

Last Updated: February 1, 2021

## 3. COMMON DEFINITION OF “HOME”

### General Background

The Home Construction Regulatory Authority (HCRA) is the regulator with responsibility to license builders and vendors of new homes under the New Home Construction Licensing Act, 2017 (NHCLA). Tarion Warranty Corporation (Tarion) is the administrator of the warranty plan and is the financial backstop for warranty obligations of vendors under the Ontario New Home Warranties Plan Act (ONHWPA).

This advisory applies to the definition of “new home” in the NHCLA and the definition of “home” in the ONHWPA. It is to be read in conjunction with the advisories for “builder,” “vendor” and “owner.”

The definition of “home” is important for several reasons including:

- The NHCLA regulates builders and vendors who are constructing or selling a “new home” as defined.
- The ONHWPA extends statutory warranty coverage to a “home” as defined.
- A person cannot enter into an agreement of purchase and sale for a (new) home unless that person has received confirmation from Tarion that the home qualifies for enrolment under the ONHWPA.
- The builder of a (new) home cannot commence construction of the home until it has enrolled the home with Tarion under ONHWPA.
- The “vendor” of a (new) home is deemed to provide the statutory warranties and protections available for a home (as defined) under the ONHWPA (as long as the definitions of vendor, builder and owner are also satisfied).

### Legislation – Act and Regulation

The NHCLA refers to a “new home” and the ONHWPA refers to a “home” but both have the same meaning. The term “new home” in the NHCLA is defined as having the same meaning as the word “home” as defined in s.1 of the ONHWPA.

S.1 of the ONHWPA defines “home” to mean:

- a) A self-contained one-family dwelling, detached or attached to one or more others by one or more common walls;
- b) A building composed of more than one and not more than two self-contained, one-family dwellings under one ownership;



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- c) A condominium dwelling unit that is a residential dwelling, including the common elements in respect of which the unit has an appurtenant common interest as described in the condominium declaration of the condominium corporation; or
- d) Any other dwelling of a class prescribed by the regulations as a home to which this Act applies, and includes any structure or appurtenance used in conjunction therewith, but does not include a dwelling built and sold for occupancy for temporary periods or for seasonal purposes.

For condominium homes, a new definition for “common elements” in s.1 of the ONHWPA is aligned with the definition in the NHCLA and provides that:

“Common elements” means all the condominium property except the condominium units.

## Quick Reference Guide – What is a home and what is not a home for licensing and warranty purposes

The chart below provides some general rules that apply for determining whether what is being constructed meets the definition of “home”. For additional information, reference the more detailed discussion that follows.

<b>Home for Licensing and Warranty Purposes</b>	<b>Not a Home for Licensing and Warranty Purposes</b>
<p>A home is:</p> <ul style="list-style-type: none"> <li>• A self-contained single-family dwelling capable of occupation year-round and that has not been previously occupied</li> <li>• One of two self-contained single-family dwellings in the same building under common ownership capable of occupation year-round and that has not been previously occupied</li> <li>• A condominium unit that is a residential dwelling unit that is capable of occupation year-round and that has not been previously occupied</li> </ul> <p>For a condominium dwelling unit, the home includes the common elements that go with the unit, as described in the condominium declaration of the condominium corporation. These are</p>	<p>A unit in one of the following is not a home:</p> <ul style="list-style-type: none"> <li>• Hotel, including a residential dwelling in a hotel condominium</li> <li>• Motel</li> <li>• Dormitory</li> <li>• Post-secondary education residence</li> <li>• Care facility, including a retirement home and a long-term care facility</li> <li>• Psychiatric facility</li> <li>• Detention facility</li> </ul> <p>A home does not include a dwelling built or sold for occupancy for temporary periods or for seasonal purposes including:</p> <ul style="list-style-type: none"> <li>• A residential dwelling with fractional ownership or time-share interest</li> </ul>



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<b>Home for Licensing and Warranty Purposes</b>	<b>Not a Home for Licensing and Warranty Purposes</b>
<p>referred to as a unit's appurtenant common interests.</p> <p>Included as part of the home generally, is any structure that is used in conjunction with the home.</p> <p>A dwelling that meets the conditions of one of the three categories of home described in the first three bullets above, may continue to meet the definition of home even if the dwelling is:</p> <ul style="list-style-type: none"><li>• Sold with identified surface defects</li><li>• Built for a charitable purpose</li><li>• Built as a coach or laneway home</li><li>• Built for educational or training purpose</li><li>• Built on all or part of a pre-existing foundation</li><li>• Rented out by the owner</li><li>• Purchased under a lease to own agreement</li><li>• A condominium dwelling unit that is part of a leasehold condominium corporation</li><li>• Attached to an industrial or commercial building</li><li>• Built using logs as an integral part of the structure and building envelope</li><li>• A mobile home on a permanent foundation</li><li>• A modular home on a permanent foundation</li><li>• A "tiny home" on a permanent foundation</li><li>• A panelized or kit home on a permanent foundation</li></ul>	<ul style="list-style-type: none"><li>• A seasonal residential dwelling not capable of year-round occupancy (seasonal home)</li><li>• A life lease of residential dwelling unit</li></ul> <p>The following dwellings are not included in the definition of home under the NHCLA and the ONHWPA:</p> <ul style="list-style-type: none"><li>• A residential dwelling on First Nations reserve lands</li><li>• A dwelling first occupied by vendor/builder</li></ul>



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Home for Licensing and Warranty Purposes	Not a Home for Licensing and Warranty Purposes
<ul style="list-style-type: none"><li>• A “shell” home</li><li>• A contracted home</li><li>• Built under contract (contracted home) and is first occupied by landowner</li><li>• Used for personal and business purposes (work/live)</li><li>• Transferred in a non-arm’s length transaction</li></ul>	

## Foundations, including a pre-existing foundation

A foundation is defined as an arrangement of various “foundation units” through which the loads from a building are transferred to supporting soil or rock. A “foundation unit” refers to any one of the structural parts of a permanent foundation, such as footings, foundation walls, block, piers and pier type foundations constructed of cement products such as concrete, concrete block or constructed of wood or any other approved material.

