

# Builder Bulletin 42

Issue Date: March 2009

Effective for homes with a date of possession on or after October 1, 2003

## CUSTOMER SERVICE STANDARD

This Bulletin replaces Builder Bulletin 42 (Revised) issued in July, 2005.

### BACKGROUND

On March 15, 2004, Tarion Warranty Corporation ("Tarion") introduced Bulletin 42 (Revised) which revised the minimum after-sales warranty service standard (the *Customer Service Standard*) for builders. Bulletin 42 (Revised) provided vendors and builders (collectively, "builders") of new freehold homes (including contract homes) and condominium units (collectively, "homes"), with details of the *Customer Service Standard*.

The *Customer Service Standard* ("CSS") applies to claims relating to homes but does not apply to claims made in respect of the common elements of a condominium project.

Tarion engages in ongoing review of the *Customer Service Standard* to improve it over time.

### WHAT THIS BULLETIN IS ABOUT

This Bulletin explains the *Customer Service Standard* and incorporates certain changes based on the ongoing review of its application by Tarion.

The following parts make up the *Customer Service Standard*:

- Part A: The *Homeowner Information Package*: A document published by Tarion that provides purchasers with an outline of the responsibilities of the homeowner, Tarion and the builder;
- Part B: The *Pre-Delivery Inspection* (PDI): A mandatory home inspection that builders are required to conduct with purchasers on or before the date of possession;
- Part C: The *Statutory Warranty Claims Process*: The process governing how homeowners must submit Statutory Warranty Forms for warranty claims; timelines within which builders must respond to and resolve claims; and the role of Tarion in the process; and
- Part D: *Warranty Review*: A builder-requested conciliation.

The *Customer Service Standard* was developed following consultation with builders, the Ontario Home Builders' Association (OHBA), consumers and government. It set out the minimum standards required by Tarion. Builders are encouraged to exceed these standards.

This March 2009 version is issued to:

- Address a CSS process change in which the PDI form is no longer sent with the CCP, but rather is submitted to Tarion upon request. (See Parts A and B below.)
- Address a process change in which a confirmation of receipt of *Homeowner Information Package* is no longer a separate document but is found in the CCP.
- Update the Bulletin so that references to Ontario New Home Warranty Program or ONHWP are changed to Tarion.

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## DEFINITIONS

In this Bulletin, the following terms have the meanings described below:

### Act

The Act is the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 and Regulations, as amended.

### Conciliation

A conciliation is a process in which Tarion assesses whether a disputed item is warranted (i.e. covered by statutory warranty) and/or whether Tarion supports the way a repair was done. Where possible, Tarion will base its conciliation decisions on the *Construction Performance Guidelines*. A conciliation may include an inspection at the home (if items that require repair are involved) or a desk assessment (if items can be assessed based on a paper record, e.g., delayed closing/occupancy compensation claim) and may also include a review of the purchase agreement, the completed PDI Form and other relevant documentation. A Warranty Review is also a type of conciliation. A Warranty Assessment Report is issued by Tarion following a conciliation. The builder is expected to fully comply with any direction that has been provided by Tarion in the Warranty Assessment Report.

### PLEASE NOTE

Only items identified in a properly submitted Statutory Warranty Form will be reviewed during the related conciliation. Items raised for the first time by a homeowner during a conciliation will not be addressed at that conciliation. Homeowners will be directed to add these new items to their next Statutory Warranty Form as appropriate.

### Chargeable Conciliation

A chargeable conciliation means a conciliation in which:

- there are items identified as warranted by Tarion in a Warranty Assessment Report;
- the builder was not denied reasonable access by the homeowner to rectify the problem (see "Reasonable Access For Repair" on p. 9 of this Bulletin); and
- the builder could have avoided the conciliation by attending to the items raised in the homeowner's Statutory Warranty Form.

Even if only one item is confirmed through the conciliation process by Tarion to be warranted, whether major or minor in nature, the conciliation will be considered chargeable to the builder.

A conciliation may be deemed “not chargeable”, if one or more of the following exceptions apply to every item determined to be warranted in the Warranty Assessment Report:

1. The builder can demonstrate that the homeowner denied reasonable access to repair or resolve the warranted item before the conciliation; or
2. A conciliation is conducted by Tarion because the builder and the homeowner disagree about the method or timing of the repair to an item that the builder has previously agreed is warranted, and Tarion supports the builder’s recommendation; or
3. The builder can show (a) that it has a history of satisfactory after-sales service to homeowners; and (b) by way of a written acknowledgement from the homeowner, that the homeowner had previously confirmed they were satisfied with the state of the item based on the builder’s repair or that the dispute relating to the item was otherwise resolved by the builder. As a result, the builder was completely satisfied that the item had been resolved and took no further action in respect of the item prior to the conciliation.

In addition to the above exceptions, Tarion maintains sole discretion to consider changing a finding of chargeability where the finding relates to an “Extraordinary Situation” as described in Appendix A to this Bulletin.

### **Deliver**

For the purpose of this Bulletin, deliver includes delivery by hand, courier, facsimile transmission, regular mail or registered mail. In the case of regular mail, delivery is effective on the date of receipt. In the case of registered mail, delivery is effective five business days after the day of mailing or on the date of receipt, if earlier. Delivery by facsimile transmission is effective on the day sent regardless of whether or not the day is a business day. Delivery by hand or courier to Tarion is effective on the business day received, if received during Tarion’s office hours. Builders should check the Tarion website for our regular office hours and for office hours during holidays.

### **PROOF OF DELIVERY**

If there is a dispute concerning delivery, the onus is on the builder to establish when delivery occurred. To avoid confusion, builders are encouraged to use methods of delivery (such as registered mail or courier) which will ensure that the builder will have proof of delivery.

### **Purchase Agreement**

An agreement between a vendor and any person providing for the purchase by such person of a home and, for the purpose of this Bulletin, includes a construction contract for the construction of a new home.

### **Purchaser**

Purchaser means a person (or persons) who enters into a purchase agreement and includes an assignee of the purchaser’s interest in a purchase agreement.

### **Regulations**

The Regulations under the Act are R.S.O. 1990, Regulations 892, 893, 894 and 165/08, as amended.

