

Builder Bulletin 46

(Revised)

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FREEHOLD DELAYED CLOSING WARRANTY

WHAT THIS BULLETIN IS ABOUT

This Bulletin¹ explains how the Delayed Closing Warranty framework operates. The framework is different depending generally on whether the sale of a freehold home is before July 1, 2008; between July 1, 2008 and October 1, 2012; or after October 1, 2012. Please see the transition rules below at section 14.

This 2012 revision to the Builder Bulletin 46 introduces two revised Addendum forms that will be applicable, generally speaking, for freehold home sales on or after October 1, 2012 (see transition rules below at section 14). The new Addendum forms also:

- provide greater flexibility for changing Critical Dates by mutual agreement (see section 7 below); and
- require builders to provide better disclosure of closing adjustments in a new Schedule “B” to the Addendum (see section 12 below).

The word “builder” when used in this Bulletin, includes both a vendor and a builder, as applicable.

Capitalized terms in this Bulletin have the meanings given to them in the freehold Addendums referred to in section 2 below.

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¹ Please note that if there is any conflict or inconsistency between the terms of this Bulletin and the applicable Addendum or with provisions of the ONHWP Act or regulations, then the provisions of the Addendum and the ONHWP Act and regulations shall prevail, with the ONHWP Act and regulations being paramount.

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The Bulletin also contains the following appendices:

1. Appendix "A": Firm Closing Date Timeline Schematic
2. Appendix "B": Tentative Closing Date Timeline Schematic

1. OVERVIEW OF DELAYED CLOSING WARRANTY FOR FREEHOLD HOMES

The Delayed Closing Warranty is governed by the *Ontario New Home Warranties Plan Act* and its regulations (the "ONHWP Act") – specifically Regulation 165/08, a copy of which is available on the Tarion website. The obligations of builders are set out in the regulation and the statutorily mandated Addendum which must form part of each purchase agreement.

The Delayed Closing Warranty is intended to provide some protection to purchasers from the impact of delays in the Closing of the purchase of the new freehold home. This objective is achieved by, among other things:

- Making clear the firm or tentative nature of the Closing date being promised. Builders must provide a specific Closing date in the purchase agreement, and must expressly tell the purchaser whether the date is firm or tentative (so the purchaser knows up front that the date may be changed);
- Limiting the builder's use of Early Termination Conditions in the purchase agreement;
- Disclosing in the purchase agreement the status of development approvals and the status of construction so the purchaser can better assess the risk that a delay may occur;
- Providing adequate notice to the purchaser when Closing is to be delayed;
- Compensating purchasers where a delay in excess of permitted delay has occurred; and
- Setting an Outside Closing Date beyond which the purchaser has a right to terminate the transaction.

The Delayed Closing Warranty is in addition to the basic obligation of a builder to take all reasonable steps to complete the construction of a home and to close the purchase and sale transaction without delay.

These matters are addressed in the applicable Addendum form, described in more detail below.

2. THE FREEHOLD ADDENDUM FORMS

The Addenda (there are two forms) for freehold homes set out standard contract provisions relating to Delayed Closing that must be included in all purchase agreements for new homes in Ontario. There are basically two freehold Addendum forms – one for purchase agreements offering a Firm Closing Date from the outset, and a second for purchase agreements which set a Tentative Closing Date and allows builders to extend as of right. The builder must choose one or the other of the Addendum forms to attach as part of the purchase agreement:

- Freehold Firm Closing Date
- Freehold Tentative Closing Date

Updated versions of these two documents are now available for freehold homes, generally speaking, for which the purchase agreement is signed on or after October 1, 2012 (see Transition Rules at section 14).

A copy of each type of the Addendum can be found on Tarion's website at www.tarion.com.

The Addendum supplements the terms of the purchase agreement and sets out important obligations of a builder in respect of delays and should be read carefully.

The builder is required to complete all blanks in the applicable Addendum.

Failure to include an Addendum in a purchase agreement, or to fill in all applicable blanks, is contrary to the terms and conditions of a builder's registration. It may result in the purchaser being able to terminate the purchase agreement, and may result in sanctions by Tarion up to and including the revocation of the builder's registration and thus revocation of the builder's right to build new homes in Ontario.

