

# Registrar Bulletin - No. 04

## How Chargeability is Determined and Applied

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This Bulletin replaces Registrar Bulletin No. 04 - How Chargeability is Determined and Applied issued February 1, 2021.

### What this Bulletin is About

This bulletin outlines the rules and guidelines that apply to builders<sup>1</sup> when resolving construction defects in new homes and other matters, covered under the *Ontario New Homes Warranties Plan Act* such as delayed closings. Specifically, this bulletin focuses on chargeable conciliations.

Should information about chargeable conciliations in other bulletins conflict with the information in this bulletin, then the information in this document shall be considered correct. Homeowners are also impacted by these guidelines, so information from this bulletin can also be found in the [Learning Hub](#) on Tarion.com.

### Important Words and Phrases

#### 1. Builder Repair Periods

When there is a deficiency in their new home a homeowner<sup>2</sup> is entitled to make a claim by submitting the appropriate form to Tarion and to the builder. The builder is expected to resolve warranted items within designated builder repair periods.

#### 2. Conciliation

If warranted<sup>3</sup> items are not resolved by the builder during the builder repair periods, the homeowner may contact Tarion to request a conciliation. Conciliation is a process in which Tarion assesses whether a disputed item is warranted or not and/or whether Tarion supports the way a repair was done.

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<sup>1</sup> In the bulletin, “builder” refers to both “vendor” and “builder”, as they are defined in the *Ontario New Home Warranties Plan Act*.

<sup>2</sup> For dwelling units, “homeowner” is the person acquiring the dwelling and for common elements, “homeowner” is the condominium corporation.

<sup>3</sup> In this bulletin, “warranted” refers to the statutory warranties and protections deemed to be given by a builder under the *Ontario New Home Warranties Plan Act*.

### 3. Chargeable Conciliation

If Tarion decides that conciliation could have been avoided had the builder honoured his/her warranty obligations within the builder repair periods, and if there is no exception to chargeability as outlined in this bulletin under [Exceptions To Chargeability](#), then there is a consequence to the builder for an unnecessary conciliation. This consequence is called a chargeable conciliation and is a mechanism to encourage builders to fulfill their warranty obligations.

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#### Important Note About Documentation

In this bulletin, any references to “document”, “documented evidence”, “work order”, “written notice” or any other similar reference can be accepted in either paper or electronic formats, if agreed to between the builder and homeowner.

#### Builder Repair Periods

When there is a defect in a new home that is covered by a statutory warranty, a homeowner must submit a Statutory Warranty Form to Tarion and to the builder.

#### Statutory Warranty

A statutory warranty is a warranty that by law, must be provided to a new home buyer by the builder. The builder is expected to honour this warranty. Tarion steps in to backstop the warranty coverage when a builder does not fulfill his/her warranty obligations.

Builders generally have a right to resolve warranted items by properly repairing or replacing items during the builder repair periods. The warranty claims process, builder repair periods and Tarion’s customer service standard, including the expectations of homeowners and builders, are described in Tarion’s Learning Hub on Tarion.com, [Registrar Bulletin 01 Customer Service Standard](#) (formerly Builder Bulletin 42) and [Registrar Bulletin 02 - Claims Process Condominium Common Elements](#) - formerly Builder Bulletin 49). A builder must resolve the warranted items in one of three ways:

a) Repair (or offer to repair in the case of a homeowner not accepting the repair each warranted item in a manner which satisfies the warranty obligation.

- b) Provide cash compensation (or offer to provide cash compensation in the case of a homeowner not accepting the offer) which satisfies the warranty obligation.
- c) Arrange some other resolution which is acceptable to the homeowner. This type of resolution must be documented by a written acknowledgement from the homeowner indicating the item(s) that have been withdrawn by the homeowner as warranty claim items.

Homeowners and builders are expected to cooperate and act reasonably to allow resolution by proper repair, replacement or cash settlement. For more information about Tarion's expectations, see [Appendix C: Checklist of Key Responsibilities](#).

## Conciliation

When a homeowner is not satisfied that the builder has resolved his/her concerns, then he/she can make a request to Tarion for a conciliation.

During the conciliation process Tarion determines whether a disputed item is warranted, i.e., covered by statutory warranty, and/or whether the attempted repair or cash settlement undertaken by the builder (or proposed by the builder but not accepted by the homeowner) satisfies the builder's warranty obligation.