### **Statutory Warranty Claim**

A Statutory Warranty Claim is a claim made by a homeowner to Tarion concerning a breach of any builder warranty prescribed by the Act and Regulations.

### **Statutory Warranty Form**

A Statutory Warranty Form is the form required by Tarion to be completed and submitted to Tarion in order for a homeowner to make a valid claim for a breach of a statutory warranty, or in the case of an emergency situation, a claim for reimbursement. Tarion reserves the right to determine whether a homeowner complies substantially

with the requirements of a Statutory Warranty Form. The Tarion Statutory Warranty Forms (either included in the *Homeowner Information Package*, or available upon request) include:

- 30-Day Form;
- Year-End Form;
- Second-Year Form;
- MSD Form;
- Emergency Form;
- Air Conditioning Form;
- Delayed Closing Form (for freehold homes); and
- Delayed Occupancy Form (for condominium units).

### **Submit**

Submission, submit and submitted, when used in relation to a Statutory Warranty Form, mean to submit in accordance with the Regulations.

### **Warranty Assessment Report**

A Warranty Assessment Report is a written report issued by Tarion, detailing whether any items listed in a Statutory Warranty Form are warranted and/or whether Tarion supports the way any disputed repair was done or the method or timing of the repair. A Warranty Assessment Report may indicate that further investigation is needed.

## **PART A. THE HOMEOWNER INFORMATION PACKAGE**

The *Homeowner Information Package* is a document developed by Tarion that builders are required to give to purchasers of new homes. It provides information about the warranty rights of new home purchasers under the Act. The *Homeowner Information Package* contains:

- Information about what is covered by warranty, what is excluded from coverage and how to use the Statutory Warranty Forms;
- Information about the Statutory Warranty Claims Process (Part C of this Bulletin), including the responsibilities of the builder, the homeowner and Tarion;
- A form for the Appointment of Designate for Pre-Delivery Inspection (“PDI”) that builders may request purchasers use when they intend to send a designate, in their place, to the PDI. If the purchaser is attending the PDI with their designate and is intending to sign the documents, then no Appointment of Designate Form is required; and
- The 30-Day Form, Year-End Form and Second-Year Form.

### **Builder Responsibilities**

Builders are required to:

1. Include a provision in every purchase agreement, stating that a *Homeowner Information Package* is available from Tarion and that the builder will deliver one to the purchaser at or before the PDI;
2. Add to the *Homeowner Information Package* their contact information for customer service and emergency situations (e.g., in the form of a covering letter or on a business card inserted in the appropriate place inside the booklet);
3. Deliver to each home purchaser the complete and current edition of the *Homeowner Information Package* no later than the PDI but preferably well before that date, such as at the time of colour selection, in order to provide the information to the purchaser in a timely manner; and
4. Ask the homeowner(s) or their designate at the PDI to initial the confirmation of receipt of the *Homeowner Information Package* in the Certificate of Completion and Possession and Warranty Certificate (“CCP”); and
5. Deliver copies of the completed CCP to Tarion as soon as possible and no later than 15 days after the date of possession.

Tarion will ensure that a *Homeowner Information Package* for each home enrolled is available for distribution by the builder to the homeowner. Additional copies are available from Tarion at a fee and can be ordered on Tarion's website at [www.tarion.com](http://www.tarion.com) or by calling Tarion at 1-877-982-7466.

## **PART B: THE PRE-DELIVERY INSPECTION (PDI)**

On or before the date of possession, the builder is required to conduct a PDI of the home with (at the purchaser's option): (i) the purchaser; or (ii) the purchaser's designate; or (iii) both the purchaser and his/her designate, and to complete the CCP and the PDI Form with the purchaser, or with the purchaser's designate if the purchaser is not attending the PDI.

The PDI Form is designed to capture deficiencies in the home at the time of possession, including items inside and outside the home that are incomplete, damaged, missing, or not operational, or items that cannot be assessed because they are obscured from view or are inaccessible. Builders may use their own PDI form, instead of Tarion's standard PDI Form, provided that it contains, at minimum, all of the information that is contained in Tarion's standard PDI Form.

The PDI itself should be as thorough as reasonably possible. The builder should take this opportunity to explain how the home and its systems work, which may prevent some customer service calls in the future.

### **PDI AND DESIGNATE**

#### **Who may be a "designate"?**

The purchaser may put forward any person as a designate. The designate may be another member of the family or a friend, or may be, for example, a home inspector or engineer. The designate is there either to be a proxy for the homeowner or to provide the homeowner with advice or both.

#### **What should I do if a purchaser and/or their designate does not attend the PDI?**

Tarion's expectation is that every builder will use their best efforts to arrange with each purchaser a mutually convenient time to conduct the PDI with the purchaser and/or the purchaser's designate.

The builder's best efforts should include:

- Contacting the purchaser well in advance to set up a mutually convenient time to conduct the PDI;
- Providing the purchaser with a few reasonable choices of date and time for the PDI; and
- Explaining to the purchaser that he/she can send a designate instead of attending the PDI personally or bring a designate with him/her.

If, despite these efforts, the purchaser does not attend the PDI or send a designate in his/her place, the builder should conduct the PDI on their own. The PDI Form and the CCP should be completed as usual except that the builder should note on them "Purchaser did not attend", and the builder should forward the *Homeowner Information Package* to the purchaser by registered mail if it has not yet been provided.

Copies of the completed PDI Form and the completed CCP should be sent to Tarion as usual and should be provided to the purchaser.

Builders may wish to include in their purchase agreements a specific provision about how the PDI date will be arranged. Builders should seek their own legal advice about the provisions in their purchase agreements.