A foundation does not include non-load bearing partition walls, weeping tiles, damp proofing, waterproofing, and parging and does not encompass load bearing structures that form part of the above ground construction such as columns, beams, posts and above ground load bearing walls.

Special considerations apply if a dwelling is being constructed on all or part of a pre-existing foundation. Decisions on whether licensing is required and whether warranty coverage is available to the dwelling will depend on the circumstances.

Importantly, local building officials undertake a footing and foundation inspection, and the foundation, even if incorporating elements of a pre-existing foundation, must still meet the requirements of the Ontario Building Code.

For contract homes, even if warranty coverage extends to the dwelling if pre-existing foundation elements of the home are found to be deficient, warranty coverage would not extend to those elements based on ss.13(2) of ONHWPA, which excludes coverage for an element supplied by the owner.



## Breaking down the key characteristics of a new home:

The dwelling must be a new dwelling.

- The title of the ONHWPA has the word “new” in it. The ONHWPA deals with “new” homes. To be a “new” home, the dwelling that is being built must be more than just a renovation to an existing building. A particular construction may incorporate some pre-existing elements into the construction and might still be considered a new home for licensing and warranty purposes. When the construction includes pre-existing elements and is a condominium, special rules will apply for purposes of determining if it is a residential condominium conversion project (RCCP) that qualifies as a new home for licensing and warranty purposes. The NHCLA and the ONHWPA Registrars should be contacted for additional information about RCCPs.

The dwelling has not been previously occupied.

- One aspect of a being a “new” home is that the dwelling has not been previously occupied. Some short-term, temporary use for a purpose such as a sales office does not necessarily constitute “previous occupation” of the home. Both the NHCLA Registrar and the ONHWPA Registrar will have an interest in whether there has been any prior use of the home. It may be relevant to what information a vendor or builder needs to provide to a purchaser. It may also be relevant to a determination of whether the use was a previous occupation of the home impacting whether the statutory warranties and protections apply to the dwelling.

The new dwelling must be self-contained.

- The self-contained aspect of the residential dwelling considers whether the ordinary aspects of living such as eating, sleeping, waste management and heating are provided for as part of the home. Consideration may be had to whether the building includes the elements necessary to satisfy the requirements for an occupancy permit under [Ontario’s Building Code Act](#).

The new dwelling must be constructed as a family dwelling.

- A family dwelling is a dwelling that is used for residential purposes.

The new dwelling must be one that can be occupied on a year-round basis and not just seasonally.

- S.9.5.1.1 of Ontario’s Building Code (OBC) refers to year-round occupancy. It applies to dwelling units intended for use on a continuing or year-round basis. See: <https://www.ontario.ca/laws/regulation/120332>.
- S.9.5.1.1. also requires that the year-round occupancy be intended to be used as the principal residence of the occupant. This principal residence obligation is not



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a requirement for the statutory warranty to apply. What is important for the statutory warranty is not what was intended, but that the dwelling is capable of year-round use.

- Zoning by-laws are not relevant to whether a home is capable of year-round occupancy for warranty purposes. It is the physical characteristics of the home and not the legality of occupying it year-round that are relevant.
- A good indication of whether or not a home was designed and built for year-round occupancy is if it contains the key elements listed in the OBC necessary to grant an occupancy permit. These key elements include things such as the provision for heating, insulation, electricity (on or off-grid), potable water supply, plumbing (or means of waste disposal), sleeping and cooking areas.

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## Interpretation Examples of “Home”

### Home sold with identified and accepted surface defects

**Description:** A home that is sold with identified surface defects is a home that has been constructed by a builder and sold by the vendor to a purchaser on the understanding that the purchase price represents acceptance of the home subject to identified surface defects.

**Licensing: Required**

**Warranty Coverage: Covered**

With the limited exception of specific surface defects that are disclosed in writing to the purchaser, included in the Agreement of Purchase and Sale (APS) and accepted by the purchaser. Those surface defects are excluded from warranty coverage.

**Discussion:** A vendor cannot simply sell a home “as is” to avoid warranty coverage. Similarly, intending to have or including a term of “sold as-is” in an APS does not exempt a person from having to be licensed as a vendor nor does it exclude the home from warranty coverage.

The ONHWPA contemplates the possibility of a new home being sold with some surface defects and excludes coverage for those surface defects. S.13(2)(l) expressly excludes from warranty coverage: “(l) surface defects in work and materials specified and accepted in writing by the owner at the date of possession”.

For example, where there has been some permitted use, a result of which is that some surface defects have occurred, a home may be sold subject to those pre-existing and specified surface defects. If a purchaser agrees to purchase the home subject to the disclosed specific surface defects those defects will be excluded from warranty coverage.



