

Registrar Bulletin - No. 12

Escalating Consequences

Effective Date: February 1, 2021

What this Bulletin is About

This Registrar Bulletin replaces the former Builder Bulletin 43 - Escalating Consequences. It applies to you as a “vendor” or “builder” (collectively referred to as “builder”) as defined in the Ontario New Home Warranties Plan Act (the “ONHWP Act”). This Bulletin provides details of the repercussions (“Escalating Consequences”) for builders who fail to comply with the minimum Customer Service Standard contained in Registrar Bulletin 01-Customer Service Standard (formerly Builder Bulletin 42: Customer Service Standard).

If builders fail to comply with the Customer Service Standard, Tarion may impose the preliminary, Level 1, 2, or 3 Escalating Consequences specifically outlined in this Bulletin. For further clarity, the Escalating Consequences in this Bulletin are enforceable in connection with the Vendor / Builder Agreements that mandate compliance with Registrar Bulletins. Applying the Escalating Consequences does not require any new or amended conditions proposed by Tarion in relation to applications for Qualification for Enrolment or Enrolment, or conditions on the builder’s licences under the New Home Construction Licensing Act (the “NHCLAct”);

Nothing in this Bulletin should be construed as limiting the authority of the Registrars under the ONHWP Act and NHCL Act to take further action in response to breaches of the Customer Service Standard, or other customer service problems on the part of a builder. Further action includes:

- Tarion proposing conditions of Qualification for Enrolment and/or Enrolment;
- Tarion refusing, revoking, or suspending applications for or confirmations of Qualification for Enrolment and/or Enrolment;
- Tarion taking other action within its authority under the ONHWP Act; and
- The Home Construction Regulatory Authority (“HCRA”) taking action within its authority under the NHCL Act based on information shared by Tarion.

Ratio of Chargeable Conciliations to Number of Possessions

If a builder fails to complete the necessary, warranty repairs within the required Builder Repair Periods under the Customer Service Standard, the builder's record may receive a chargeable conciliation, as described in Registrar Bulletin 03 - How Chargeability is Determined and Applied (formerly Builder Bulletin 20 - How Chargeability is Determined and Applied). The builder's ratio at a point in time of the number of such chargeable conciliations to the number of possessions over the past three years provides an objective indicator of whether the builder is complying with the Customer Service Standard.

A builder's record will trigger the Escalating Consequences if:

- The calculation of the builder's ratio results in a ratio that is greater than 0.04, and
- The builder has at least two chargeable conciliations (including chargeable conciliations arising from Warranty Review Reports) over the past three years.

Examples

A builder who has two chargeable conciliations and 50 possessions (calculated using the number of possessions in the past three years) will have a ratio of 0.04.

1. No. of chargeable conciliations = 3
No. of possessions in the past three years = 54
Ratio = $3/54 = 0.06$ (i.e., greater than 0.04)
Builder is subject to Interview/Audit (preliminary to Escalating Consequences)
2. No. of chargeable conciliations = 4
No. of possessions in the past three years = 100
Ratio = $4/100 = 0.04$
Builder is not subject to Interview/Audit or Escalating Consequences
3. No. of chargeable conciliations = 1
No. of possessions in the past three years = 12
Ratio = $1/12 = 0.08$
Builder is not subject to Interview/Audit or Escalating Consequences: although the ratio is greater than 0.04, the builder has fewer than two chargeable conciliations.

Calculate Your Chargeable Conciliation Ratio

(1) Number of chargeable conciliations (including chargeable conciliations arising from Warranty Review Reports) in the past three years = _____. If this number is 1 or 0, a builder will not be subject to the Interview/Audit or the Escalating Consequences. If this number is 2 or more, continue to calculate:

(2) Number of possessions in the past three years = _____

(3) Ratio: (1) divided by (2) = _____

If this ratio is higher than 0.04, i.e., 0.05 or 0.06 or higher, then a builder has crossed the “unacceptable” threshold and is subject to the Interview/Audit (preliminary stage before Escalating Consequences).

If this ratio is 0.04 or lower, i.e., 0.04 or 0.03 or less, the builder’s ratio is acceptable and the builder is NOT subject to the Interview/Audit or the Escalating Consequences.