A conciliation may include an inspection at the home, a virtual inspection, a re-inspection of certain items or a desk assessment (if items can be assessed based on a paper record - for example, a delayed closing claim would be processed based on a desk assessment). Conciliations may include a review of the purchase agreement, the completed pre-delivery inspection form and other relevant documents.

During a conciliation Tarion makes a decision on the following points:

- Whether the items on the claim forms are warranted or not warranted.
- Whether a repair made by the builder brought the item to a state in which it is no longer a warranted defect.
- In the case of a repair not done because the homeowner would not accept the repair method, Tarion will determine whether the proposed repair method would have been sufficient to satisfy the warranty obligations if it had been completed when the builder intended to do the repair.
- In the case of a repair not done because the homeowner would not accept the timing of the repair proposed by the builder, Tarion will determine whether the proposed timing would have been sufficient to satisfy the warranty obligations.

- In the case of a cash settlement offered by the builder but not accepted by the homeowner; Tarion will determine whether the cash settlement offer was fair compensation for the warranted defect.

## Chargeable Conciliation

The conciliation will become chargeable if Tarion determines that:

- One or more items reported by the homeowner is warranted under the Ontario New Home Warranties Plan Act and the builder has failed to repair or resolve the item(s) during the applicable repair periods, and
- There is no exception to chargeability as outlined in this bulletin (see the [Exceptions To Chargeability](#) section below).

When Tarion makes the decision that a conciliation is chargeable, two things happen:

1. The builder must reimburse Tarion for conducting the conciliation based on the fee specified in Appendix A and
2. The builder's record on the Ontario Builder Directory (maintained by the Home Construction Regulatory Authority) is updated to reflect that the builder has received a chargeable conciliation. The chargeable conciliation is a measure of builder performance. It stays on the builder's record for 10 years. When the vendor and builder are separate entities, the chargeable conciliation is shown against both the vendor and builder.

Note: The homeowner's conciliation deposit is refunded when any item on the form is found to be warranted, regardless of the chargeability status.

## Chargeable Conciliation and Minor Items

Any warranted item, even if it is considered minor (or the cost to repair is very low), will result in a chargeable conciliation unless an exception applies. The question is often raised whether this is fair to the builder. Here are the reasons Tarion considers it fair:

- The timeframes for repairing warranted items are reasonable. Builders are expected to attend to all items that have been identified on a warranty form that are warranted,
- Minor items can be easily repaired and good customer service practices would ensure that these items are addressed.

- What may seem minor to the builder may not be minor to the homeowner. The cost and time associated with a conciliation means parties are invested in the issue and feel strongly about the disputed items.
- Conciliations, especially inspections, cost all parties time and money, therefore, builders and homeowners are expected to cooperate and act reasonably to achieve resolution.

### Other Points about Chargeable Conciliation

- A builder's past record is not a factor in determining whether or not a conciliation is chargeable.
- The sole determination of chargeability is whether one or more warranted items exist at the conciliation and no exception to chargeability applies.
- A builder is responsible for its employees, trades, subcontractors and suppliers. There is no exception based on the idea that a builder's representative was supposed to attend to the item in question, but failed to do so.
- A valid delayed closing or occupancy compensation, deposit refund or financial loss claim can also result in a chargeable conciliation. The desk assessment is considered a conciliation.
- Conciliations conducted where the builder is unwilling or unable to fulfill their warranty obligations will be chargeable (unless a chargeability exception applies such as improper denied access).
- There is only a single chargeable conciliation for each Warranty Form regardless of the number of warranted items. Likewise, if a conciliation is chargeable and an additional warranted item is found on a subsequent reinspection, chargeability applies only once.

### Major Structural Defect Claims in Years Three to Seven

Any time after the end of the second year, but no later than the expiry of the seventh year of possession, a homeowner may make a Warranty Claim under the Major Structural Defect (MSD) Warranty. For more information on how these claims are handled, please refer to [Registrar Bulletin 03 Seven-Year Warranty Framework - Major Structural Defect](#) (formerly Builder Bulletin 24).