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To clearly establish that certain defects were accepted by the purchaser, vendors are expected to disclose the defects to the purchaser, either in the agreement of purchase and sale or a schedule or appendix to that agreement.

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## Home built for charitable purpose

**Description:** A home built for a charitable purpose is a home that is built for or given to a registered charitable organization for the purpose of fund-raising or to provide low- or no-cost housing to one or more specified individuals.

**Licensing: Required**

**Warranty Coverage: Covered**

**Discussion:** The fact that a home is built for a charitable purpose does not mean that licensing is not required or that it is not eligible for warranty coverage. An example of a charitable purpose is where a builder donates a home to a registered charity for a lottery. The successful bidder or lottery winner can choose to take title to the home. The builder and vendor must be licensed, and the home must be enrolled.

Note that a builder cannot be its own 'charity'. A builder or vendor cannot avoid licensing obligations and the requirement to enrol a home by electing to raffle off or give away a home for promotional purposes. A key consideration is whether the dwelling was constructed for residential occupancy.

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## Coach or laneway home

**Description:** Coach or laneway homes are homes built on a lot, which already contains an existing, fully detached (and typically larger) home, making the coach or laneway home a secondary home. The construction is on the same lot as the main home. It is not constructed on a separate lot.

Typically, these secondary homes do not have independent service connections but rather, connect to the main house services for utilities such as electricity, gas, domestic water, and sewage.

**Licensing: Required**

**Warranty Coverage: Covered**



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**Discussion:** The fact that the home is small or is built on land that already has an existing home on it does not affect warranty eligibility.

Provided that the dwelling has the components of a new home (e.g., self-contained) and is constructed in accordance with the year-round requirements of Part 9 of the OBC, it will be eligible for warranty coverage if it is constructed by a builder (i.e. is not an owner-built dwelling).

For a coach or laneway home that is not on a separate building lot, the “owner” of the lot will have contracted with a licensed builder to build the home (i.e. a contract home). The home typically relies upon the ‘main’ (larger) home for supply of water or other services. This does not disqualify the home from warranty coverage. However, if a warranty claim is made concerning any such items, the source of the problem will need to be identified to determine if it is: (a) a defect pertaining to work/materials in the coach/laneway/tiny home – which may be covered, as opposed to, (b) a defect in the ‘main’ home – which would not be covered.

Sharing a lot or sharing services does not remove the obligation to be licensed nor does that fact alone exclude the home from warranty coverage.

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## “Tiny” Home

**Description:** A “tiny home” can be described as a small, self-contained dwelling unit intended for year-round use, has living and dining areas, kitchen and bathroom facilities, and a sleeping area. A tiny home can be one that is built on-site or built in a factory then brought to the property.

**Licensing: Required**

**Warranty Coverage: Covered**

**Discussion:** A tiny home can be a primary home or a separate structure on a property that already has an existing house. For the purposes of licensing and warranty coverage, a tiny home must be affixed to a permanent foundation.

Campers, recreational vehicles, cottages and other structures used on a seasonal basis do not fall within the category of “tiny home”. Different municipalities may have minimum and maximum size requirements. However, in all cases, a tiny home cannot be smaller than 17.5 m<sup>2</sup> (188 ft<sup>2</sup>), the minimum size required by the OBC.





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The Ministry of Municipal Affairs and Housing has issued a guide about tiny homes, that applies to newly built, stand-alone tiny homes that are separate buildings from existing structures on a property. The guide is available at: [Tiny Home Guide MMAH](#).

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## Home built for educational or training purpose

**Description:** An educational home is a home that is built as an educational or training tool for persons/students that may be considering the construction trades as a future career and when completed, is subsequently sold.

**Licensing: Required**

**Warranty Coverage: Covered**

**Discussion:** The fact that a home is built for an educational purpose does not mean that licensing is not required, nor does it disqualify the home from warranty coverage. Builder and vendor licensing are required, and the completed home is eligible for warranty coverage so long as it otherwise meets the definition of “home” and is being sold or built for an owner for residential occupancy. The additional purpose for which the home is built (i.e., educational) is not relevant to the issues of licensing and warranty coverage. The builder and vendor must be licensed, and the home must be enrolled (as long as there is also a vendor, builder and owner as defined).

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## Time-share interest in a residential dwelling without title ownership

**Description:** A time-share arrangement without title ownership is a contractual arrangement under which an interest in the property has been acquired by contract but the right to use the dwelling is shared among more than one purchaser of a contractual interest to occupy.

**Licensing: Not required**

**Warranty Coverage: Not covered**

**Discussion:** Warranty coverage does not extend to dwellings where the purchaser only acquires a right to occupy the dwelling for a temporary period as distinct from a title interest in the property.



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With time-sharing, a user agrees to a lease arrangement that gives the user a right to occupy the property for specified time periods. The user does not receive an ownership interest in the property and warranty coverage does not apply (see discussion of “owner” below).

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## Fractional or co-ownership interest

**Description:** A dwelling purchased through a fractional or co-ownership interest may be acquired for occupancy by each fractional owner for temporary periods. It may also be acquired by more than one person, for full-time occupancy. With a fractional or co-ownership interest, there is an ownership interest in the title to the property. For example, with tenancy in common ownership, all tenants in common have an undivided fractional share of the whole.