3. STATEMENT OF CRITICAL DATES

The first page of the Addendum is the *Statement of Critical Dates*. This document sets out Critical Dates related to Closing. The builder must complete the blanks in the Statement of Critical Dates or else the purchase agreement is not enforceable by the builder.

Tarion has provided a web-based calculator which can be found on BuilderLink (formerly the Builder Portal) and Tarion's website at www.tarion.com, to assist in calculating these dates. Tarion will also publish, from time to time, monthly paper calendars for builders and their staff without access to the Internet.

Firm Closing Date Option

For the Firm Closing Date option, the builder must specify a calendar date for each of the following:

- *Firm Closing Date* – the date by which the builder agrees to complete the home and have it ready for occupancy.
- *Outside Closing Date* – the date which is 365 days after the Firm Closing Date. If Closing has not occurred by that date, the purchaser can elect to terminate the deal, all monies paid by the purchaser are to be returned with interest and the purchaser will be entitled to Delayed Closing Compensation.
- *End of the Purchaser's Termination Period* – this date is the end of the 30-day period during which the purchaser may terminate the transaction if the home purchase transaction has not closed by the Outside Closing Date.

Tentative Closing Date Option

For the Tentative Closing Date option, the builder must specify a calendar date for each of the following:

- *First Tentative Closing Date* – the date by which the builder expects the home will be completed and ready for occupancy.
- *Second Tentative Closing Date* – the date 120 days after the First Tentative Closing Date, which is the outside date to which the builder can initially extend Closing without the purchaser's consent.
- *Firm Closing Date* – the date 120 days after the Second Tentative Closing Date, which is the outside date to which the builder can further extend Closing without the purchaser's consent or without setting a Delayed Closing Date and paying Delayed Closing Compensation.
- *Outside Closing Date* – the date which is 365 days after the earlier of the Second Tentative Closing Date and the Firm Closing Date. If Closing has not occurred by that date, the purchaser can elect to terminate the deal, and all monies paid by the purchaser are to be returned with interest and the purchaser will be entitled to Delayed Closing Compensation.

- *Notice of Delay beyond the First Tentative Closing Date* – this date is 90 days before the First Tentative Closing Date and is the last day by which notice must be given if a delay beyond the First Tentative Closing Date is expected.
- *Notice of Delay beyond the Second Tentative Closing Date* – this date is 90 days before the Second Tentative Closing Date and is the last day by which notice must be given if a delay beyond the Second Tentative Closing Date is expected.
- *End of the Purchaser’s Termination Period* – this date is the end of the 30-day period during which the purchaser may terminate the transaction if the home is not ready for occupancy by the Outside Closing Date.

Schematics illustrating the timelines under each option of the freehold delayed Closing regimes are attached as Appendix “A” and “B”.

4. DISCLOSURE OBLIGATIONS

When the Purchase Agreement is Signed

Builders must complete the blanks in the section of the Addendum titled “Information Regarding the Property.”

Development Approvals

The first portion of the disclosure section of the Addendums requires the builder to disclose the following information relating to the status of development approvals:

- Whether the Property is within a plan of subdivision or proposed plan of subdivision;
- Whether the plan of subdivision is registered or draft;²
- Whether the builder has received confirmation from the relevant government authorities that there is sufficient water capacity; and
- Whether the builder has received confirmation from the relevant government authorities that there is sufficient sewage capacity.

The builder must also disclose the nature of the confirmation that has been received (if there has been confirmation). For example, confirmation may be in writing, by email or by conversation with a particular person.

If the availability of water or sewage capacity is uncertain the builder must disclose to the best of its ability the issues that need to be resolved.

Construction Status

Builders must also disclose the following information relating to the status of construction:

- Whether a building permit has been issued in respect of the Property; and
- Whether Commencement of Construction of the home has occurred, and if not, the date that Commencement of Construction is expected to occur.

If construction has not yet begun at the time the purchase agreement is signed, the builder must give written notice to the purchaser within ten (10) days after The actual date of Commencement of Construction.

