

## **Discussion Guide - Builder Bulletin and Vendor and Builder Agreement Consultation**

On February 1, 2021, the Home Construction Regulatory Authority (HCRA) will be designated as the regulator of new home builders and vendors under the New Home Construction Licensing Act, 2017. At that time, Tarion will no longer be responsible for registering builders and vendors of new homes but will continue to administer the warranties and protections under the Ontario New Home Warranties Plan Act.

Due to these changes, Tarion will need to adjust its operational policies.

Tarion is therefore providing notice of and consulting on proposed changes, including:

- Eliminating certain Builder Bulletins and updating others to address changes to Tarion's mandate following the launch of the HCRA;
- Creating four new Registrar Bulletins; and
- Developing new standardized Vendor and Builder Agreements to align with the new home enrolment process.

Additionally, Tarion will be renaming existing and new bulletins as "Registrar Bulletins" and re-numbering them to provide a coherent and sequential framework.

These changes will help ensure a smooth transition as we support the designation of a new regulatory authority. For further information on the proposed changes, please review the discussion guide below.

Please consider the consultation questions included in this guide and submit any feedback to [submissions@Tarion.com](mailto:submissions@Tarion.com) by January 15, 2021.

### **Builder Bulletins**

**Context:** Currently, a Builder Bulletin is the title that Tarion has given to its policy statements. While in many cases the bulletin content is prescriptive (setting out rules), some bulletins are more informational. Tarion's Builder Bulletins are enforced through the vendor builder agreements that registrants sign.

Our current Builder Bulletins are numbered for reference, but due to changes made over the years, some have been removed, some are no longer used, and some need updating.

With the imminent launch of the HCRA, Tarion is proposing to revise its current Builder Bulletin framework, removing outdated or redundant bulletins, and re-aligning them to provide clearer information to vendors and builders. Additionally, any bulletins which deal with items related to the HCRA's statutory mandate will be removed since the responsibility will be transferred to HCRA.

For the 31 current Builder Bulletins, Tarion is proposing to:

1. Remove 15 Builder Bulletins that are no longer relevant or that will now fall under the HCRA's mandate.
2. Update four Builder Bulletins that contain a mix of registration and warranty information which needs to be re-worked to address the HCRA's mandate.

3. Create or substantially revise four new Builder Bulletins in response to the launch of the HCRA.
4. Rename existing and new bulletins as “Registrar Bulletins” and re-number them to provide a coherent and sequential framework.

The four new or substantially revised Registrar Bulletins would cover the following issues:

1. **Warranty and Protection Plan Enrolment Processes** - Tarion’s new processes for confirmation of qualification for enrolment and enrolment of new homes.
2. **Risk-Based Inspection Program** - Tarion’s new risk-based inspection program.
3. **Additional Condominium Provisions** - requirements of condominium vendors currently included as standard terms and conditions (e.g. reporting of condo cancellation, information about title and title restrictions, requirement to attach the Condominium Information Sheet).
4. **Enrolment Fees** - Outlines the per home enrolment fees and how they will be collected.

The remaining revised and renumbered Registrar Bulletins can also be found in **Appendix 1** at the end of this document. These remaining bulletins in addition to name and number changes have been updated to ensure that the information and obligations relate to Tarion’s new processes and revised mandate

Our new Registrar Bulletins can be found on our consultation page [here](#).

## **Stakeholder Impacts**

### *Homeowners and Buyers*

- There are no impacts to homeowners and buyers associated with this proposal.

### *Builders*

- Reduces burden on Builders with fewer bulletins and better organized information for them to review.
- Builders will need to re-educate staff to ensure they are informed of the new Registrar Bulletins.

### *Tarion*

- Need to revise and update Registrar Bulletin documents.
- Additional communications resources will need to be developed to educate industry stakeholders.

## **Questions to Consider:**

- 1) Are there additional bulletins which Tarion should consider amending?
- 2) Do you feel there are any negative consequences to removing any of the proposed bulletins?
- 3) Do you feel there are any negative consequences to amending any of the proposed bulletins?
- 4) Are there any other considerations associated with the proposed changes to Tarion’s Builder Bulletins?

## **Vendor and Builder Agreements**

**Context:** Earlier this fall, Tarion consulted on proposed regulatory changes related to the Rebuilding Consumer Confidence Act, 2020. Tarion has now made regulatory changes based on feedback from those consultations and is moving forward with developing new standard vendor and builder agreements.

Currently, Tarion grants registrations to vendors and builders which allow them to sell and build new homes. Registrations are granted subject to certain terms and conditions which are found in regulations (Regulation 894), imposed by a term and condition letter, or are set out in a contract between the vendor and builder and Tarion which is required to be signed as part of registration (and some terms and conditions are repeated across all of those formats).

In the new regulatory framework many of the requirements that vendors and builders must meet to sell, to offer to sell, to build or offer or agree to build homes are set out. These are agreements that under the ONHWPA and regulations builders and vendors must sign.

