**SUN+**'s warranty obligations.

Ontario's new home warranty protection was created 40 years ago to provide home buyers with protection if cannot or will not stand behind their deposit return obligations or construction warranties.

We intend to make sure that as with all of Ontario's new home buyers, Urbancorp customers impacted by the situation receive the warranty protection they are entitled to.

It is important for Ontario's new home buyers to know that their warranty rights are protected when their build complete the job, or fulfil the builder's warranty obligations.

Generally speaking, if you sign an agreement of purchase and sale for a new home in Ontario, you qualify for protection (up to \$40,000 for freehold homes and \$20,000 for condominiums which are also protected under provisions of the Condo Act) and possibly delay compensation of up to \$7,500 from Tarion.

These rights are preserved regardless of the status of the builder. If you do receive your home and your builder insolvent, your home is still covered under the construction warranties for seven years. If the builder does not fulfil the warranty responsibilities, Tarion will.

Creditor protection proceedings can cause some delays for new home buyers, as creditors and others may be taking certain steps against the builder. When this occurs, there may be opportunities for buyers to participate in proceedings. They can contact court-appointed officials directly to get more information.

Many of the court orders and background materials filed in support are also published online, so buyers can get information themselves. Home buyers affected by insolvency or bankruptcy proceedings should monitor the proceedings and retain legal counsel so that they are aware of all of their legal options.

Home buyers affected by such proceedings also have the option of banding together, retaining and sharing legal fees. If a builder becomes involved in insolvency or bankruptcy proceedings after a new home buyer has signed an agreement, the buyer typically will be faced with delays.

If the builder can successfully restructure it is possible that the builder will still finish the home and the sale. In some cases, the buyer may find their agreements taken over by another builder who finishes their home.

In some cases, home buyers can have their agreements terminated in insolvency and bankruptcy proceedings. This is the more reason why home buyers should consider retaining legal counsel.

Otherwise, a homeowner generally will have to wait until there is actual bankruptcy of the builder or the builder fundamentally breaches the agreement of purchase and sale before return of deposit can be sought and a claim filed with Tarion.

As the regulator of Ontario's new home builders and the administrator of the new home warranty program, Tarion is actively involved when a registered builder becomes insolvent. In everything that we do, we make sure that the best interests are top of mind. If you are a home buyer affected by a builder insolvency and have any questions, we encourage you to contact Tarion directly at 1-877-982-7466.

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