² Builders are reminded that the *Planning Act* does not permit sales to be signed by reference to a plan of subdivision unless and until the plan of subdivision has received draft plan approval.

“Commencement of Construction” means the start of excavation for and/or construction of foundation components or elements (such as footings, rafts or piles) of the home.

Other Disclosure

There are other ongoing disclosure obligations set out in the balance of each Addendum. For example, there are specified informational requirements for: extending or accelerating any Critical Dates by mutual agreement; setting a new Closing Date in cases of Unavoidable Delay; and setting Delayed Closing Dates.

5. CONDITIONS OF SALE

General

A condition is a term in a purchase agreement that sets out a situation in which the purchase agreement may terminate if a specified event either happens or does not happen.

The use of conditions of sale is regulated by the terms of the Addendum. Builders are permitted to include only certain specified types of conditions in their purchase agreement. These permissible types of conditions fall into four general categories:

- *Early Termination Conditions* – discussed in detail below;
- The usual condition regarding compliance with Planning Act subdivision control provisions;
- Conditions which are rights of termination in a favour of a party due to the default of the other; and
- Purchaser conditions – conditions for the sole benefit of the purchaser.

Early Termination Conditions

Non-waivable Conditions

The builder is permitted to make a purchase agreement conditional upon receipt of approval for:

- A change to the official plan, other governmental development plan or zoning by-law (including a minor variance);
- A consent to creation of a lot(s) or part-lot(s);
- A certificate of water potability or other measure relating to domestic water supply to the home;
- A certificate of approval of septic system or other measure relating to waste disposal from the home;
- Completion of hard services for the Property or surrounding area (e.g. roads, rail crossings, water lines, sewage lines, other utilities);
- Allocation of domestic water or storm or sanitary sewage capacity;
- Easements or similar rights serving the Property or surrounding area;
- Site plan agreements, density agreements, shared facilities agreements or other development agreements with approving authorities or nearby landowners and/or any development approvals required from an approving authority; and/or
- Site plans, plans, elevations and/or specifications under architectural controls imposed by an approving authority.

These conditions are for the benefit of both the builder and the purchaser and cannot be waived by either party.

The builder must provide written notice not later than 5 Business Days after the date specified for satisfaction of a condition that: (i) the condition has been satisfied; or (ii) the condition has not been satisfied (together with reasonable details and backup materials), and that as a result the purchase agreement is terminated.

Also, if notice is not provided as set out above, then the condition is deemed not satisfied and the purchase agreement is terminated.

Waivable Conditions

The builder is also permitted to make the purchase agreement conditional upon:

- Receipt of approval for a basement walkout;
- Receipt by the builder of confirmation that sales of a Freehold Project have exceeded a specified threshold by a specified date;
- Receipt by the builder of confirmation that financing for the Freehold Project on terms satisfactory to the builder has been arranged by a specified date; and/or
- Confirmation the builder is satisfied that the purchaser has adequate financial resources to complete the transaction.

These conditions are for the benefit of the builder and may be waived by the builder in its sole discretion.

The builder must provide written notice on or before the date specified for satisfaction of the condition that: (i) the condition has been satisfied or waived; or (ii) the condition has not been satisfied or waived, and that as a result the purchase agreement is terminated.

Also, if notice is not provided as set out above, then the condition is deemed waived and the purchase agreement will continue to be binding on both parties.

The Non-waivable Conditions and Waivable Conditions referred to above are together called the *Early Termination Conditions*.

Set Out in the Addendum

To ensure that any Early Termination Conditions required by the builder are clearly communicated to the purchaser, all Early Termination Conditions must be listed in section 6 of the Addendum³ or an appendix with the heading "Early Termination Conditions." Details of the Early Termination Conditions must also be included. For example, each Early Termination Condition must be set out separately, be reasonably specific as to the type of approval which is needed, and identify generally the approving authority. The builder is required to take all commercially reasonable steps to satisfy any Early Termination Conditions included in the purchase agreement.