## **Builder Responsibilities**

Builders are required to:

1. Include a provision in every purchase agreement, whereby the parties agree that the builder and either one or both of the purchaser and the purchaser's designate (at the purchaser's option) will meet at the home on or before the date of possession to conduct the PDI;
2. Make an appointment with the purchaser well in advance to conduct the PDI at a time that is mutually convenient. Purchasers may attend in person, send a designate to conduct the PDI on their behalf or attend with their designate;
3. Complete the standard PDI Form provided by Tarion or the builder's own PDI form if appropriate;
4. During the PDI, go through the PDI Form with the purchaser, or with the purchaser's designate, and ensure that any deficiencies, unauthorized substitutions, or any items that cannot be inspected because they are obscured from view or inaccessible, incomplete or missing are noted on the PDI Form;
5. Confirm the date of possession with the purchaser or with the purchaser's designate, and fill in the date of possession on the CCP and the PDI Form. The date of possession is the date when the builder transfers the control and right to occupy the home to the purchaser. (This is not the date of the PDI, unless the purchaser will be assuming possession and/or occupancy on the same day that the PDI is conducted.);
6. Confirm the enrolment number on the CCP. Complete and sign the CCP and the PDI Form with the purchaser or the purchaser's designate, and give him/her the purchaser's copy of the completed CCP and PDI Form. If the purchaser is not attending the PDI with the designate, and the designate is signing documents on the purchaser's behalf, the builder should ask the purchaser to provide a written document confirming that the designate is appointed as designate. For this purpose, Tarion has designed a standard form called "Appointment of Designate", which is included in the *Homeowner Information Package*. The purchase agreement should specify which form of written authorization is satisfactory when appointing a designate;
7. Deliver copies of the completed CCP to Tarion as soon as possible and no later than 15 days from the date of possession; and
8. Deliver copies of the PDI to Tarion or the homeowner upon request and in particular when a conciliation or claim inspection is requested.

If a builder fails to deliver completed CCPs or PDI Forms to Tarion (as specified above), this will be considered in Tarion's risk assessment of the builder, conducted as part of the builder's annual renewal of registration. Also, if the builder has not delivered a completed CCP, Tarion will not know the date of possession of that home. In such circumstances Tarion will use the date of possession provided by the homeowner when applying the customer service standard rules, unless there is clear evidence to contradict the homeowner's date.

### **HOW TO GET COPIES**

Tarion will provide the builder with a CCP for each home enrolled. Copies of the standard PDI Form are available on request. For reference, an electronic version of the standard PDI Form is available on [www.tarion.com](http://www.tarion.com)

## **PART C: THE STATUTORY WARRANTY CLAIMS PROCESS**

The Statutory Warranty Claims Process (the Claims Process) involves specific steps - steps homeowners must take to submit Statutory Warranty Forms; repair periods for builders to complete warranty repairs; and steps Tarion will take to become involved if necessary. Tarion becomes involved in claims only at the times described. However, homeowners may contact their builders at any time. Tarion is also available on an informal basis to provide information to the builder and to homeowners at any time.

The time periods in the Claims Process are generally fixed in the Regulations, and they may be adjusted in the following two sets of circumstances. In recognition of difficulties which builders may face in scheduling

appointments with homeowners and/or performing work in the holiday period between December 24<sup>th</sup> and January 1<sup>st</sup> (inclusive) every year, any time period fixed in the Claims Process will be extended if any portion of the time period occurs during this holiday period. Time periods which would span, or would start or end during this holiday period will be extended by nine days and all related subsequent time periods will be adjusted so that they remain consecutive. An example of this is shown on page 13.

In addition, where a time period ends on a weekend or holiday, the time period is extended to end on the next business day which is not a holiday (i.e., where the time period to submit a 30 Day-Form ends on a Sunday, the time period will be extended to end on the next Monday where Monday is not a holiday). An example of this is also shown on page 13.

#### **EXCEPTIONS TO THE CLAIMS PROCESS**

Exceptions are certain situations where the Claims Process is modified to take into account special circumstances (i.e., Emergencies, Seasonal Items, Special Seasonal Items, Air Conditioning between May 15 and September 15, and Extraordinary Situations) that apply either to individual builders or are industry-wide. See Appendix A for a detailed explanation of the Exceptions to the Claims Process.

Note that Tarion may in its sole discretion, extend or shorten any times set out in the Claims Process (including those described in Appendix A) if it determines that a builder is unable or unwilling to repair or resolve the claim items covered by a warranty.

The Claims Process differs slightly depending on whether the date of possession of the home is before or after September 1, 2005.

#### **STEP 1: Homeowner Statutory Warranty Claim**

The homeowner is entitled to make a Statutory Warranty Claim with respect to a statutory warranty by submitting the applicable Statutory Warranty Form to Tarion at certain times.

#### **First Year Process for homes with a date of possession on or after October 1, 2003 and before September 1, 2005**

There are two opportunities for homeowners to submit Statutory Warranty Forms to Tarion in the first year of possession:

- (a) Within the first 30 days after the date of possession: Once within the first 30 days after the date of possession, the homeowner is entitled to submit a 30-Day Form listing any items that are believed to be covered by a statutory warranty. The homeowner may submit only one 30-Day Form.
- (b) Within the 30 days before the first year anniversary of the date of possession: Any time within the 30 days before the first anniversary of the date of possession, the homeowner is entitled to submit a Year-End Form, listing any items that are believed to be covered by a statutory warranty. If the homeowner submits more than one Year-End Form to Tarion before the end of the first year of possession, the items listed on the last Year-End Form submitted will *replace* the items on all Year-End Forms that were submitted earlier.

#### **First Year Process for homes with a date of possession on or after September 1, 2005**

There are two opportunities for homeowners to submit Statutory Warranty Forms to Tarion in the first year of possession:

- (a) Within the first 30 days after the date of possession: Once within the first 30 days after the date of possession, the homeowner is entitled to submit a 30-Day Form listing any items that are believed to be covered by a statutory warranty. The homeowner may submit only one 30-Day Form.
- (b) Within the 30 days before the first year anniversary of the date of possession: Once within the 30 days before the first anniversary of the date of possession, the homeowner is entitled to submit a Year-End Form,

listing any items that are believed to be covered by a statutory warranty. The homeowner may submit only one Year-End Form.

Regardless of the date of possession, the homeowner is required to use either the 30-Day or Year-End Form, as appropriate, for any Statutory Warranty Claim made in the first year of possession. This includes Statutory Warranty Claims for one-year warranty items, as well as items covered under the two-year and seven-year (Major Structural Defect) warranties.