#### Important note on MSD rules after July 1, 2012

If the builder does not resolve a warranted MSD claim in full on its own, the conciliation will be chargeable unless there is a chargeability exception as outlined in the [Exceptions To Chargeability](#) section, below. This only applies to freehold homes where the agreement of purchase and sale was signed on or after July 1, 2012 and condominium projects where the first agreement of purchase and sale for a unit occurred on or after July 1, 2012.

## Tarion's Expectations of Builders and Homeowners During the Resolution Process

Builders and homeowners are expected to cooperate and act reasonably to achieve resolution by proper repair, replacement or cash settlement.

### Builder Responsibilities

- A builder (and its trades) is expected to act in a respectful, courteous and cooperative manner in all aspects of the claims process.
- A builder is responsible for its employees, trades, subcontractors and suppliers. There is no exception based on the idea that a builder's representative was supposed to attend to the item in question but failed to do so.
- A builder is responsible for assessing each claim item reported on a Warranty Form, conducting whatever inspections are necessary, obtaining any clarifications from the homeowner and then repairing or resolving each item during the repair periods.
- Builders should ask homeowners for details about the defects. For example: If a claim form refers to squeaks 'throughout' the flooring, the builder should ask exactly where the squeaks are, and the homeowner is expected to be specific and point out exactly where the issues are.
- A builder is responsible for determining the method of resolution: repair, replacement or cash settlement.
- A builder is expected to have a system to track and verify that all the items listed on the Warranty Form have been resolved.
- A builder is responsible for paying attention to a claim and providing a resolution in a timely manner. If a builder consistently performs repairs at the last minute, it may have an impact on future applications to Tarion including, for example, requiring mandatory customer service training as a condition of qualification for enrolment or enrolment.
- A builder is expected to provide details of proposed repairs in a timely manner, if requested by the homeowner, in advance of the conciliation.
- A builder should be fair and reasonable in scheduling repairs and reliable in terms of following up on the agreed to dates and times. Most homeowners have to book time off work to accommodate the scheduling arrangements. A minimum period of two(2) business days' notice should be provided to homeowners when scheduling repairs.

- A builder should use the Ontario Building Code and Tarion’s Construction Performance Guidelines<sup>4</sup> as primary resources when determining if the defects in question are covered under the warranty.
- A builder is required to reimburse Tarion for conducting the conciliation based on the fee specified in Appendix A if the conciliation inspection results in a chargeable conciliation.
- A builder must resolve a warranted MSD claim, pursuant to [Registrar Bulletin 03 - Seven-Year Warranty Framework - Major Structural Defect](#) (formerly Builder Bulletin 24) to avoid a chargeable conciliation.

### Homeowner Responsibilities

- A homeowner is expected to act in a respectful, courteous and cooperative manner in all aspects of the claims process.
- A homeowner will facilitate a more favourable resolution by allowing a builder (and its trades, suppliers, subcontractors) reasonable access to the home during business hours (Monday to Friday, 8:00 a.m. to 5:00 p.m.) to investigate and remedy defects.
- A homeowner must follow the process in good faith to allow for a reasonable and timely resolution of warranted items.
- A homeowner is expected to be fair and reasonable in arrangements to schedule repairs. This includes responding to scheduling requests, allowing access during business hours, and working fairly with the builder to arrange repair opportunities within the builder repair periods. If there are scheduling issues that cannot be resolved, the homeowner is encouraged to contact Tarion. If a homeowner does not allow the builder a reasonable opportunity to resolve items during the prescribed repair periods, the homeowner may jeopardize the warranty coverage for those items.
- A homeowner should use the Ontario Building Code and Tarion’s [Construction Performance Guidelines](#) as primary resources when determining if the items in question are covered under the warranty.
- A homeowner must properly clarify all claim items when asked by the builder or his representative and be specific as to where defects are located.

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<sup>4</sup> The purpose of the Construction Performance Guidelines is to provide advance information as to how Tarion will decide disputes between homeowners and builders about defects in work or materials unless there is other information which affects the assessment. The Construction Performance Guidelines are intended to complement the Ontario Building Code and are supplemented by any applicable guidelines or standards produced by industry associations. They do not replace manufacturers’ warranties. The Construction Performance Guidelines were prepared in consultation with various industry volunteers, Tarion employees and the general public. The Construction Performance Guidelines can be found at [tarion.com](http://tarion.com)

- A homeowner will advise the builder as soon as possible if a repair made by the builder has failed or it is considered inadequate.
- A homeowner must request a conciliation if warranted items are not resolved by the builder during the repair periods and/or to the homeowner's satisfaction in order to continue with the warranty process for that claim form.