Date for Satisfaction

The date for satisfaction of any Early Termination Condition must be no later than 90 days before the Firm Closing Date (or First Tentative Closing Date for a tentative transaction) with two exceptions: (i) the condition regarding builder confirmation that the purchaser has the financial resources to complete the transaction must be satisfied within 60 days after signing the purchase agreement (or 60 days after a home sale condition is satisfied or waived); and (ii) project viability conditions cannot be outstanding for more than nine months following signing of the purchase agreement.

³ In the pre-2012 Addendum, Early Termination Conditions are set out in section 2.

Three Day Review Period

If the builder includes one or more Early Termination Conditions, then the purchaser has a three Business Day time period after receiving a true and complete copy of: the signed purchase agreement; or proposed purchase agreement to, review the conditions that have been listed. If project viability conditions are included, the review period for such conditions is extended to 10 calendar days. If the purchaser is not satisfied with any such condition, the purchaser has the right to terminate the purchase agreement without penalty and the builder must return to the purchaser all monies paid by the purchaser together with interest (see section 11 below).

Other Builder Conditions

A purchase agreement may also be conditional upon the compliance with the subdivision control provisions (section 50) of the Planning Act, which compliance shall be obtained by the builder at its sole expense, on or before Closing.

A purchase agreement may also contain rights of termination where one or the other of the parties is at fault.

Prohibited Conditions of Sale

For greater certainty, the builder is not permitted to make the purchase agreement conditional upon:

- Receipt of a building permit;
- Receipt of an occupancy permit; and
- Completion of the dwelling.

Only conditions expressly permitted by the Addendum are enforceable by the builder. Any other conditions will be deemed void and unenforceable by the builder but will not affect the validity of the balance of the purchase agreement.

Purchaser Conditions

The purchase agreement may include any condition that is for the sole benefit of the purchaser which the parties may agree upon. Examples might include conditions in favour of the purchaser relating to: the sale of an existing dwelling; obtaining purchaser mortgage financing; or approval of a basement walkout.

6. FIRM OR A TENTATIVE CLOSING DATE OPTION

Firm or Tentative Closing Transaction

Builders must elect to offer either: a Firm Closing Date from the outset; or a Tentative Closing Date, i.e., specify an anticipated Closing Date which is tentative and which may be extended for up to 120 days on two occasions without the purchaser's consent.

Firm Closing Date Option

A builder may choose to offer a Firm Closing Date. Where the Firm Closing Date option is chosen, the builder cannot extend the Firm Closing Date without paying compensation to the purchaser, except in cases of *Unavoidable Delay* (see section 8 below) or where the builder and purchaser mutually agree to amend the purchase agreement (see section 7 below).

Builders who offer a Firm Closing Date must use the Firm Closing Date version of the Addendum which is simpler as it does not contain provisions concerning tentative dates or multiple extensions of such dates.

Tentative Closing Date Option

A builder may choose the Tentative Closing Date option. Builders who offer Tentative Closing Dates must use the Tentative Closing Date version of the Addendum. This version of Addendum contains terms relating to extensions of the tentative Closing Dates, provision for notice of such extensions, and requirements for setting the Firm Closing Date.

Setting New Closing Dates under the Tentative Closing Date Option

With the Tentative Closing Date option, you start by agreeing upon a First Tentative Closing Date with your purchaser.⁴ If the home will not be ready by this time, you can extend the Closing Date by up to 120 days. You can do so by either setting a Second Tentative Closing Date or setting a Firm Closing Date. If you need to exercise this right to extend, you must notify your purchaser at least 90 days before the First Tentative Closing Date.

If you have set a Second Tentative Closing Date and the home will still not be ready by this date, you are entitled to extend up to an additional 120 days by properly setting a Firm Closing Date. Again, at least 90 days prior written notice is required.