Interview/Audit: Preliminary Stage Before Escalating Consequences

A builder’s chargeable conciliation Ratio will be reviewed monthly by Tarion. If the ratio of chargeable conciliations to number of possession is higher than the threshold ratio of 0.04 and the builder has accumulated two or more chargeable conciliations in the past three years, the builder’s compliance with the Customer Service Standard will be subject to a review by Tarion. If the review reveals that the builder’s level of compliance with the Customer Service Standard is unsatisfactory, Tarion will require the builder to:

- Attend a meeting with Tarion to review the builder’s current customer service practices and how they can be improved, and to review statistics/records about the builder; and/or
- Undergo an audit of the builder’s customer service practices, including a construction review of at least one home prior to the pre-delivery inspection.

If the outcome of an interview and/or audit is satisfactory, then no further action will be taken. If the outcome is not satisfactory, then the builder will be placed in Level 1 of Escalating Consequences

Three Levels of Escalating Consequences

Level 1

If a builder is placed in Level 1, the builder will be required to:

1. Provide a written commitment to improve the builder's service to meet the minimum Customer Service Standard, including the Warranty Service Rules, with an appropriate action plan to accomplish that goal;
2. Where appropriate, attend a course(s) for improving warranty service (e.g., customer service, construction practices, business skills);
3. Carry out their warranty service within the provisions of the minimum Customer Service Standard; and/or
4. Co-operate fully if Tarion elects to conduct pre-possession targeted inspections

If the builder demonstrates sustained compliance with the Customer Service Standard and incurs no further chargeable conciliations, no further action will be taken.

A builder placed in Level 1 will be moved to Level 2:

- In 90 days, if the builder demonstrates an unwillingness to cooperate with Tarion and its obligations under ONHWP (e.g., refusal to provide written commitment or to attend training);
- In one year, if monitoring reveals that the builder's compliance with the Customer Service Standard does not improve; or
- At any time, if the builder's warranty service delivery significantly worsens, e.g., if the ratio of chargeable conciliations to possessions increases significantly.

Level 2

Builders in Level 2 will be required to carry out their warranty service within a restricted time frame. Under the restricted time frame, the builder Repair Period after Conciliation, as described in Registrar Bulletin 01 - Customer Service Standard (formerly Builder Bulletin 42 - Customer Service Standard), is not available to the builder. Once Tarion has delivered the Warranty Assessment Report to the homeowner and to the builder, the builder will no longer have the additional 30 days to make the necessary repairs. Instead, Tarion will settle the warranty claim directly with the homeowner. The claim will be paid out of the guarantee fund (maintain by Tarion under the ONHWP Act) and the builder will be invoiced and required to promptly pay for the costs incurred to resolve the claim, plus a 15 per cent administration fee and applicable taxes.

At the discretion of the Registrar, a builder placed in Level 2 may also be subject to:

- Security requirements in addition to any security already required according to the builder's risk assessment [see Registrar Bulletins RB 11F, RB 11Land RB 11H (formerly Builder Bulletin 28— Security Requirements) for details on Tarion's builder risk assessment process]; and/or
- Restrictions on the number of future homes that will receive Qualification for Enrolment and/or Enrolment Confirmation (i.e., restrictions on the number of homes the builder may sell / build), in addition to any current limits proposed by Tarion on that builder.

A builder who demonstrates sustained compliance with the Customer Service Standard over a period of at least one year will be moved back to Level 1. A builder will be moved to Level 3 if any warranty Claim (as defined in the ONHWP Act) is paid by Tarion on the builder's behalf while the builder is in Level 2.

Level 3

A builder placed in Level 3 will be subject to:

- A Notice of Proposal (NOP) by Tarion to refuse new applications for Qualification for Enrolment and/or Enrolment;
- An NOP by Tarion to amend existing conditions of Qualification for Enrolment and/or Enrolment;
- A Notice of Proposal by Tarion to revoke or suspend previous determinations that homes are Qualified for Enrolment; and / or
- Tarion requesting or requiring that HCRA issue an NOP in respect of the builder's licences under the NHCLA.

The NOP(s) will be based on the builder's demonstrated failure to perform their obligation to meet the minimum Customer Service Standard. The NOP is in addition to any other remedies available to the Registrars under the ONHWP Act and NHCL Act, and other circumstances in which the Registrars may issue a Notice of Proposal. Under both Acts, a builder has the right to appeal an NOP to the Licence Appeal Tribunal (LAT).

Registrar

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