The claims process and Tarion's customer service standard, including the expectations of homeowners and builders, are also described in Tarion's [Learning Hub, Registrar Bulletin 01 - Customer Service Standard](#) (formerly Builder Bulletin 42) and [Registrar Bulletin 02 - Claims Process - Condominium Common Elements](#) (formerly Builder Bulletin 49).

## HomeHub

The HomeHub feature in MyHome and BuilderLink allows homeowners and builders to communicate about items with a view to resolving warranty claims without a conciliation by Tarion. Homeowners and builders can update each other on the status of items, provide supporting photos and other documents, and correspond about repairs. HomeHub will also indicate whether the homeowner has requested a conciliation.

Tarion will consider all of the circumstances and communications on a file when determining whether an exception to chargeability applies. While Tarion encourages homeowners to use HomeHub, there is no requirement that they use it or that they regularly check and provide updates. It is the builder's responsibility to use a contact method that the homeowner uses and through which the homeowner will receive the builder's communications. If a homeowner has not updated an item or responded to a builder's comments in HomeHub, the builder must contact the homeowner using a different method.

If, for example, a homeowner does not expressly respond in HomeHub to a builder's resolution offer, repair proposal, request for information about an item, or request for access, Tarion will not consider this to be a refusal or agreement by the homeowner for an exception to chargeability to apply.

Also, a homeowner may request a conciliation but not update items in HomeHub. It is the builder's responsibility to confirm with the homeowner before the conciliation inspection which items they want Tarion to assess. An exception to chargeability will not apply based only on the item status or conciliation request indicated in HomeHub.



## Exceptions To Chargeability

A conciliation is chargeable if Tarion determines that one or more items are warranted at the conciliation inspection, unless a specified exception to chargeability applies for each and every item that was assessed as warranted.

The general principle underlying the specified exceptions to chargeability is fairness. The exceptions are designed on the principle that a conciliation should not be chargeable if builders could/would have complied with their customer service obligation but, through no fault of their own, were unable to do so.

If a specified exception applies and the conciliation is not chargeable, the builder is still responsible for resolving the warranted item(s). Tarion will work with the builder and homeowner to facilitate fair and reasonable access in situations where there is a dispute about providing access.

### The Nine Specified Exceptions to Chargeability are:

1. Denied Access
2. Reasonable Repair Refused
3. Reasonable Cash Settlement Refused
4. Evidence of Prior Satisfaction
5. Re-Introduced Item or New Issue
6. Item Not Described Sufficiently
7. Shortened or No Builder Repair Period
8. Extraordinary situations exception
9. Warranty Decision Overturned by LAT

#### **1. Denied Access**

A conciliation is not chargeable if the builder demonstrates that the homeowner unreasonably denied access to repair the warranted item(s) (to the interior or exterior of the home) before the conciliation.

For this exception to apply, builders must demonstrate that:

- (a) they worked in good faith with the homeowner to arrange a mutually convenient date and time to do the

necessary repair work by:

- making at least three attempts in writing (including by email if an agreed upon email channel has been established) to schedule repair work during regular business hours (Monday to Friday, 8:00 a.m. to 5:00 p.m.) within the builder repair periods;
- providing at least two business days' notice to the homeowner prior to proposed repair work;
- making reasonable efforts to accommodate the homeowner in scheduling repair work; and
- documenting efforts to schedule repair work; and

(b) the homeowner would not allow the builder access to do the repair work.

The denied access exception also applies if the homeowner intimidates, threatens, or physically or verbally abuses the builder or the builder's employees, trades, subcontractors or suppliers in a way that the builder cannot gain reasonable access or is justified in not attending the home due to health and/or safety concerns. In these circumstances, a builder should request Tarion's assistance.

The homeowner is required to permit access to the builder for the warranty to apply. [See Appendix B: Denying Access](#) for examples of possible reasonable and unreasonable reasons for denying access.

- If the builder encounters difficulties gaining access, he/she should advise Tarion of the difficulties in writing in a timely manner and indicate whether he/she wants Tarion to intervene.