These first two extensions of up to 120 days each are available to you (upon giving proper notice) and you need not pay Delayed Closing Compensation. However, once you have set a Firm Closing Date, your only right to extend is to set a Delayed Closing Date and Delayed Closing Compensation will be payable.⁵

Notice for Setting a Second Tentative Closing Date

To set a Second Tentative Closing Date, you must:

- Give written notice to your purchaser at least 90 days before the First Tentative Closing Date; and
- Choose a Second Tentative Closing Date that is 120 days or less after the First Tentative Closing Date. If you are confident a full 120 days is not needed, then you can set an earlier Second Tentative Closing Date – for example, 30, 60 or 85 days after the First Tentative Closing Date – or go straight to setting a Firm Closing Date. The Second Tentative Closing Date must be a Business Day prior to the Outside Closing Date.

Notice for Setting a Firm Closing Date

If you have given proper notice of a Second Tentative Closing Date but still cannot complete the home by this date, you may further extend Closing by up to an additional 120 days by setting a Firm Closing Date.

To set a Firm Closing Date at this stage, you must:

- Give written notice at least 90 days before the Second Tentative Closing Date you have set; and
- Choose a Firm Closing Date that is 120 days or less after the Second Tentative Closing Date.

Possible Automatic Firm Closing Date

A Firm Closing Date may also be set automatically in two circumstances:

⁴ Set out in the Statement of Critical Dates.

⁵ You may also be able to extend if both parties mutually agree to do so (see section 7 below) or in the case where Unavoidable Delay exists (see section 8 below).

- If you fail to give a full 90 days written notice for the first extension, then the First Tentative Closing Date becomes the Firm Closing Date; and
- If you exercise the first extension properly but fail to give a full 90 days written notice for the second extension, then the Second Tentative Closing Date becomes the Firm Closing Date.

Setting a Delayed Closing Date

In connection with either the Firm Closing Date Option or the Tentative Closing Date Option, if you cannot complete the home for occupancy by the Firm Closing Date, and your purchaser does not want to extend the Firm Closing Date by mutual agreement, you can still set a Delayed Closing Date despite your purchaser's wishes. You can do this because, by the terms of the Addendum, your purchaser was made aware that this could be necessary. However, if you delay the Closing this way, your purchaser is entitled to Delayed Closing Compensation.

To achieve this further extension you are required to:

- Choose a Delayed Closing Date; and
- Give at least 10 days written notice. If you do not provide 10 days prior written notice as required, Delayed Closing Compensation is payable for an additional 10 days (i.e., from the date the notice should have been given).

If you choose a Delayed Closing Date that is beyond the Outside Closing Date, then your written notice setting the Delayed Closing Date must include a statement explaining that your purchaser need not accept the full delay and will have the right to terminate the purchase agreement during the 30-day Purchaser's Termination Period after the Outside Closing Date. This right to terminate is further described in section 11 of this Bulletin.

As explained earlier, the Outside Closing Date is 365 days after:

- The Firm Closing Date when using the Firm Closing Date option for the transaction; or
- The earlier of the Second Tentative Closing Date or the Firm Closing Date when using the Tentative Closing Date option for the transaction.

In many cases, this date will be earlier than the "latest possible" Outside Closing Date given on the Statement of Critical Dates.

7. CHANGING CRITICAL DATES BY MUTUAL AGREEMENT

The Addendum sets out a structure for setting, extending and/or accelerating⁶ Critical Dates. Critical Dates may be amended by mutual agreement but only on the following basis:

- The builder and purchaser may at any time after signing the purchase agreement, agree in writing to extend or accelerate one or more Critical Dates, (e.g., First Tentative Closing Date, Second Tentative Closing Date, Firm Closing Date or Delayed Closing Date), in each case to a new specified calendar date.
- The amendment must provide that it is being made voluntarily; that the builder and purchaser acknowledge that the purchaser has no obligation to sign the amendment; and that the purchase transaction will still be valid if the purchaser does not sign the amendment.
- The amendment must include a new revised Statement of Critical Dates.

⁶ The rules for accelerating dates are more stringent for pre-2012 Addendum forms.

- Also, since any such change may affect the Delayed Closing Warranty, any request by the builder to extend a Critical Date to a later date must include a written statement that:
 - i. Discloses to the purchaser that the signing of the amendment may result in the loss of Delayed Closing Compensation, as described in section 7 of the Addendum⁷;
 - ii. Unless there is an express waiver of compensation, describes in reasonable detail the cash amount, goods, services or other consideration which the purchaser accepts as compensation; and
 - iii. Contains a statement that the purchaser waives compensation or accepts the compensation noted in item ii above, in either case, in full satisfaction of any Delayed Closing compensation otherwise payable by the builder.