**Licensing: May be required depending on the terms of the co-ownership and fractional agreements**

**Warranty coverage: May be covered depending on the terms of the co-ownership and fractional agreements**

**Discussion:** Fractional and co-ownership interests may require licensing and may be covered by warranty. The fact that purchasers may have some title interest as opposed to only a contractual interest, is not sufficient to require licensing or to have warranty coverage. Where multiple sequential occupancy by the various owners of title is hardwired into the agreement of purchase and sale, it may give rise to a conclusion that the occupancy is temporary and therefore not covered by warranty. The legal arrangements, including the terms of the co-ownership arrangements and the management agreements, will be considered in determining whether what is constructed meets the definition of “home”.

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## Residential dwelling on First Nations reserve lands

**Description:** A home that is built on First Nations lands is one that is built on a tract of land that has been set aside for the use and benefit of a First Nation. Legal title to the land remains vested in the federal Crown.

**Licensing: Not required**

**Warranty Coverage: Not covered**



**Discussion:** The lands on which the homes are built are within the jurisdiction of the federal government.

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## Home rented out by the owner

**Description:** A home rented out by an owner is one that is constructed and rented to a tenant after title has transferred from the vendor to the purchaser (homeowner).

**Licensing: Required**

**Warranty Coverage: Covered**

**Discussion:** Even though the purchaser does not occupy the home, the person still becomes the “owner” of the home. The ONHWPA provides that an “owner” is “a person who first acquires a home from its vendor for occupancy” and includes a successor in title. The fact that the purchase of the home initially may be characterized as “for investment purposes” (i.e., to rent out) is not relevant. Nor is it relevant that the home is not being occupied by the original purchaser. A home may be purchased “for occupancy” but the occupancy is through the purchaser’s tenant, or a licensee such as a family member. This arrangement does not exclude the purchaser from being an “owner” under the ONHWPA.

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## Residential dwelling in a hotel condominium

**Description:** A “hotel condominium” consists of privately and separately owned suites that are rented out on a short term/nightly basis to guests, similar to a hotel. The terms of ownership and use of a hotel condo may vary. In some cases, the unit owner is specifically precluded or restricted from using the suite for personal use, whereas in other cases, the unit owner may use the suite for a certain number of days per month or per year.

**Licensing: May be required depending on the construction of the dwelling and the terms of the sales related agreements, including the Agreement of Purchase and Sale.** Licensing may not be required if the hotel condominium falls within the exclusions contained in the definition of “home” for dwellings “built and sold for occupancy for temporary periods or for seasonal purposes.”



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**Warranty Coverage: May be covered depending on the construction of the dwelling and the terms of the sales related agreements, including the Agreement of Purchase and Sale.** A hotel condominium may not be eligible for warranty coverage if it falls within the exclusions contained in the definition of “home” for dwellings “built and sold for occupancy for temporary periods or for seasonal purposes.”

**Discussion:** The definition of “home” under the ONHWPA excludes from warranty coverage dwellings “built and sold for occupancy for temporary periods or for seasonal purposes”.

Decisions on whether licensing is required and whether warranty coverage applies will depend on decisions made as to whether one or both of the following apply:

1. The physical structure of the dwelling is such that it is apparent that it was “built” for temporary or seasonal use.
2. Either or both of the sales agreement and the Description and Disclosure indicate that the dwelling unit is “sold” for temporary or seasonal use.

Regarding the physical structure, the dwelling unit must be:

- Constructed to OBC requirements for year-round occupancy;
- A self-contained household including eating, sleeping and accommodation for other day-to-day needs for the individuals occupying the dwelling; and
- Capable of use as a single-family dwelling if the owner so chooses. The fact that the owner agrees to rent out the unit or allow it to be used as a short-term occupancy unit does not in and of itself make it ineligible for warranty coverage.

Regarding the Agreement of Purchase and Sale, it cannot oblige the purchaser to make the unit available for others to use on a temporary or seasonal basis for more than 50 percent of the time. That is, it cannot be sold on the basis that it will be subject to that limitation.

For example, a sale arrangement that requires the purchaser to turn over occupancy of the unit for a rental pool for 6.5 months out of the year would make it ineligible for warranty coverage on the basis that it was sold for occupancy on a temporary or seasonal basis.

The declaration and disclosure documents may be referred to for purposes of clarifying the temporary or seasonal nature of the occupancy.

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## Home attached to an industrial or commercial building

**Description:** An industrial/residential or commercial/residential arrangement refers to a situation where a home is attached to either an industrial or commercial building. Examples include a residential dwelling attached to a manufacturing plant or commercial space.

**Licensing: Required** (with respect to the residential dwelling unit portion of the structure)

**Warranty Coverage: Covered** (with respect to the residential dwelling unit portion of the structure)

**Discussion:** A home that otherwise qualifies for warranty coverage does not become disqualified simply because it is attached to a non-residential building. Warranty coverage does not extend to the commercial or industrial parts of the structure to which it is attached.

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## Home purchased under lease to own arrangement

**Description:** A lease to own arrangement is one in which there is an agreement that provides for title to be transferred at some future date following first occupancy. Under this arrangement, the potential purchaser pays lease payments, a portion of which is applied towards the down payment. At a predetermined point in time, the potential purchaser has the option of purchasing the property.