If the homeowner does not submit either a 30-Day Form or a Year-End Form within the first year of possession, then Tarion will consider no further claims regarding one-year warranty items.

#### **FIRST YEAR EXAMPLE**

For a home with a date of possession of June 6, 2005, the first day the 30-Day Form could be submitted is June 7, 2005 (the first day after the date of possession). The last day the 30-Day Form could be submitted is July 6, 2005 (the 30<sup>th</sup> day after the date of possession). Only one 30-Day Form will be accepted by Tarion.

For a home with a date of possession of June 6, 2005, the first day that the Year-End Form could be submitted is May 7, 2006. The last day the Year-End Form could be submitted is June 5, 2006.

#### **Second Year Process (all dates of possession on or after October 1, 2003)**

At any time, and as often as required, during the second year of possession, the homeowner may make a Statutory Warranty Claim for items under the two year warranty or under the Major Structural Defect warranty. To do so, the homeowner must submit to Tarion a completed Second-Year Form.

If the homeowner does not submit a Second-Year Form by the end of the second year of possession, then Tarion will consider no further claims regarding two-year warranty items (unless the appropriate Statutory Warranty Form has been submitted in respect of those items in the first year of possession, and the claim has not been withdrawn).

#### **Years Three to Seven Process (all dates of possession on or after October 1, 2003): Major Structural Defect (MSD)**

Any time after the end of the second year, but no later than the expiry of the seventh year of possession, the homeowner may make a Statutory Warranty Claim in respect of the MSD warranty. To do so, the homeowner must submit a completed MSD Form to Tarion.

MSD claims made on or after the second anniversary of the date of possession are handled directly by Tarion. Tarion will schedule and conduct an assessment, and issue a Warranty Assessment Report to the homeowner within 30 days of receipt of the homeowner's Statutory Warranty Form. If the defect is determined to be a valid MSD, Tarion will either provide direct compensation from the guarantee fund or arrange for the repair.

The MSD warranty in these years is provided by Tarion not the builder. However, if Tarion receives an MSD Form for a warranted MSD item during years three through seven of possession, Tarion reserves the right to involve the builder in the process, and to treat it as an MSD Form submitted in the first two years of possession, if:

- The MSD is the result of a defect that was reported in writing to Tarion in the first two years after the date of possession;
- The defect was not remedied (or was remedied improperly) by the builder; and
- The defect ultimately led to or became the subject of the MSD Form received in years three through seven.

If the homeowner does not submit an MSD Form by the end of the seventh year of possession, then Tarion will consider no further claims regarding MSD warranty items (unless the MSD has been previously identified in either a 30-Day, Year-End or Second-Year Form and the claim has not been withdrawn).



## **STEP 2: Initial Builder Repair Period**

The initial builder repair period differs slightly depending on whether the date of possession of the home is before or after September 1, 2005.

### **Initial Builder Repair Period for Homes with Dates of Possession on or after October 1, 2003 and before September 1, 2005:**

The builder has an initial builder repair period of up to 120 days to repair or otherwise resolve warranted items. For all Statutory Warranty Forms other than the Year-End Form, the builder repair period starts on the day after Tarion receives a properly submitted Statutory Warranty Form. For a Year-End Form, the builder repair period starts on the later of:

- the first anniversary of the date of possession; or
- the day after the date that Tarion receives the Year-End Form.

### **Initial Builder Repair Period for Homes with Dates of Possession on or after September 1, 2005:**

The builder has an initial builder repair period of up to 120 days to repair or otherwise resolve warranted items in the following circumstances:

- For items listed on a 30-Day Form, the initial builder repair period starts on the 31<sup>st</sup> day from the date of possession (i.e., the day after the last day for a homeowner to submit a 30-Day Form) and goes until the 120<sup>th</sup> day after that date (i.e., the 150<sup>th</sup> day from the date of possession);
- For items listed on a Year-End Form, the initial builder repair period starts on the first year anniversary of possession (i.e., day 366) and goes until the 120<sup>th</sup> day after that date; and
- For items listed on a Second-Year Form, the initial builder repair period starts on the day after the day that Tarion receives the Second-Year Form and goes until the 120<sup>th</sup> day after that date.

#### **REASONABLE ACCESS FOR REPAIRS**

The homeowner is required to provide the builder with reasonable access during regular business hours, arranged at least 24 hours in advance at a time mutually convenient to the homeowner and the builder, to complete the repairs.

Builders who seek to rely on a refusal to grant access as a basis for failing to repair must be able to show that they worked in good faith to arrange a mutually convenient date for repairs with the homeowner. Builders must make reasonable efforts to accommodate homeowners in scheduling repairs. This will include making at least three attempts to schedule repair work during the repair period with sufficient notice to the homeowner. Builders are expected to give at least 24 hours notice prior to a scheduled repair. Notice should be in writing and builders should document their efforts to schedule repairs.

## **STEP 3: Homeowner Request for Conciliation**

If the builder does not repair or resolve all of the warranted items listed on the Statutory Warranty Form during the initial builder repair period, a homeowner may request a conciliation by contacting Tarion at any time within the 30 days following that period.

When the homeowner requests a conciliation, Tarion will schedule a conciliation inspection appointment with the homeowner and notify the builder. The conciliation inspection will be scheduled within the 30 day period that begins on the 31<sup>st</sup> day after the date on which the request for conciliation was made.

The homeowner and builder shall pay the conciliation fees set out in Builder Bulletin 10. If the homeowner does not request a conciliation during the applicable conciliation request period, the homeowner will be deemed to have withdrawn all claim items listed on the applicable Statutory Warranty Form. The homeowner may resubmit a Statutory Warranty Form at the applicable times for any items deemed to have been withdrawn if those items are still covered by warranty at the date of re-submission.

**STEP 4: Pre-Conciliation Repair Period**

The builder has 30 days after the date the homeowner requests the conciliation to repair or resolve all of the claim items listed on the Statutory Warranty Form that are covered by a warranty.

**STEP 5: Conciliation Process**

Unless the homeowner requests that the conciliation inspection be cancelled, Tarion will conduct the conciliation at the scheduled appointment date and time.

