

Registrar Bulletin - No. 09

Risk-Based Inspection Program

Effective Date: February 1, 2021

What this Bulletin is About

Tarion implemented the Targeted Inspection Program in 1993 to provide on-site technical coaching at benchmark stages of construction, to help new and problem builders make informed decisions on construction practices.

This Bulletin outlines revisions to the Targeted Inspection Program, which has been revised to include all builders and retitled as the “Risk-Based Inspection Program”. Developed as an element of Tarion’s risk mitigation strategy, the program focuses on identifying construction practices and technical issues that represent risks of future claims. This Bulletin replaces Builder Bulletin 31-Targeted Inspections.

The key purpose of the Risk-based Inspection Program is the coaching opportunity that the on-site interaction provides. The intention is for the builder to work collaboratively with Tarion to identify construction practices that may pose a risk to future claims against the builder. In other words, the Tarion inspector focuses on the builder rather than each individual unit, for the long-term improvement of the builder’s performance through best practices. Where specific health and safety risks have been identified, further inspections may be required to ensure that risks are mitigated in each subject unit.

The Risk-based Inspection Program applies to all builders; however, the program does not apply to condominium projects required to meet the provisions of Registrar Bulletin 19 - Condominium Projects Design and Field Review Reporting.

Effective Date

This Bulletin applies to all homes enrolled on or after February 1, 2021.

Definitions and Abbreviations

1. **Builder** means both “vendor” and “builder”, as they are defined in the *Ontario New Home Warranties Plan Act*.
2. **FRC** means a “Field Review Consultant” as defined in Registrar Bulletin 19.
3. **OBC** means the *Ontario Building Code* and the *Ontario Building Code Act*

What's Different in this Edition?

This version of the Bulletin contains the following changes from the previous edition of BB31, effective June 2010:

- “Targeted inspections” are renamed as “targeted construction inspections” and fall under the broader category of “risk-based inspections.”
- Sub-types of risk-based inspections include “site and practices inspections” and “targeted construction inspections.”
- The prescribed fee schedule applicable to the former targeted inspections is eliminated.
- Builders are required to follow up in writing to any risks identified by Tarion.

General

Project Types Subject to the Requirements of this Bulletin

All freehold and condominium projects are subject to this Bulletin, except for any project subject to the reporting requirements of Registrar Bulletin 19 (typically type C & D condos).

Condominium Types (as defined in Registrar Bulletins 11F, 11L and 11H)

Condo Types	Description
Type A	Project has only Part 9 OBC construction requirements and is a lot-line condominium
Type B	Project has only Part 9 OBC construction requirements and is NOT a lot-line condominium
Type C	Project has both Part 9 and Part 3 OBC construction requirements
Type D	Project has only Part 3 OBC construction requirements

Types of Risk-based Inspections

The inspections referenced in this Bulletin are risk-based inspections and do not replace inspections required under the OBC. Rather they are intended to help identify and address substandard construction practices and reduce risk or re-occurrence. They may also help inform remedial measures to help address builder performance.

Site and Practices Inspections

Site and Practices Inspections are applicable to all builders; however, priority will be given to new builders, builders with an unsatisfactory record of compliance, and builders who present risk factors (as detailed later in this Bulletin). The frequency of the inspections will be established by Tarion based on the builder's business practices, anticipated construction volume, and past performance.

Site and Practices Inspections are conducted at the project site with Tarion staff and representatives of the subject builder. The inspection will focus on a representative sample of units if multiple buildings/units are under construction. An active dialogue is encouraged throughout the process to facilitate builder education and identify emerging trends. Inspections will focus on any construction method used by the builder that may represent a risk of future claims.

Site and Practices Inspections are not intended to identify and track individual deficiencies for warranty purposes, rather the inspections are intended to identify root causes of deficiencies to encourage builders to improve construction practices and reduce risk. Where a risk or deficiency is noted that represents a significant health and safety concern, a specific targeted construction inspection may be required to ensure the risk is properly mitigated.

When selected for Site and Practices Inspections, Tarion will notify the builder, and the builder is required to:

- 1) Respond to Tarion's request and act reasonably to schedule a mutually appropriate time for the inspection;
- 2) Arrange to have an appropriate representative (e.g. site supervisor and/or a principal of the builder) available to provide access and speak to the builder's construction practices;
- 3) Arrange for appropriate representatives to be present during Tarion's inspections and to facilitate access; and
- 4) Notify Tarion at least 24 hours prior to any scheduled inspection should it need to be rescheduled.