To be an arrangement that requires a builder and vendor licence and one to which warranty coverage applies, the lease to own agreement must include:

- A clear statement of the total purchase price.
- Details of the terms of the lease including the lease payment, the future value of the accrued down payment, and a precise date of when the sale transaction is intended to close and title to be transferred to the lessee.

Generally, the question regarding warranty eligibility is: Are the lease and other agreements relating to use and acquisition of the home in effect an agreement to eventually acquire the dwelling outright?

The construction and sale of the lease to own dwelling will not require builder and vendor licensing and the residential dwelling will not be eligible for warranty coverage if the lease to own agreement includes a provision that allows the lessee or lessor to opt out of the purchase of the unit.



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The lessee is one or more persons who have entered into a lease to own agreement, have occupied the unit, but have not yet purchased or taken title to the unit.

**Licensing: Required** (so long as title transfer is for a date certain and addressed in the Agreement of Purchase and Sale, and occupancy is not temporary)

**Warranty Coverage: Covered** (so long as title transfer is for a date certain and addressed in the Agreement of Purchase and Sale, and occupancy is not temporary)

**Discussion:** So long as the title transfer is certain and contemplated in the agreement, and occupancy is not temporary, a “lease to own” agreement is considered to meet the definitions of “home”, “owner”, “vendor” and “builder” as set out in the Act.

Title does not actually have to be transferred before a warranty claim can be satisfied. This raises the potential for claims to be paid out to the lessee in a situation where title ultimately is never actually transferred (i.e., the lessee never becomes an “owner”).

The possession date (i.e., the start of the lease to own period) will be the date of possession for purposes of calculating time periods for warranty coverage eligibility.

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## Condominium dwelling unit in a leasehold condominium corporation

**Description:** A leasehold condominium corporation (LCC) is built on leased land. The LCC has a leasehold interest in the land. The purchaser of a condominium dwelling unit in the LCC acquires a ‘leasehold interest’.

A leasehold interest is an interest in the land for a set period of time. Title to the land does not transfer to the LCC or to the person with an interest in the condominium dwelling unit. A person’s interest in an LCC dwelling unit is a leasehold interest that will end when the LCC’s lease term, including any renewals of the original term, expires. Ss.165 (3) of the Condominium Act requires that for a leasehold condominium corporation, the initial leasehold term (before renewal) must be not less than 40 years less a day and not more than 99 years as specified in the declaration for the condominium.

**Licensing: Required**

**Warranty Coverage: Covered**

**Discussion:** Tarion and HCRA consider the transfer of a leasehold interest in this situation to be like a transfer of title in all important respects. For example, the leasehold



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condominium “owner” can mortgage, lease and/or transfer his/her interest without the consent of the landlord or the condominium corporation. The leasehold condominium owner is therefore, considered to be an “owner” under the ONHWPA.

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## Life lease of residential dwelling unit

**Description:** In a life lease agreement, the life lease holder or purchaser is purchasing a right to occupy a life lease residential dwelling unit until they sell the life lease (if permitted), return the lease with or without a payment from the lessor, the fixed maximum term is reached, there is no provision for next of kin to continue to occupy the unit, or the life lease holder passes away. Some life lease arrangements set a fixed term, e.g., 49 years.

Life lease arrangements allow for independent living with fewer personal care supports than might be found in a retirement home or long-term care facility. A life lease gives the life lease holder a right to occupy a unit, not ownership of a unit. Eligibility criteria typically include a minimum age and the ability to live independently.

**Licensing: Not required**

**Warranty Coverage: Not covered**

**Discussion:** A life lease arrangement does not have an “owner”, “vendor” or “home” as defined in the ONHWPA. It has a lessor, lessee, and a contractual right to occupy a specified unit – not an ownership right.

To qualify for warranty coverage under the ONHWPA there must be an “owner”, a “vendor” and a “home”.

- No “Owner”  
The ONHWPA defines an “owner” as “a person who first acquires a home from its vendor for occupancy, and the person’s successors in title”. Implicit in this definition is the requirement that the “owner” obtain title and ownership of the home. In a life lease arrangement, the purchaser is not an “owner” as title and ownership are not transferred.
- No “Vendor”  
Vendor is defined in the ONHWPA to be “a person who sells on his, her or its own behalf a home not previously occupied to an owner and includes a builder who constructs a home under a contract with the owner.” The definition of vendor is therefore contingent on ownership (by virtue of the reference “sells...to an



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owner”) and, for the same reason as outlined above, the definition is not met in a life lease arrangement.

- Not a “home”

A life lease unit may also be excluded from coverage under the ONHWPA if it is a dwelling unit in a multiple unit residential building which is not a condominium. The definition of “home” in the ONHWPA is:

- a. A self-contained one-family dwelling, detached or attached to one or more others by one or more common walls;
- b. A building composed of more than one and not more than two self-contained, one-family dwellings under one ownership;
- c. A condominium dwelling unit that is a residential dwelling, including the common elements in respect of which the unit has an appurtenant common interest as described in the condominium declaration of the condominium corporation; or
- d. Any other dwelling of a class prescribed by the regulations as a home to which this Act applies, and includes any structure or appurtenance used in conjunction there with but does not include a dwelling built and sold for occupancy for temporary periods or for seasonal purposes.

The only class of multiple unit residential building that might meet the definition of “home” is a condominium.

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## Log home

**Description:** Log homes use wood logs stacked horizontally to form an integral part of the structure and the building envelope.