Tarion will conduct the conciliation inspection and issue a Warranty Assessment Report to the homeowner and to the builder within the 30 day period that begins on the 31<sup>st</sup> day after the date on which the request for conciliation was made. The Warranty Assessment Report will outline any items on the Statutory Warranty Form that were not resolved by the time of the conciliation, are covered by warranty under the Act, and are therefore still the builder's responsibility to correct. In some cases the Warranty Assessment Report may indicate that further investigation is needed.

If Tarion determines that at least one item in the Warranty Assessment Report is warranted, the conciliation will be considered to be "chargeable" to the builder (unless one of the exceptions set out on page 3 of this Bulletin apply).

The purpose of a conciliation inspection is to allow Tarion to observe the condition of items listed on the relevant Statutory Warranty Form and in some cases to gather relevant documentation that the homeowner and builder may wish to provide so that an assessment of warrantability can be made. Builders are invited to attend conciliation inspections to assist with the purpose of such inspections.

**CONDUCT AT CONCILIATION OR CLAIM INSPECTION**

All parties at a conciliation or claim inspection are expected to act in a respectful, courteous and co-operative manner. Builders are expected to follow the direction of Tarion staff and be mindful of requests made by homeowners. Tarion staff have full discretion to end a conciliation inspection in the event of disruptive activity by a participant (homeowner or builder).

To participate in the conciliation or claim inspection process, builders and homeowners must abide by any policies issued by Tarion from time to time that relate to the conduct of these inspections, including policies relating to the taking of photographs and video or audio recordings.

**STEP 6: Post-Conciliation Repair Period**

If the Warranty Assessment Report identifies any items that are warranted, the builder will be given one final opportunity to repair or resolve the items, within a maximum of 30 days from the date when Tarion issues the Warranty Assessment Report, unless at Tarion's discretion (and in consultation with the homeowner) there is a valid reason why additional time ought to be provided in order to effect a particular repair (for example, the item involves an Extraordinary Situation as described in Appendix A to this Bulletin).

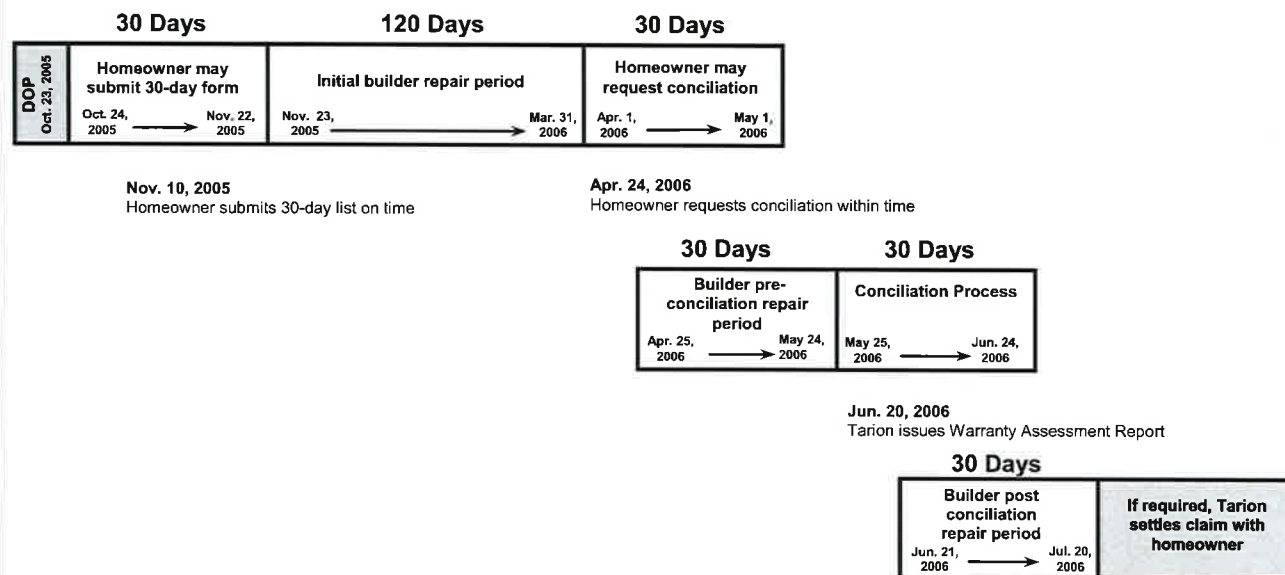
If the builder is unable to effect a repair due to a denial of access or due to a disagreement with the homeowner as to proper method of repair, the builder must notify Tarion in writing of the issue prior to the expiry of the post-conciliation repair period. If the builder fails to so notify Tarion, the builder's ability to rely upon the issue as a defence to the conciliation being chargeable may be prejudiced.

**STEP 7: Tarion Settles the Claim**

If the builder has not corrected or otherwise resolved all items covered by the warranty within 30 days of the date when Tarion issues the Warranty Assessment Report (or otherwise in accordance with the Warranty Assessment Report), Tarion will settle the remaining warranted items directly with the homeowner. This may involve a claim inspection at the home, and if so, the builder will be notified in writing of the date and time of the claim inspection. Tarion will pay compensation to the homeowner from the guarantee fund, or will arrange for the repairs, and invoice the builder for the amount of the compensation or repair costs, plus an administration fee of 15 per cent and applicable taxes.

## EXAMPLE – STATUTORY WARRANTY CLAIM PROCESS

This example illustrates the Statutory Warranty Claims Process that would apply for the warranted items on a 30-Day Form submitted by a homeowner who took possession of their home on October 23, 2005.