Sample forms of amendment can be found on Tarion's BuilderLink (formerly the Builder Portal) or will be provided upon request to Tarion.

If the purchaser for his or her own purposes requests the change(s) in date(s), the only requirements that apply are: that the amendment be in writing; that the new date(s) be calendar dates; that the amendment include a new Statement of Critical Dates; and that items i, ii, and iii, immediately above, do not apply.

A builder is permitted to include a provision in a purchase agreement allowing the builder a one-time unilateral right to extend a Firm Closing Date or Delayed Closing Date, as the case may be, one (1) Business Day to avoid the necessity of tender where a purchaser is not ready to close the transaction on the Firm Closing Date or Delayed Closing Date, as the case may be. Delayed Closing Compensation will not be payable for such period and the builder may not impose any penalty or interest charge on the purchaser.

The purchaser and builder may agree in the purchase agreement to any unilateral extension or acceleration rights that are unilaterally exercisable by the purchaser.

8. UNAVOIDABLE DELAY

The builder may extend a First Tentative Closing Date, a Second Tentative Closing Date, a Firm Closing Date and/or a Delayed Closing Date, as the case may be, without penalty in certain circumstances if there is an Unavoidable Delay.

An Unavoidable Delay means a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which is beyond the reasonable control of the builder and is not caused or contributed to by the fault of the builder.

If Unavoidable Delay occurs, the builder may extend the relevant dates by no more than the length of the Unavoidable Delay Period. The builder can implement this extension without the approval of the purchaser and without the requirement to pay Delayed Closing Compensation in connection with the Unavoidable Delay, provided the requirements of the Addendum are met.

When an Unavoidable Delay arises, the builder must provide the purchaser with written notice describing the delay along with an estimate of the duration of the delay. The builder must advise the purchaser as soon as possible when the delay has ended.

When the delay has ended, the builder must provide written notice to the purchaser setting out a brief description of the Unavoidable Delay, identifying the date of conclusion of the Unavoidable Delay Period, and setting new future Critical Dates (i.e., First Tentative Closing Date, Second Tentative Closing Date, Firm Closing Date, Delayed Closing Date, Outside Closing Date and the last day of the Purchaser's Termination Period, as the case

⁷ Section 9 of the pre-2012 Addendum forms.

may be). The new dates are calculated by adding to the existing Critical Dates the number of days of the Unavoidable Delay Period, provided that the new Firm Closing Date or Delayed Closing Date (if applicable) must be at least 10 days after the giving of notice, unless the builder and purchaser agree otherwise. The notice must set out as calendar dates all the new or confirmed Critical Dates.

In the context of an Unavoidable Delay, either the builder or the purchaser may request in writing earlier new dates, and the other party's consent to the earlier dates shall not be unreasonably withheld.

If an Unavoidable Delay occurs, the builder should review carefully the sections of the Addendum to ensure that all obligations are complied with. Failure to comply with the Addendum requirements may result in the builder having to pay Delayed Closing Compensation for the period for which an Unavoidable Delay is claimed.

9. BUILDING CODE - CONDITIONS OF OCCUPANCY

On or before the date of Closing, the builder is required to deliver to the purchaser either:

- An Occupancy Permit (as defined in the Addendum); or
- If an Occupancy Permit is not required under the Ontario Building Code (OBC), a signed written confirmation by the builder that all conditions of Occupancy under the OBC have been fulfilled and Occupancy is permitted under the Building Code.

However, if the builder and the purchaser agree that the purchaser shall be responsible for certain conditions of Occupancy, then without changing the statutory requirements for an Occupancy Permit, the purchaser may not be permitted to refuse to close on the basis that such conditions have not been completed. Also, the builder is required to deliver a modified form of written confirmation which confirms completion of all OBC conditions of Occupancy but excluding any conditions which the purchaser has agreed to complete.