### **Importance of Providing Written Documentation to Tarion Before the Conciliation**

If a builder does not give written notices to the homeowner, document efforts to schedule repair work and provide this information in writing to Tarion prior to the conciliation, then this denied access exception to chargeability will not apply. Further, should a builder appeal this decision at the Builder Arbitration Forum (BAF), this denied access exception to chargeability will not be considered at the BAF.

For more information about BAF, please refer to [Registrar Bulletin O8 - Builder Arbitration Forum](#) (formerly Builder Bulletin 41) and the BAF Rules.

## **2. Reasonable Repair Refused**

A conciliation may not be chargeable if the conciliation was required because the builder and the homeowner disagreed about the method or scope or timing of a repair to the applicable warranted item(s).

For this exception to apply:

(a) Builders must demonstrate that:

- they committed in writing to the homeowner to repair the item(s) and provided reasonable details (if details were requested by the homeowner and details were reasonably available at the time of the request), in advance of the conciliation;
- there was sufficient time before the conciliation to complete the work and the builder had agreed to do so;
- the homeowner refused the proposed repair and/or denied reasonable access (as outlined above) to enable the builder to effect the repair; and

(b) Tarion must consider the builder's repair proposal sufficient to address the warranted item(s) according to the warranty obligation including compliance with applicable law, industry standards and the Construction Performance Guidelines. If an alleged warranted item(s) is clearly dealt with by the Construction Performance Guidelines, and there is no conflict with applicable law or industry standard, Tarion will accept the Construction Performance Guidelines standard as the appropriate criterion for assessing whether the item(s) are or are not warranted.

## **3. Reasonable Cash Settlement Refused**

A conciliation may not be chargeable if the conciliation was required because the homeowner did not accept a reasonable cash compensation offer made by the builder to resolve the applicable warranted item(s).

For this exception to apply:

(a) Builders must demonstrate that:

- they made a written offer of cash compensation to settle the item(s) in advance of the conciliation;
- the homeowner refused the proposed cash settlement; and

(b) Tarion must consider the proposed cash settlement offer to be reasonable in the circumstances in terms of dollar amount and timing of the offer. The homeowner must also be given a reasonable amount of time to consider the settlement offer before the conciliation. What is reasonable may depend on the size and complexity of the settlement. At minimum, 24 hours should be provided.

Tari will determine whether the amount of the cash settlement offer satisfies the warranty obligations. In the absence

of other evidence, Tarion would favourably consider a builder's settlement offer that is the average of two quotes<sup>5</sup> for the item.

These quotes must be obtained from two separate and qualified trades or suppliers who are independent of the builder<sup>6</sup>. The quotes must also relate to a proper scope of work and the trades/suppliers providing the quotes must be prepared to do the work for the amount quoted.

Tarion will also consider the evidence of its own experts or contractors or estimates provided by the homeowner.

#### **4. Evidence of Prior Satisfaction**

A conciliation may not be chargeable if the builder can demonstrate that he/she took no further action on an item(s) because the homeowner had previously indicated that they were satisfied with the builder's repair or resolution of the item(s).

For this exception to apply, the builder must provide Tarion with documented evidence, e.g., signed settlement agreement or written acknowledgment, that the homeowner advised the builder before the conciliation that they were satisfied with the state of the repaired item(s) or satisfied that the dispute relating to the item(s) was otherwise resolved (and so long as the homeowner has not given notice before the Request for Conciliation that the repair failed).

If the builder asks the homeowner to sign a document acknowledging a resolution of the item(s), the homeowner must understand that the purpose of the document is to acknowledge the homeowner's satisfaction with the repair work or the settlement. If the builder simply asks the homeowner to initial a work order this may not be sufficient if, for example, the homeowner is initialing only to confirm that the subcontractor attended the home.

#### **5. Re-Introduced Item or New Issue**

A conciliation may not be chargeable if the builder did not have a reasonable opportunity to resolve the warranted item(s) during the builder repair period(s) because of one or more of the following reasons:

- The item was removed by Tarion from the list of items to be conciliated but was later re-introduced by the homeowner.

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<sup>5</sup> In circumstances where an item is unique and only a single quote can be obtained, in the absence of other evidence, such single quote will suffice for Tarion's purposes.

<sup>6</sup> This means generally, a supplier or trade over which the builder does not have an ability to direct or significantly influence the business affairs of the supplier or trade. The fact that a builder has a contractual relationship with the supplier or trade will not in itself disqualify the supplier or trade's quote.