**Licensing: Required**

**Warranty Coverage: Covered**

**Discussion:** The material used in the construction of the home does not determine whether a home has warranty coverage.

The main issue that arises in respect of log homes is whether a home is a “seasonal” dwelling in which case it would not meet the definition of “home” under the ONHWPA.

Provided that the home is constructed in accordance with the Ontario Building Code, the home will qualify for warranty coverage.





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## Mobile home on a permanent foundation

**Description:** A mobile home is a single-section or multiple-section, self-contained family dwelling, and built off-site. The mobile home will have a vehicle chassis and will be affixed to a permanent foundation.

A permanent foundation is a foundation that complies with the requirements of the OBC. The mobile home is affixed to the foundation by the same vendor of the mobile home or by a person or entity under contract with the vendor.

**Licensing: Required**

**Warranty Coverage: Covered** (where vendor arranges for dwelling unit to be affixed to permanent foundation)

**Discussion:** To qualify for coverage, the mobile home must meet two criteria:

- (1) It must meet the requirements of CSA A277 or CSA Z240 MH Standard and be capable of year-round occupancy; and
- (2) It must be installed on a permanent foundation (i.e. a foundation that complies with the requirements of the Ontario Building Code) and the vendor of the mobile home is responsible for the construction of the foundation and the installation/affixing of the mobile home to it.

Typically, the owner of the home will have title to the property to which the home is affixed. If the owner does not have title to the underlying land the analysis will be more complex.

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## Modular and manufactured home on a permanent foundation

**Description:** A modular home is a home that is made up of finished sections or modules that are built off-site, and which, when assembled together, form a complete, self-contained family dwelling.

Whether described as a modular or a manufactured home, the home is one that is almost entirely built in a factory, with attached walls, floor, ceiling, wiring, plumbing and interior fixtures in place in sections or modules before transportation to the site. The sections or modules are then assembled and affixed to a permanent foundation on site by the vendor. The vendor of the dwelling will be responsible for the construction of the



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foundation and the installation of the home onto the foundation, or for contracting to have the foundation constructed and the home installed on it.

A permanent foundation is a foundation that is constructed in accordance with the requirements of the OBC.

**Licensing: Required** (where vendor is responsible for constructing the foundation and for affixing the dwelling unit to it)

**Warranty Coverage: Covered** (where vendor is responsible for constructing the foundation and for affixing the dwelling unit to it)

**Discussion:** To qualify for coverage, the modular home must be affixed to a permanent foundation. A permanent foundation is a foundation that is constructed in accordance with the requirements of the OBC and the home is affixed to the foundation by the same entity who sells the home to the owner.

Typically, the owner of the home will have title to the property to which the home is affixed. If the owner does not have title to the underlying land the analysis will be more complex.

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## Panelized or kit home

**Definition:** A “panelized home” or “kit home” means a complete, self-contained, one-family dwelling assembled on site using factory-built components and affixed to a permanent foundation.

The structural components of the home, walls, roof, and floor systems are constructed in a factory and delivered to the site to be assembled and the balance of the home finished. If the owner has control of the assembly and finishing, it is not defined as a home for purposes of licensing and warranty coverage. Though unlike a modular home, a panelized or kit home will typically involve more assembly and related work at the installation site which is generally completed by the owner. The result is that these homes will not necessarily be covered by the statutory warranty as there will not be a “builder” who has supplied all the work and materials for the home.

However, if a kit home intended for year-round occupancy is sold, assembly arranged for by the vendor and the vendor is also responsible for constructing the foundation and for affixing the kit home to it, this may be a home that both requires licensing and enrolment for warranty coverage.



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**Licensing: Builder and Vendor Licensing Required**, where vendor is responsible for the assembly of the kit, the foundation and for affixing the finished dwelling unit to the foundation. Where vendor is only responsible for the sale of the kit and a builder assembles the kit on a permanent foundation, vendor is only a supplier of materials and therefore does not have to be licensed, however the builder who assembles the finished dwelling unit must be licensed.

**Warranty Coverage: Covered** where vendor and/or builder is responsible for all of the assembly of the kit, the foundation and for affixing the finished dwelling unit to the foundation.

**Discussion:** For licensing and to qualify for warranty coverage, there must be a builder who is supplying the work and materials, the panelized or kit home is intended for year-round occupancy, and must be installed on a permanent foundation that complies with the requirements of the Ontario Building Code. The vendor of the home will be responsible for constructing the foundation and for affixing the home to it.

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## Seasonal home – a home that does not meet year-round occupancy requirements of the OBC

**Description:** A seasonal home is one that does not meet the requirements of the Ontario Building Code for year-round occupancy (e.g., it has no insulation or provision for winter heat).

**Licensing: Not required**

**Warranty Coverage: Not covered**

**Discussion:** The definition of “home” in the ONHWPA and the NHCLA does not include dwellings that are built and sold “for seasonal purposes”. A home built for “seasonal purposes” (or a “seasonal home”) is one that is not constructed for purposes of year-round occupancy.

The intended seasonal use or how the home is actually occupied is not a relevant consideration (e.g., as a cottage or recreational property only during the summer months). Whether the home has been constructed for year-round occupancy is relevant.

The means of access to the property (such as by boat) and intended use as a principal versus secondary residence are not relevant considerations.

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## “Shell” home

**Description:** A “shell” home is a dwelling in respect of which a builder completes the exterior ‘shell’ of the building (i.e., structural elements) but does not finish the interior elements.