1. The homeowner may submit a 30-Day Form in the 30 day period following the date of possession which is anytime between October 24, 2005 and November 22, 2005 inclusive. The homeowner in our example submits the 30-Day Form on November 10, 2005.
2. The initial builder repair period starts 31 days after the date of possession on November 23, 2005. It lasts for 120 days, but excludes the December 24<sup>th</sup> to January 1<sup>st</sup> Holiday Period, so it ends on March 31, 2006. (The 120 days would otherwise end on March 22, 2006.)
3. The homeowner may request a conciliation at any time in the 30 day period that begins on April 1, 2006. However, because that 30 days ends on April 30, 2006 which is a Sunday, the homeowner's request for conciliation period would actually end on May 1, 2006. In this example, the homeowner requests a conciliation on April 24, 2006 and Tarion schedules the conciliation inspection on May 31, 2006.
4. The builder has 30 days after the date of the homeowner's request for conciliation (from April 25, 2006 to May 24, 2006 inclusive) to resolve any outstanding warranty items listed on the 30-Day Form before the conciliation inspection takes place.
5. Tarion conducts the conciliation inspection on May 31, 2006 and issues a Warranty Assessment Report on June 20, 2006.
6. The builder has a final repair period of 30 days from the date of the Warranty Assessment Report (June 21, 2006 to July 20, 2006 inclusive) to resolve all warranted items on the report.

## PART D. WARRANTY REVIEW: BUILDER-REQUESTED CONCILIATION

A Warranty Review, available to all registered builders, is a builder-requested conciliation to assess a warranty dispute between a builder and a homeowner. A Warranty Review can only take place if Tarion has either already received a Statutory Warranty Form from a homeowner relating to the item(s) in question, or the homeowner consents to the Warranty Review.

A Warranty Review must be requested between Day 30 and Day 110 of the initial builder repair period, however, this will not extend the normal 120-day initial builder repair period under the Claims Process for warranty repairs.

A Warranty Review is limited to assessing disputes between builders and homeowners about whether an item is warranted, and the correct method or timing of repair required to fix the items. Warranty Reviews are not available for measurement-based items found in the Tarion *Construction Performance Guidelines*.

A Warranty Review has the same force and effect on all parties as a homeowner-requested conciliation. Builders are required to repair those items determined by Tarion to be warranted, or they will be found to be in breach of warranty.

### Procedure and Fee

#### 1. Builder Requests the Warranty Review

- A builder may request a Warranty Review no earlier than 30 days and no later than 110 days within the initial builder repair period.
- Builders are required to deliver the request for a Warranty Review to Tarion in writing. In support of the request, a builder is required to indicate the items for review (from the applicable Statutory Warranty Form submitted by the homeowner), and what the builder's position is on each item.
- There is a \$550 fee, payable in advance by cheque, money order, or other Tarion-approved payment method, for each Warranty Review. Payment must accompany each Warranty Review request. If Tarion's Warranty Assessment Report states that the conciliation is not a chargeable conciliation, the fee will be refunded to the builder.

#### 2. Assessment by Tarion and Warranty Assessment Report

- Tarion will conduct an on-site inspection or a desk assessment and issue a Warranty Assessment Report to the builder and the homeowner within 30 days of the builder's delivery of a complete request for Warranty Review.

#### 3. Repairs by Builder

- If any warranted items are identified, the builder is required to complete any necessary repairs no later than 30 days after the expiry of the 120-day initial builder repair period.

#### 4. Tarion Settles the Claim

- If the builder has not completed the repairs or otherwise resolved the warranted items within the 30 day period described in 3. above, then Tarion will settle directly with the homeowner and pay compensation to the homeowner from the guarantee fund or arrange the repairs. Tarion will invoice the builder for the amount of the compensation or repair costs, plus an administration fee of 15 per cent and applicable taxes.

#### 5. A Warranty Review is not considered a chargeable conciliation and the fee is refunded if:

- Tarion determines that there are no warranted items; or
- there are warranted items and Tarion agrees with the builder's method or timing of repair for all items in question.

**BUILDER ARBITRATION FORUM**

A builder who disagrees with Tarion's determination of warrantability or chargeability in a Warranty Assessment Report may be eligible to request an arbitration under the Builder Arbitration Forum. An arbitration request may only be made by registered builders who attend the conciliation inspections and must be made within 28 days of receipt of the Warranty Assessment Report. For full eligibility requirements and other information, please refer to *Builder Bulletin 41: Builder Arbitration Forum*.



Howard Bogach  
Registrar

## APPENDIX A: EXCEPTIONS TO THE CLAIMS PROCESS

The Claims Process applies to typical warranty situations. Under the Exceptions, the Claims Process will be adjusted for the following situations.

### 1. Emergencies

An emergency warranty situation is any situation that occurs within the warranty period and involves a warranted item that if not attended to immediately, in the opinion of Tarion, would likely result in substantial damage to the dwelling or would likely represent a substantial risk to the health and safety of the occupants or means the home is uninhabitable.

An emergency includes the following situations:

- Complete loss of heat, between September 15 and May 15;
- Gas leak;
- Complete loss of electricity;
- Complete loss of water;
- Complete stoppage of sewage disposal;
- Plumbing leak that requires the entire water supply to be shut off;
- Major collapse of any part of the home's exterior or interior structure;
- Major water penetration on the interior walls or ceiling;
- A large pool of standing water inside the home; and/or
- Any situation where, in the opinion of Tarion, the home is uninhabitable for health or safety reasons.

Damage caused by forces beyond a builder's control (for example, municipal or utility service failures or 'acts of God') is not warranted under the Act, and therefore is not an "emergency" warranty situation.

#### Emergency Procedure

1. A homeowner who believes there is an emergency warranty situation should contact the builder first, using the emergency service contact information that the builder is required to provide in the *Homeowner Information Package*. The homeowner should follow the builder's instructions in attempting to handle the emergency situation.
2. The builder is permitted up to 24 hours to resolve the emergency, to ensure that the situation has been made safe and secure, and to prevent any further damage from occurring. Full repair of the defect in accordance with the builder's warranty obligations may take longer to complete once the initial emergency has been dealt with. Builders are required to complete the full repair (including repairing any damage to builder installed materials) in accordance with their warranty obligations as soon as possible and no later than 30 days from the date that the homeowner reported the emergency.
3. If the builder cannot be reached within 24 hours using the emergency contact information provided in the *Homeowner Information Package*, or if the builder has been contacted but has not resolved the emergency within 24 hours, the homeowner is entitled to contact Tarion for further direction. Tarion will determine (usually by phone) if this is an emergency or if the item should be added to the homeowner's next Statutory Warranty Form. If the homeowner satisfies Tarion that this is an emergency warranty situation, Tarion will first try to contact the builder. If Tarion is unable to contact the builder, or the builder is unwilling to resolve the emergency, Tarion will instruct the homeowner to make or contract for the necessary repairs to correct the emergency, i.e., any repairs necessary to make the home safe and secure, and to prevent any further damage in the near future.
4. If the homeowner is unable to contact the builder and Tarion, the homeowner may, without jeopardizing their warranty rights, do or contract for the necessary repair work to correct the emergency only.
5. If the homeowner has arranged to have the emergency repairs done and wishes to be reimbursed, the homeowner is required to obtain an Emergency Form (available from Tarion by calling 1-877-982-7466 or from the Tarion website), and to submit to Tarion and the builder the completed Emergency Form along with all required supporting documents (i.e., receipts, photographs of the damage and repair if available).