- In the course of doing a repair or replacement a new and different defect arises and the builder was unaware of the new deficiency but agrees at or before the conciliation to resolve the issue to the warranty standard.

### **6. Item Not Described Sufficiently**

A conciliation may not be chargeable if the item was not described accurately or specifically enough by the homeowner to enable the builder to resolve it (however, if a builder is unclear about the homeowner's specific concern, the builder has an obligation to speak with the homeowner or attend the home to clarify the exact issue).

This exception may apply if the specific issue was not listed by the homeowner as a described defect on a warranty form, but was part of a larger attachment or report included with the homeowner's submission covering a large number of items (such as a general building inspector's report).

### **7. Shortened or No Builder Repair Period**

A conciliation may not be chargeable if, for reasons beyond the builder's control, the builder has not had a reasonable period of time in which to resolve the warranted item(s). This exception may apply where, for example:

- Tarion has exercised its discretion to abridge a builder repair period; or
- because of an administrative error by Tarion, the builder was not given notice of the claim or conciliation by Tarion.

### **8. Extraordinary Situations**

If a builder is experiencing a "builder extraordinary situation" or an "industry/regional extraordinary situation" as defined in Tarion's Registrar Bulletins 01 and 02, has complied with the applicable procedures set out in that Bulletin and has received an extension of the builder repair period from Tarion, but a homeowner insists on proceeding to a conciliation on an affected item(s) before the extended repair period has elapsed, the conciliation will not be chargeable on the basis of that item(s) being assessed as warranted.

### **9. Warranty Decision Overturned by LAT**

A conciliation is not chargeable if an appeal to the Licence Appeal Tribunal reverses Tarion's decision that one or more items are not warranted.

## **Items Placed Under Investigation**

If at the time of the conciliation Tarion is not able to determine whether an item is warranted, the item is put under investigation and a second inspection or desk assessment is done. This is considered a continuation of the initial

conciliation.

This means that although the initial conciliation was not chargeable (because Tarion had not yet determined whether or not the item was warranted) if upon further investigation (the continuation of the initial conciliation) it is determined that an item is warranted, the conciliation is then chargeable.

There are two possible exceptions to the conciliation becoming chargeable in this circumstance:

- One of the specific exceptions to chargeability applies.
- The builder, acting reasonably, could not inspect or otherwise discover that the warranted defect existed at the first inspection and the builder resolved the defect at its sole cost and expense within a reasonable time thereafter as determined by Tarion.

## Extraordinary Circumstances

If a builder is faced with extraordinary circumstances that prevent resolution of a claim during the builder repair periods, builders are advised to follow the procedures in Registrar Bulletin Nos. [01](#) and [02](#) (formerly Builder Bulletin 42 and Builder Bulletin 49) to determine if the circumstances are appropriate for Tarion to exercise its discretion to extend repair periods. Examples of extraordinary circumstances include industry or region-wide shortages of material and significant labour interruptions.

The conciliation would then occur at the end of any extended repair period. Please see Registrar Bulletin Nos. [01](#) and [02](#) (formerly Builder Bulletin 42 and Builder Bulletin 49) for more information about extraordinary circumstances.

## Challenging and Reversing a Chargeable Conciliation

There are two ways for a builder to challenge Tarion's decision that a conciliation is chargeable:

1. A written request to Tarion for a review of its decision.
2. An appeal (subject to eligibility rules) through the Builder Arbitration Forum in accordance with its procedural rules.

### 1. Requesting a Review through Tarion

To request a review a builder should contact the author of the warranty assessment report.

Tarion reserves the right in its sole discretion to reassess a decision that a conciliation is chargeable based on the considerations in this bulletin. As a general rule, evidence relating to whether items are or are not warranted, or to whether a chargeability exception applies, must be presented prior to the conciliation – the goal being to avoid conciliations. Tarion may, at its sole discretion, consider information received after the conciliation in

making a chargeability assessment or reassessment.

If Tarion agrees to a review, it will consider new information provided by the builder or others and may reverse its decision if this new information confirms one of the following:

- An exception to chargeability applies.
- The applicable item or items should not have been warranted at the conciliation.
- The defect was such that a builder, acting reasonably, could not inspect or otherwise discover that the warranted defect existed (and the builder resolves the defect at its sole cost and expense within a reasonable time as determined by Tarion).