For a “shell” home to meet the definition of “home”, it must be one that meets the requirements for an occupancy permit as provided for in Division C, s.1.3.3.1 to s.1.3.3.6 of Regulation 332/12 made under the Building Code Act, as applicable.

**Licensing: Required** (where the shell home satisfies the Chief Building Official of the municipality of the minimum requirements for occupancy)

**Warranty Coverage: Covered** (where the shell home satisfies the Chief Building Official of the municipality of the minimum requirements for occupancy)

**Discussion:** The OBC has different rules that apply for purposes of permitting occupancy, depending on the type of building and the proposed use of the building.

Occupancy and temporary occupancy can be permitted for residential dwellings even though part of the interior of the dwelling remains unfinished. For example, for certain dwellings, the requirement is that “the building envelope, with respect to the dwelling unit to be occupied, is substantially complete including, but not limited to, cladding, roofing, windows, doors, assemblies requiring fire-resistance ratings, closures, insulation, vapour barriers and air barriers”, and “required plumbing fixtures in the dwelling unit to be occupied are substantially complete and operational”.

Depending on the construction, certain walls, partitions, and floor assemblies may be required to be fire separations. Completion of these components would be required for purposes of an occupancy permit.

### **Usual elements of the “shell” of a dwelling constructed as freehold or low-rise condominium:**

In a freehold or low-rise condominium, the elements of the “shell” typically include:

- Footings/foundation
- Framing
- Exterior cladding
- Building envelope
- Heating distribution system (roughed in and capped)
- Electrical distribution system (roughed in)
- Plumbing distribution system (roughed in)



## Usual elements of the “shell” of a dwelling constructed as a high-rise condominium:

In a high-rise condominium, the elements of the “shell” typically include:

- Building envelope
  - Floor assemblies constructed to the sub-floor
  - All installations with respect to the provision of water and sewage services (roughed in)
  - All installations with respect to the provision of heat, ventilation, and air conditioning (roughed in)
  - All installations with respect to the provision of electricity (roughed in)
- 

## Model or Show Home

**Description:** A model or show home is a home that has been constructed and used for the purposes of one or both of:

- a) Showcasing design features, construction details and finishing quality of a builder’s product; and
- b) A temporary business use such as a vendor’s sales office or décor centre.

Rather than sitting vacant, it is not uncommon for a model home to be used for business purposes (e.g., as a sales office) by the vendor prior to its eventual sale.

## Licensing: Required

## Warranty Coverage: Covered

**Discussion:** Use of a home as a model home whether to showcase aspects of the homes being constructed or as a temporary business use, such as a sales office or décor centre, does not remove the requirement for having a licensed builder and vendor, nor does it remove the obligation to enroll the home for warranty coverage. Like a new home sale that has pre-existing surface defects drawn to the purchaser’s attention, any pre-existing surface defects in a model home must be detailed in the agreement of purchase and accepted by the purchaser. Surface defects accepted by the purchaser in writing at the time of purchase will be excluded from warranty coverage.

A home that otherwise qualifies for warranty coverage does not become disqualified simply because it was used by the vendor on a temporary basis as a model/show home, sales office or décor centre. As with other warranted homes, the period of warranty coverage for a model home will begin on the date of possession by the purchaser.

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## Home transferred in a non-arm's length transaction

**Description:** A non-arm's length transaction is one in which a vendor transfers a home to a party to whom the vendor is related personally or professionally, such as where a vendor corporation sells a home to one of its shareholders or to an affiliated corporation.

**Licensing: Required**

**Warranty Coverage: Covered**

**Discussion:** The fact that the sale of the home is from the vendor to a non-arm's length party does not mean that the vendor does not need to be licensed, nor does it mean that the home is excluded from warranty coverage under the ONHWPA.

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## Home first occupied by the vendor/builder

**Description:** This is a home that is initially built for sale but subsequently occupied by the vendor/builder prior to it being offered for sale to a third-party purchaser or occupied by a third party.

**Licensing: Required** (will have been required when the home was originally being constructed)

**Warranty Coverage: Not covered**

**Discussion:** Enrolment of the home would have been required if being built for sale. If subsequently excluded from coverage because of the vendor/builder taking occupancy, it will not have warranty coverage as it becomes a home that has been previously occupied in this case by the vendor/builder or a third party occupying with their permission, prior to sale to a third-party purchaser.

A new home that is occupied by the vendor/builder of the home as a residential dwelling or by another third party, will not qualify for warranty coverage if subsequently sold, as it will have been "previously occupied" and no longer meets the definition of "home" and the seller of the home will no longer meet the definition of "vendor".

The definition of "vendor" is "a person who sells on his, her or its own behalf a home not previously occupied to an owner and includes a builder who constructs a home under contract with the owner. Thus, where a new home has been "previously occupied"



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before a sale to a third-party, the home will not qualify for coverage under the ONHWPA.

The test is whether there was genuine “occupancy” by the vendor/builder or whether it was made to appear as though there was occupancy for the purpose of disqualifying the home from warranty coverage.

Consideration will be had to whether there is evidence that the home was being built for purposes of sale. A subsequent decision might genuinely be made by the vendor/builder to elect to occupy the home as their residential dwelling or to rent it out, and having done so, remove it from warranty coverage. It is in this situation that clear evidence of genuine occupancy is required.