**The proposed Vendor Agreement** will set out the obligations of the Vendor – the person who will be entering into sales of homes or agreeing to build a home under a construction contract for a contract home. The Vendor is also primarily liable for performance of the deemed statutory warranties provided by the vendor to purchasers

**The proposed Builder Agreement** will set out the obligations of the Builder – the person who will be building homes under a contract either with a licensed vendor or with a consumer landowner wanting to have a contract home built on their land.

Some of the highlighted changes in these new proposed agreements are:

- Provisions related to the new qualification for enrolment and enrolment processes, definitions, representations, and covenants as outlined in regulations.
- Greater clarity about the information that a vendor or builder must furnish to Tarion.
- Updates to the indemnity/guarantee language, to clearly outline situations in which Tarion would seek recourse on non-warranted claims.

You can find the new draft agreements below:

- [Click here for the Vendor Agreement](#)
- [Click here for the Builder Agreement](#)

### **Stakeholder Impacts**

#### *Homeowners and Buyers*

- There are no impacts to homeowners and buyers associated with this proposal.

#### *Vendors and Builders*

- Builders will need to re-educate staff to ensure they are informed of the new content of the new agreements.

#### *Tarion*

- Additional communications resources will need to be developed to ensure industry stakeholders are educated on the changes.

**Questions to Consider:**

- 5) Do you have any feedback on the draft vendor agreements?
- 6) Do you have any feedback on the draft builder agreements?
- 7) Are there any other considerations associated with the draft agreements?

## Appendix 1: Proposed Changes to Tarion Builder Bulletins

\*In the chart below, the bulletins labelled with 'conforming changes' are those that have had changes in title, number and content to ensure the information and obligations conform to Tarion's new processes and revised mandate.

<b>Registrar Bulletin #</b>	<b>Current Builder Bulletin #</b>	<b>Title of Bulletin</b>	<b>Proposed Approach</b>
01	42	<a href="#">Customer Service Standards</a>	Conforming changes
02	49	<a href="#">Claims Process - Condominium Common Elements</a>	Conforming changes
03	24	<a href="#">Seven Year Warranty Framework - Major Structural Defects</a>	Conforming changes
04	20	<a href="#">How Chargeability is Determined and Applied</a>	Conforming changes
05	34	<a href="#">Builder Deliveries</a>	Conforming changes
06-F	46	<a href="#">Delayed Closing Warranty - Freehold</a>	Conforming changes
06-C	47	<a href="#">Delayed Closing Warranty - Condominium</a>	Conforming changes
06-P	48	<a href="#">Delayed Closing Warranty - POTLS</a>	Conforming changes
07			Unassigned
08	41	<a href="#">Builder Arbitration Forum</a>	Conforming changes
09	31, 38	<a href="#">Risk-Based Inspections</a>	New
10		<a href="#">Warranty and Protection Plan Enrolment Processes</a>	New
11-F	28F	<a href="#">Freehold Security Requirements</a>	Conforming changes
11-L	28L	<a href="#">Low-rise Security Requirements</a>	Conforming changes
11-H	28H	<a href="#">High-rise Security Requirements</a>	Conforming changes
12	43	<a href="#">Escalating Consequences</a>	Conforming changes
13	22	<a href="#">Floor Area Calculations</a>	Conforming changes
14	44	<a href="#">Waiver of Indemnity of Builders</a>	Conforming changes
15	27	<a href="#">Enrolment Fees</a>	New
16			Unassigned
17		<a href="#">Additional Condominium Provisions</a>	New
18	51	<a href="#">Residential Condominium Conversion Projects</a>	Conforming changes
19	19	<a href="#">Condominium Projects Design and Field Review Reporting</a>	Conforming changes

<b>Registrar Bulletin #</b>	<b>Current Builder Bulletin #</b>	<b>Title of Bulletin</b>	<b>Proposed Approach</b>
	10	Conciliation Fees	Discontinue
	14	Manage Addendums to APS's	Discontinue
	25	Delayed Closing-Delayed Occupancy	Discontinue
	26	Registration and Renewals	Discontinue
	30	Expanded Registration Requirements	Discontinue
	31	Targeted Inspections	Discontinue
	32	Cap Liability on Private Sewage Disposal Systems Claims	Discontinue
	33	Certification of Private Sewage Disposal Systems	Discontinue
	35	Manage Registration and Enrolment of Hi-Rise and Low-Rise Condominium Projects	Discontinue
	36	Rating Criteria for After Sales Service	Discontinue
	37	Manage Lease to Own Agreements	Discontinue
	38	Low-Rise Condominium Inspection Program	Discontinue
	39	Deposit Coverage for Freehold Homes and Financial Loss Coverage for Contract Homes	Discontinue
	45	Set Aggregate Maximum Coverage Amounts for One Year Two Year and Major Structural Defect Warranties	Discontinue