In circumstances where the reversal is based on information provided to Tarion by the builder after the conciliation, the conciliation fee is still not refundable.

If Tarion makes a previously chargeable conciliation non-chargeable, the builder will be advised in writing of the reversal and the reasons for the reversal.

## ***2. Appealing a Decision through the Builder Arbitration Forum***

A chargeable conciliation may be appealed through the Builder Arbitration Forum (subject to eligibility) and may be reversed by an arbitrator. If the arbitrator determines that a conciliation should not have been chargeable, Tarion will reverse its decision and the conciliation will not be chargeable. Tarion will refund the conciliation fee paid by the builder.

### **Homeowner Challenges and Concerns**

The decision regarding chargeability does not affect the homeowner's rights or responsibilities under the warranties, the warranties on the home, or the warranted items that require resolution.

A homeowner may pursue issues that concern procedural fairness with Tarion's Ombudsperson. However, the determination of whether a conciliation is chargeable is an administrative decision made solely by Tarion. The issue of chargeability only affects a builder and therefore can be challenged by a builder but cannot be challenged by a homeowner.

## Reversing a Non-Chargeable Conciliation Decision

Tarion has the discretion to reassess and reverse its conciliation decision so that a previously non-chargeable conciliation becomes a chargeable conciliation. This must be done within 365 days of the original conciliation decision. Here are some examples of cases where reversal may happen:

- Additional information or analysis from the homeowner is provided to Tarion after the conciliation shows that an item assessed as not warranted should have been warranted (although if Tarion proposes to consider new information from the homeowner, then it will similarly allow the builder to present new evidence received after the conciliation).
- Due to an administrative error by Tarion, the builder was incorrectly advised that an item was not warranted and/or that the conciliation was not chargeable.
- Additional information provided to Tarion after the conciliation shows that a previously applied exception to chargeability should not have been applied (although if Tarion proposes to consider new information then it will similarly allow the builder to present new evidence received after the conciliation).

If Tarion reverses its decision and makes a conciliation chargeable, the builder will be advised in writing by the Vice President, Warranty Services, of the reversal and the reasons for the reversal.

Registrar

*"Peter Balasubramanian"*



## Appendix A

### Conciliation Fees

If a conciliation is chargeable to the builder, the builder is required to pay a fee to Tarion.

The current fees for builders are set out below. All fees are subject to applicable taxes.

Conciliation	Fee
Freehold or Condominium Unit	\$1000
Condominium Common Element	\$3000

## Appendix B

### Denying Access

This appendix provides some examples of circumstances that Tarion may consider reasonable and unreasonable for a homeowner to deny access to a builder. These are not exhaustive lists.

#### **Reasonable reasons for a homeowner to deny access to a builder:**

- The builder refuses to give the homeowner any information reasonably available at the time about his/her proposed approach to the repair. Note that the homeowner cannot dictate the method of repair; but, upon request is entitled to have reasonable information about the proposed method of repair, if such information is reasonably available at the time of the request.
- The builder wants to use a trade or subcontractor who has continuously demonstrated poor workmanship.
- The builder is not specific enough in the dates and times proposed for the repair work.
- The builder (or the builder's employees, trades, subcontractors or suppliers) has intimidated, threatened, or physically or verbally abused the homeowner.

#### **Unreasonable reasons for a homeowner to deny access to a builder:**

- The homeowner denies access even though there is sufficient time left in the repair periods to complete the proposed repair work.
- The homeowner does not agree with the method or details of the repair work proposed by the builder; but, Tarion considers the repair proposed by the builder to be reasonable.
- The homeowner believes the builder is not competent but there is no evidence that the trades or subcontractors proposed to do the work have continuously demonstrated poor workmanship.

## Appendix C

### Checklist of Key Responsibilities

The following is a checklist highlighting the key responsibilities of the homeowner, builder and Tarion during the conciliation process. This checklist is intended to help each party in outlining their responsibilities. It does not include any exceptions to the prescribed warranty process nor are they in themselves exceptions to chargeability but rather are for illustrative purposes only.