Each case will require a fact-specific determination of whether there was a genuine occupancy by the vendor/builder (v/b) or third party (e.g. tenant). The indicators of genuine occupancy include the following:

- The v/b changed the address on their driver’s licence to the new home.
- The v/b has various bills (e.g., utility, telephone, gas) delivered to the address of the new home.
- The v/b does not have another residence.
- The premises have been furnished and the appliances or utilities have been connected. The utilities are being used at a level that indicates genuine occupancy of the dwelling.
- The v/b is physically living in the premises – e.g., simply entering into a lease agreement without the lessee having physically moved into the property is not enough to constitute “previous occupancy” under the ONHWPA.
- The v/b is not just sleeping at the residence. There is an element of residency or tenancy – “simple possession” does not suffice.
- The v/b was not living in the house illegally – e.g., before it was completed and before occupancy was permitted by the municipality.
- The v/b has been living in the home for a not insignificant period of time (there is no cut off point, but in general, the longer the occupancy the more likely it is genuine occupancy).

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## Owner contracts to have home built on their lands

**Description:** An owner of land may contract with a licensed builder to build a home on the land intending to sell the home. If the owner sells the home without occupying it, the owner is acting as a vendor and must be licensed before signing the purchase agreement. In this case, the owner will also be responsible to the purchaser for the statutory warranties.



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However, if the owner of the land chooses to live in the home, or keep it and rent it out, instead of selling it as originally planned, then the builder is deemed to be the vendor and is therefore responsible for the statutory warranties.

**Licensing: Required** (the builder of a contract home is deemed to be a vendor for warranty purposes)

**Warranty coverage: Covered**

**Discussion:** The fact that an owner intended to act as a “vendor” of a home built under contract with a builder, is not determinative of whether the home will have warranty coverage. A person who contracts with a builder to construct a home on the owner’s property is simply an “owner” and therefore no different than an owner whose home qualifies for warranty protection in a contract home situation – unless the owner proceeds to sell the home and acts as a vendor.

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## Home used for Residential and business purposes (live/work units)

**Description:** A live/work unit is a home used by the owner both as a residence and for business purposes.

**Licensing: Required**

**Warranty Coverage: Covered**

**Discussion:** Even though the home is being used for business as well as residential purposes, the definitions of “home” and “owner” in the ONHWPA may still be met.

A “home” is defined under the ONHWPA as follows:

- a) A self-contained one-family dwelling, detached or attached to one or more others by common wall;
- b) A building composed of more than one and not more than two self-contained, one-family dwellings under one ownership;
- c) A condominium dwelling unit that is a residential dwelling, including the common elements in respect of which the unit has an appurtenant common interest as described in the condominium declaration of the condominium corporation; or
- d) Any other dwelling of a class prescribed by the regulations as a home to which this Act applies, and includes any structure or appurtenance used in conjunction therewith but does not include a dwelling built and sold for occupancy for temporary periods or for seasonal purposes.





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The fact that there is some business element to the dwelling such as a home office does not mean that licensing is not required or that there is no warranty coverage so long as the home meets the definition prescribed in (a) to (d) above and does not fall within the exclusion of one built for temporary use or seasonal purposes.

An “owner” is defined under the Act as “a person who first acquires a home from its vendor for occupancy, and the person’s successors in title”. Since the owner is using the home partly as a residence, then the home is acquired, at least in part, “for occupancy”, and this part of the definition is met.

Any defects in work done by the owner to modify the home for the business (e.g., wiring, plumbing, etc.) would be excluded from coverage by virtue of s.13(2)(a) of the ONHWPA which excludes defects in materials, design and work supplied by the owner.

For situations involving a residential unit attached to a commercial building, see the discussion under [“Home attached to an industrial or commercial building”](#).

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## Accommodation for detention, care and support, education, travel, and similar purposes

**Description:** A range of living accommodation is provided for detention, care and treatment, education, travel, and similar purposes. Units in these facilities are not “homes” within the meaning of the ONHWPA either because they do not give rise to an ownership interest or because they are intended for occupancy for temporary periods. This would include a unit in the following types of accommodation:

- Hotel
- Motel
- Inn
- Hostel
- Dormitory
- Post-secondary education residence
- Boarding house
- Work camp residence
- Care facility, including a retirement home and long-term care facility
- Psychiatric facility
- Detention facility

**Licensing: Not required**

**Warranty Coverage: Not covered**



## Contract home

**Description:** A contract home is a home built under a construction contract between the owner of the land on which the home will be built and a builder who undertakes to construct the home. A contract home can take the form of any one of the homes described in this guideline.

### Licensing: Required

**Warranty coverage: Covered** (but with warranty coverage rules that are unique to contract homes)

**Discussion:** Ss.14 (2) of the ONHWPA provides that, “Subject to the regulations, an owner of land who has entered into a contract with a builder for the construction of a home on the land and who has a cause of action against the builder for damages resulting from the builder’s failure to substantially perform the contract, is entitled to receive payment out of the guarantee fund of the amount by which the amount paid by the owner to the builder under the contract exceeds the value of the work and materials supplied to the owner under the contract.”

The condition that must be satisfied for a contracted home to be entitled to compensation from the guarantee fund is that the owner of land must have a cause of action against the builder for damages resulting from the builder’s failure to substantially perform the contract. This substantial failure to perform the contract may give rise to a financial loss claim. If the contract is substantially performed it is the various construction defect warranties that may apply.