6. Within 10 days of receipt of the completed Emergency Form, Tarion will contact the builder to determine whether the builder has reimbursed the homeowner, and if not, will conduct a conciliation, and issue a Warranty Assessment Report to the homeowner and the builder. If Tarion identifies any emergency item as warranted in the Warranty Assessment Report, the conciliation will be considered chargeable.
7. Tarion will notify the builder that the builder has 30 days to reimburse the homeowner for their reasonable costs associated with the warranted repairs undertaken and to complete repairs to damaged builder installed materials, as documented in the Emergency Form and confirmed by Tarion in the Warranty Assessment Report.
8. If the builder fails to reimburse the homeowner, Tarion will settle directly with the homeowner, and pay compensation to the homeowner from the guarantee fund or arrange for the repairs. The builder will be invoiced for the amount of the compensation paid and for repair costs, plus an administration fee of 15 per cent and any applicable taxes.

### **EXTREME EMERGENCIES**

An extreme emergency is a situation that, in the opinion of Tarion, requires an immediate response in order to preserve the integrity of the home, and/or prevent serious personal injury or warranted damage. The Claims Process may be accelerated in extreme emergency situations. Tarion will make reasonable attempts to inform the builder if an accelerated process is required.

## **2. Seasonal Items**

A seasonal item is any warranted item listed on a Statutory Warranty Form submitted to Tarion between November 16 and April 30 (inclusive), involving the exterior of the home, which cannot be repaired effectively within the normal Claims Process due to weather constraints. A seasonal item includes a warranted item related to:

- Exterior painting;
- Exterior cement/concrete work (e.g., parging application/repairs);
- Exterior mortar work (e.g., brick installation/repairs);
- Exterior stucco work/repairs, including repairs to exterior insulation finishing systems;
- Exterior caulking;
- In-ground supports for decks; or
- Any other exterior work deemed appropriate by Tarion, excluding air conditioning, grading, sod, driveways and walkways, which are covered separately below.

If the item is submitted on a Statutory Warranty Form to Tarion between May 1 and November 15 inclusive, the normal Claims Process applies. A builder who needs more time due to unsuitable weather conditions may apply to Tarion for an extension under the "Extraordinary Situations" provisions of this Bulletin (see page 20).

### Seasonal Items

If a Seasonal Item is submitted on a Statutory Warranty Form between November 16 and April 30 inclusive, the following procedure applies:

1. The builder is required to complete the repairs as soon as possible after the return of suitable weather conditions, but no later than September 1;
2. If the item has not been repaired by September 1, the homeowner may contact Tarion in the 30-day period between and including September 2 and October 1 to schedule a conciliation inspection. Tarion will advise the builder in writing of the scheduled date of the conciliation inspection;
3. The builder has 30 days from the date when the homeowner requests a conciliation to complete the repairs;
4. If the builder has not completed the repairs within 30 days, Tarion will conduct a conciliation inspection and issue a Warranty Assessment Report to the builder and the homeowner within the following 30 days;
5. The builder has up to 30 days from the date when Tarion issues the Warranty Assessment Report to complete the repairs, as long as the repairs are completed by November 15; and
6. If the builder does not complete the repairs within 30 days or by November 15, if earlier, Tarion will settle directly with the homeowner and pay compensation to the homeowner from the guarantee fund or arrange for the repairs. Tarion will invoice the builder for the amount of the compensation or repair costs, plus an administration fee of 15 per cent and applicable taxes.

### 3. Special Seasonal Items: Final Grading, Sod, Driveways and Walkways

A Special Seasonal Item is any warranted item listed on a Statutory Warranty Form involving final grading, sod, driveways or walkways.

#### Special Seasonal Items Procedure

The Special Seasonal Items Procedure is as follows:

1. The homeowner requests the repair or installation of final grading, sod, driveways and walkways by listing the item and submitting the 30-Day or Year-End Form to Tarion;
2. (a) For homes with a date of possession between October 1, 2003 and April 30, 2004, inclusive, the builder has up to one year from the date of possession to complete the installation or repair (subject to consideration by Tarion of any specific agreement between the homeowner and the builder in a relevant purchase agreement, and any limitations on installation due to the developer and/or subdivision agreement or relevant municipal agreement); and
  - (b) For homes with a date of possession on or after May 1, 2004, the builder must install or repair the item(s) within 270 days of "seasonable weather" from the date of possession (subject to consideration by Tarion of any specific agreement between the homeowner and the builder in the purchase agreement, and any limitations on installation due to the developer and/or subdivision agreement or relevant municipal agreement). "Seasonable weather" for this type of work is the period between May 1 and November 15, inclusive, in any given calendar year. There are 199 days of seasonable weather in one calendar year.