Should Tarion identify any risks during the inspection, a written summary will be provided to the builder. Within 10 business days, the builder must provide a written response, outlining either:

- a) the method(s) and timeline(s) to mitigate the risk(s); or
- b) the reason(s) why it disputes the identified risk(s).

When providing a response, the builder is encouraged to include the following, at their own cost:

- a) Designs, details, or sketches;
- b) Reports from Third-party Professionals;
- c) Inspection reports or interpretations from the local building department; and/or
- d) Photos, notes, or other relevant documentation.

Targeted Construction Inspections

Targeted Construction Inspections are a second layer of inspections that may be required when a serious issue (e.g. structural or health & safety concern) is identified during a *Site and Practices Inspection*, when potential issues are reported to Tarion, when a builder agrees to mitigate an identified risk, or as otherwise deemed appropriate by Tarion.

Targeted Construction Inspections are conducted at the specific building or unit that is subject to the inspection with Tarion staff and a senior representative of the builder. Tarion staff may be accompanied by third-party professionals as they deem appropriate. Inspections are generally limited to the subject matter that originally triggered the inspection, however, may be extended to include any other items identified during the inspection. *Targeted Construction Inspections* are not intended to reproduce the scope of Site and Practices Inspections or replace inspections under the Ontario Building Code.

When selected for *Targeted Construction Inspections*, Tarion will notify the builder, and the builder is required to:

- 1) Provide notice to Tarion when the identified construction milestone is reached, or the subject work is complete;
- 2) Facilitate access for Tarion staff, and/or third-party consultants, to access the site at a reasonable time;
- 3) Make every effort to ensure the subject work is not covered prior to Tarion's inspection;
- 4) Arrange to have an appropriate representative (e.g. site supervisor and/or a principal of the builder) available to speak to the builder's construction practices;
- 5) Provide copies of drawings, reports, or other documents requested by Tarion; and
- 6) Notify Tarion at least 24 hours prior to any scheduled inspection should it need to be rescheduled.

Should the subject work not be complete, Tarion may notify the builder that additional inspections are required

Administrative Requirements

Risk Factors Determining Required Inspections

When a builder enrolls new unit(s), Tarion will complete a risk assessment based on factors that include, but are not limited to:

- Limited recent history of enrolling homes.
- Significant changes to the principals, officers, directors, or employees, including those responsible for construction or the day-to-day operations of the builder.
- Significant changes to the business model including product type, volume of construction, or project scope.
- Any warranted claims and systemic reported issues within the past 24 months, whether paid or unpaid.
- Any chargeable conciliations.

Where a builder has one or more risk factors that merit the risk mitigation outlined in this Bulletin, Tarion will analyze the builder's file to create an appropriate inspection plan. The plan will outline the type and frequency of inspections. Tarion staff will communicate with the builder to outline the reasons for the implementation and to review the inspection plan requirements. Builders may be exempt from the prescribed inspections due to demonstrated construction experience and a lack of risk-factors.

Inspection Records and Additional Action

The information provided by both the builder and Tarion will remain in Tarion's records and may be used during future conciliations for related claims, including as evidence at the Builder Arbitration Forum (BAF) or Licence Appeal Tribunal (LAT).

Failing to comply with this program, as outlined above, may result in Tarion proposing revised or additional terms and conditions in connection with applications for confirmation of Qualification for enrolment or enrolment, which may be appealed to the LAT in the normal course.

None of the terms set out herein shall derogate from Tarion's authority under the *Ontario New Home Warranties Plan Act* and regulations, including but not limited to its powers to issue Notices of Proposal, withhold security, or take other reasonable measures as set out in the legislation.

Note: Inspections shall not relieve a builder of warranty liability should warranty claims later arise at a home that was inspected under the provisions of this program.

Program Fees

Any fees related to site and practices inspections or pre-defined targeted construction inspections will be outlined at the time of home enrolment. The builder may be required to reimburse Tarion for additional inspection costs related to repeat inspections required due to the lack of site access, incomplete work, or for any other reason that the builder could have reasonably provided notice to Tarion to reschedule the inspection.

For more information regarding this Bulletin, please contact Tarion.

Registrar

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