Builder	
✓	A builder (and its trades) is expected to act in a respectful, courteous and cooperative manner in all aspects of the claims process.
✓	A builder is responsible for its employees, trades, subcontractors and suppliers. There is no exception based on the idea that a builder's representative was supposed to attend to the item in question, but failed to do so.
✓	A builder is responsible for assessing each claim item reported on a Warranty Form, conducting whatever inspections are necessary, obtaining any clarifications from the homeowner and then repairing or resolving each item during the repair periods.
✓	A builder is responsible for determining the method of resolution: repair, replacement or cash settlement.
✓	A builder is expected to have a system to track and verify that all the items listed on the Warranty Form have been resolved.
✓	A builder is responsible for paying attention to a claim and providing a resolution in a timely manner. If a builder consistently performs repairs at the last minute, it may have an impact on future applications to Tarion including, for example, requiring mandatory customer service training as a condition of qualification for enrolment.
✓	A builder is expected to provide details of proposed repairs, if requested by the homeowner, and details were reasonably available at the time of the request, in advance of the conciliation.

✓	A builder should be fair and reasonable in scheduling repairs and reliable in terms of following up on the agreed to date and time. Most homeowners have to book time off work to accommodate the scheduling arrangements. A minimum period of two (2) business days' notice should be provided to homeowners when scheduling repairs.
✓	A builder should use the Ontario Building Code and Tarion's Construction Performance Guidelines as primary resources when determining if the defects in question are covered under the warranty.
✓	A builder is required to reimburse Tarion for conducting the conciliation based on the fee specified in Appendix A if the conciliation inspection results in a chargeable conciliation.
✓	A builder must resolve a warranted MSD claim, pursuant to <a href="#">Registrar Bulletin 03</a> (formerly Builder Bulletin 24), to avoid a chargeable conciliation.

Homeowner	
✓	A homeowner is expected to act in a respectful, courteous and cooperative manner in all aspects of the claims process.
✓	A homeowner will facilitate a more favourable resolution by allowing a builder (and its trades, suppliers, subcontractors) reasonable access to the home during business hours (Monday to Friday, 8:00 a.m. to 5:00 p.m.) to investigate and remedy defects.
✓	A homeowner must follow the process in good faith to allow for a reasonable and timely resolution of warranted items.
✓	A homeowner is expected to be fair and reasonable in arrangements to schedule repairs. This includes responding to scheduling requests, allowing access during business hours, and working fairly with the builder to arrange repair opportunities within the builder repair periods. If there are scheduling issues that cannot be resolved, the homeowner is encouraged to contact Tarion. If a homeowner does not allow the builder a reasonable opportunity to resolve items during the prescribed repair periods, the homeowner may jeopardize the warranty coverage for those items.

✓	A homeowner should use the Ontario Building Code and Tarion’s Construction Performance Guidelines as primary resources when determining if the items in question are covered under the warranty.
✓	A homeowner must properly clarify all claim items when asked by the builder or his representative.
✓	A homeowner will advise the builder as soon as possible if a repair made by the builder has failed or it is considered inadequate.
✓	A homeowner must request a conciliation if warranted items are not resolved by the builder during the repair periods and/or to the homeowner’s satisfaction in order to continue with the warranty process for that claim form.

Tarion	
✓	Tarion must perform a conciliation upon the timely request of a homeowner. A conciliation may include an inspection at the home, a virtual inspection or a desk assessment and may also include a review of the purchase agreement, the completed pre-delivery inspection form and other relevant documents.
✓	During a conciliation inspection, Tarion determines whether: (i) one or more items reported by the homeowner is warranted and the builder failed to repair or resolve the item(s) during the applicable repair periods; and (ii) an exception to chargeability as specified in this bulletin applies.
✓	During a conciliation inspection, Tarion will (i) assess whether a repair brought the item to a state in which it is no longer a warranted defect; (ii) if a repair could not be done because the homeowner would not accept the repair methodology, or the timing of the repair proposed by the builder, then Tarion will assess whether the proposed repair methodology, if it had been completed when the builder intended to do the repair, would have been sufficient to satisfy the warranty obligations; and/or (iii) if a cash settlement is not accepted by the homeowner, whether the settlement offer was fair compensation for the warranted defect.

✓	Tarion will prepare a warranty assessment report upon completion of the conciliation, determining whether the item(s) are warranted or not.
✓	If Tarion determines that chargeability applies, a chargeable conciliation will be placed on the Ontario Builder Directory under the builder's record and this will remain on the website for 10 years