#### Examples:

If a homeowner takes possession of the home on June 30, 2004, the deadline for installation or repair of special seasonal items is September 9, 2005. The "seasonable weather" days are calculated as follows:

	<b>Number of "Seasonable Weather" Days</b>
July 1, 2004 to November 15, 2004	138
November 16, 2004 to April 30, 2005	0
<u>May 1, 2005 to September 9, 2005</u>	<u>132</u>
<b>Total</b>	<b>270 days</b>

If a homeowner takes possession of the home on November 30, 2004, the deadline for installation or repair of special seasonal items is July 10, 2006. The "seasonable weather" days are calculated as follows:

	<b>Number of "Seasonable Weather" Days</b>
December 1, 2004 to April 30, 2005	0
May 1, 2005 to November 15, 2005	199
November 16, 2005 to April 30, 2006	0
<u>May 1, 2006 to July 10, 2006</u>	<u>71</u>
<b>Total</b>	<b>270 days</b>

3. If the repair or installation of a special seasonal item is not completed within the builder repair period described in 2. above, the homeowner may contact Tarion within the 30 days following the builder repair period to request a conciliation.
4. Tarion will conduct a conciliation inspection and issue a Warranty Assessment Report to the builder and the homeowner within 30 days after the homeowner notifies Tarion.



5. If the Warranty Assessment Report states that any of the final grading, sod, driveway and walkway items are warranted, Tarion will then (subject to consideration by Tarion of any specific agreement between the homeowner and the builder in the relevant purchase agreement, and any limitations on installation due to the developer and/or subdivision agreement or relevant municipal agreement) settle directly with the homeowner and pay compensation to the homeowner from the guarantee fund or arrange the repair. Tarion will invoice the builder for the amount of the compensation or repair costs, plus an administration fee of 15 per cent and applicable taxes.

#### **4. Air Conditioning between May 15 and September 15**

Air conditioning defects are covered under the one year warranty only. The warranty applies if the builder installed the system, or undertook to install it but did not complete the installation. A warranted air conditioning defect that results in a complete lack of cooling between May 15 and September 15 inclusive will be dealt with outside the standard Claims Process, in accordance with the following procedure.

##### Procedure for Air Conditioning: May 15 to September 15

The Procedure is as follows:

1. The homeowner contacts Tarion to report a complete lack of cooling during the period from May 15 to September 15 inclusive, and during the first year of possession;
2. Tarion requests the homeowner to complete and submit an Air Conditioning Form;
3. The builder is required to complete the repairs as soon as possible and no later than 30 days from the day Tarion receives the Air Conditioning Form;
4. The homeowner can request a conciliation by Tarion if the builder has not completed the repairs by the end of the 30-day period;
5. Tarion will conduct a conciliation inspection and issue a Warranty Assessment Report to the builder and the homeowner within 10 days of the homeowner's request; and
6. If the Warranty Assessment Report states that the air conditioning item is warranted, the conciliation will be considered chargeable and Tarion will settle directly with the homeowner, and will pay compensation to the homeowner from the guarantee fund or arrange the repairs. The builder will be invoiced for the amount of the compensation or repair costs, plus an administration fee of 15 per cent and applicable taxes.

#### **5. Extraordinary Situations**

##### **Builder Extraordinary Situations**

A builder Extraordinary Situation is where a builder requires additional time beyond the applicable builder repair period to complete the necessary repairs to items listed on a Statutory Warranty Form, due to special circumstances affecting the builder or one of the homes the builder is servicing. For example, a repair may require the special order of a part that will take more time to arrive than the initial builder repair period permitted under the Claims Process or the repair may be delayed due to unusual and unsuitable weather conditions.

The special circumstance must result in the builder being unable to complete a repair, as opposed to the repair being inconvenient. Increased cost of the repair, for example, as a result of the original installer being unavailable is not an acceptable reason on its own for a builder to delay repairs beyond the time set out in the standard Claims Process.

### Procedure for Builder Extraordinary Situations

The Procedure for Builder Extraordinary Situations is as follows:

1. A builder who encounters an Extraordinary Situation regarding an item listed on a Statutory Warranty Form is required to notify Tarion and the homeowner, in writing, prior to the date of a conciliation inspection and no later than 10 days before the end of the applicable builder repair period. The written notice must:
  - a. State which item cannot be repaired within the applicable timeframe and why, including written proof of the builder's situation;
  - b. Acknowledge that the item is warranted and that the builder undertakes to repair it; and
  - c. State the proposed extension needed to complete the repair(s) in question.
2. Tarion will then review the situation, and may require the builder to produce additional proof of the circumstances in question.
3. Tarion will inform the builder and the homeowner after receipt of the written notice with sufficient proof from the builder, if an extension of time is justified, and if so, the number of days by which the builder repair period may be extended to complete the repair(s) in question.

### **Industry/Regional Extraordinary Situations**

Industry/Regional Extraordinary Situations may require an extension of the applicable builder repair period for a part of the construction industry, a region, or the entire province. Examples include:

- An irregular (i.e., not ongoing or "normal") labour or trade shortage;
- An irregular (i.e., not ongoing or "normal") shortage of work material;
- Strikes or other serious labour disruptions; and
- Severe weather or other 'acts of God'.

### Procedure for Industry/Regional Extraordinary Situations

The Procedure for Industry/Regional Extraordinary Situations is as follows:

1. A potential Industry/Regional Extraordinary Situation may be brought to the attention of Tarion's Vice President of Claims by a written notice from a builder, from the OHBA or from a local Home Builders' Association;
2. Tarion will thoroughly review the information, and may require additional documentation to assess the situation;
3. If Tarion confirms that an Industry/Regional Extraordinary Situation exists or is about to happen, Tarion will issue a written Warranty Alert to all builders affected. The Alert will describe the nature of the event; which regions, industries, or types of warranties are affected; and in what circumstances the permitted extension will apply to the relevant builder repair periods; and
4. A builder who is affected by the Industry/Regional Extraordinary Situation and wishes to apply the extended builder repair period provided in the Warranty Alert is required to provide written notice to the affected homeowners as soon as possible. The notice must be delivered before the expiry of the applicable builder repair periods, and no later than 10 days from receipt of the Alert. The notice must include an explanation of why the extension is required for the home, and the number of days that the builder repair period has been extended due to the Alert. The standard builder repair periods in the Claims Process will continue to apply to builders who do not provide this notice to their homeowners.

### **APPENDIX B: ONGOING REVIEW OF THIS BULLETIN**

Tarion continues to collect and review input from all stakeholders, including builders and homeowners, and to monitor the appropriate data regarding the implementation of the Customer Service Standard. Once sufficient data has been collected and reviewed, Tarion will decide whether to reduce the initial builder repair period from 120 to 90 days.