

## DRAFT OHBA RESPONSE TO TARION "INTERIM ENHANCEMENTS TO THE (TARION) CUSTOMER SERVICE STANDARD:

Regulation Number: 892

OHBA Draft General Statement:

OHBA continues to support improvements that will build consumer confidence in the new home buying process.

Understanding that the Ontario's new home warranty system is a legislative mandatory builder warranty on all new homes administrated by Tarion, it is important that any changes are reasonable and practical for the builder to administrate and for the consumer to navigate and understand. Tarion functioning as the administrator, needs to create and administrate a consistent statutory structure with clear timelines, rules, procedures and timely and practical decision-making for both the consumer and the builder to enforce and to resolve warranty disputes.

The Tarion impact assessment does indicate that Tarion proposed changes will have an impact on the builder, but it does not fully appreciate the builder system impact or the cost of uncertainty regarding "Tarion grace" periods without the necessary notifications to the builder. It is important to note that the end of the 30-day period is the start of the Tarion-regulated repair period followed by the Tarion-regulated statutory conciliation requests period. Builders, as the regulated industry, must work and satisfy Tarion administrative framework and creating grace periods require notice to builders when the grace period is over and how the connected repair period and conciliation period will function as a result.

It should be noted that consumers can directly submit defect list to the builder throughout the 1<sup>st</sup> year, but that the Tarion-statutory forms of 30-days, 1-year, 2-year, and 7-year, serve to provide an orderly framework for the administrator to exercise their legislative and regulatory powers over the regulated industry and should be consistent with due process.

DRAFT RESPONSES TO PROPOSALS:

### **1. Add a Grace Period to the first 30-day submission period:**

OHBA Draft Response:

The builder needs the legislative warranty authority to clearly indicate what a grace period means – is it 1 day, 5 days or 15 days. The consumer can send the builder a defect list every day, but the warranty authority needs to provide some clear framework of when does the submission period to Tarion close, so that the powers that can be exercised under its authority against the regulated industry has structure and fairness.

Regard the provision of Grace, is it based on an application for Grace against a criteria list that Tarion checks against? For example, Tarion provides a list of acceptable reasons for the late-30-day form to be accepted like – I forgot. The homeowner list is submitted to Tarion 3 days after the 30-day form is due, and the homeowner needs to check-off on the form – **I forgot** - as the reason that grace is being requested. This will give Tarion the opportunity to improve their internal communications to the homeowners on the due dates of the form and help everyone understand why forms are submitted after the established and published due dates. This is one approach.

Tarion could also decide to simply provide a blanket acceptance of all forms. OHBA would suggest a Grace period of 1 day with no criteria is practical and function for the builder to manage through the Tarion process, but that a 15-day grace period requires some sort of criteria to qualify the list for the Grace provision.

As those who are informed about the Tarion warranty provisions, any item that is not on the 30-day form can be listed on the 1-year form, so the item will continue to have status in the warranty program, along with the consumer being able to directly submit the item to the builder at any time. In this way the homeowner continues to have access to the Tarion warranty authority and their rights under the administrator.

## **2. Grace period added to the request for conciliation period for all forms (30-day, year-end, two-year and MSD forms)**

The builder needs the legislative warranty authority to clearly indicate what a grace period means – is it 1 day, 5 days or 15 days?

Understanding that the Ontario's new home warranty system is a legislative mandatory builder warranty on all new homes administrated by Tarion, it is important that any changes are reasonable and practical for the builder to administrate and for the consumer to navigate and understand. Tarion functioning as the administrator, needs to create and administrate a consistent statutory structure with clear timelines, rules, procedures and timely and practical decision-making for both the consumer and the builder to enforce and to resolve warranty disputes.

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It is important to note that a homeowner engaged in the Tarion-regulated warranty process should have been notified numerous times of their right to request a conciliation by Tarion.

OHBA would suggest a Grace period of 1 day with no criteria is practical and function for the builder to manage through the Tarion process, but that a 15-day grace period requires some sort of criteria for the Grace provision regarding conciliation requests.

## **3. Allow for the submission of more than one 30-day form in the initial and year-end periods.**

As noted earlier, homeowners can submit defect directly to the builder during the warranty period. The Tarion-regulated period has established dates to submit forms to provide a clear framework and structure for both the homeowner and the builder. Builders expect that Tarion will establish, provide and certify the final 30-day and year-end form that is part of the Tarion-regulated process. It is the only reasonable way that the regulated industry can work to satisfy the regulatory requirements of the Ontario New Home Warranty Act and to ensure that the legislative authority is exercising its powers reasonably and following due process.

Any confusion created about Tarion certified 30-day or year-end form will only result in homeowners being frustrated about what is being reviewed during the Tarion-regulated process and will frustrate the builders who are working to respond to the Tarion-regulated process.

If both the homeowners and the builders are frustrated by the Tarion-regulated process, or if the process results in uncertainty about what is on the list and what is not, it can only lead to more confusion and frustration towards Tarion.

## **4. Add a grace period after the year-end submission deadline if the homeowner can show that the builder was provided with written notice of the defect with the one-year period. We are seeking input on the type of written notices that would be acceptable.**

Adding items to a statutory list always creates confusion and uncertainty for the builder, and frustration for the homeowner who is looking to have the listed item reviewed.

It is a builder warranty, and the consumer can notify the builder of defects throughout the process.

Providing a grace period for the homeowner to add to year-end list if the homeowner can show that the builder was provided with written notice could become a very difficult process and situation for the builder, Tarion and the homeowner to manage.

The concept that “showing written notice” doesn’t actually prove that the builder was aware for the defect during the period. During the correspondence of written notice there must be some acknowledgement by the builder that the defect item has been presented.

Again, the homeowner will have been working through the Tarion process along the way as they get to the year-end submission and reminded by Tarion to complete the form to the homeowner’s satisfaction. Adding an item after the form has been submitted requires some acknowledgement by the builder that the items have been registered.

**5. Make a policy change to the definition of the emergency claims to include any water penetration claim (as opposed to “major” water penetration only).**

The change to define all water penetration as emergency will generate a much higher volume of builder engagements with homeowners as Tarion will no longer serve to determine what is “major” versus “minor”. That is to say that every “wet-spot on the drywall” will trigger a water penetration call from Tarion to the builder.

Managing these “water penetration calls” from Tarion will be a challenge, as we have elevated everything in this building spectrum as an emergency.

For the homeowner, these additional builder engagements will mean that the homeowner will need to provide access of their home to the builder. Tarion will need to clarify what is the process of warranty coverage if the builder is denied access for inspection or for repairs.