If the builder cannot satisfy these requirements, the builder is required to set a Delayed Closing Date (or new Delayed Closing Date) on a date that the builder reasonably expects to have satisfied the requirements, and to comply with the provisions of the Addendum dealing with setting Delayed Closing Dates and paying Delayed Closing Compensation. Delayed Closing Compensation is not payable, however, if the inability to provide occupancy is caused by the failure of a purchaser to fulfill any conditions of Occupancy for which the purchaser is contractually responsible.

10. DELAYED CLOSING COMPENSATION

The builder warrants to the purchaser that, if the Closing is delayed beyond the Firm Closing Date (other than by mutual agreement in writing as described in section 7 of this Bulletin) or as a result of Unavoidable Delay), then the builder must compensate the purchaser up to a total amount of \$7,500, which amount includes: (i) payment to the purchaser of a set amount of \$150 a day for living expenses for each day of delay until the date of Occupancy or the date of termination of the purchase agreement (if applicable); and (ii) any other expenses (supported by receipts) incurred by the purchaser due to the delay.

Delayed Closing Compensation is payable only if:

- Closing occurs or the purchase agreement is terminated under specified circumstances (see section 11 below); and
- The purchaser's claim is made within one (1) year after Closing, or after termination of the purchase agreement, as the case may be. (See section 12 below.)

If the builder gives written notice of a Delayed Closing Date to the purchaser less than 10 days before the Firm Closing Date, Delayed Closing Compensation is payable from 10 days before the Firm Closing Date.

If the builder gives written notice of a Delayed Closing Date to the purchaser more than 90 days before the First Tentative Closing Date instead of setting a Second Tentative Closing Date, Delayed Closing Compensation is payable from the date that is 240 days after the First Tentative Closing Date. Similarly, if the builder gives written notice of a Delayed Closing Date to the purchaser more than 90 days before the Second Tentative Closing Date instead of setting a Firm Closing Date, Delayed Closing Compensation is payable from the date that is 120 days after the Second Tentative Closing Date.

Living expenses are direct living costs such as costs for accommodation and meals. A set daily amount of \$150 per day for living expenses is payable and receipts are not required. The purchaser must, however, provide receipts in support of any claim for other Delayed Closing Compensation, such as for moving and storage costs. Submission of false receipts may disentitle the purchaser to any Delayed Closing Compensation in connection with a claim.

11. TERMINATION OF THE PURCHASE AGREEMENT

Termination on Consent

The builder and the purchaser may terminate the purchase agreement at any time by mutual written consent.

Termination after Outside Closing Date

If for any reason (other than breach of contract by the purchaser) Closing has not occurred by the Outside Closing Date, then the purchaser has 30 days to terminate the purchase agreement by written notice to the builder. If the purchaser does not provide written notice of termination, then the Delayed Closing Date is the date set by the builder in the written notice or if the builder fails to set a date, the Delayed Closing Date is deemed to be 90 days after the Firm Closing Date.

Termination for Failure to Specify Dates

The purchaser may terminate the purchase agreement by written notice to the builder if all applicable Critical Dates in the Statement of Critical Dates are not completed with calendar dates; or any Critical Date is expressed as being subject to change depending upon the happening of an event.

Termination Relating to Conditions of Sale

If the purchase agreement is subject to Early Termination Conditions the purchase agreement may terminate if an Early Termination Condition is not satisfied (and is not waived in the limited instances where the Addendum permits a condition to be waived), by the required date. The builder is obliged to take all commercially reasonable steps within the builder's power to satisfy such Early Termination Conditions.

Return of Monies on Termination

If the purchase agreement is terminated (other than as a result of breach of contract by the purchaser), the builder must return all monies paid by the purchaser, including deposits and monies for extras and upgrades, within 10 days with interest from the date each amount was paid to the builder to the date of return of the amount.

12. 2012 CHANGES

Disclosure of any Closing Adjustments

The Addendum sets out obligations on the builder with respect to disclosure of any and all adjustments or changes to the purchase price or balance due on Closing. These include:

- There must be a Schedule B attached (in the form prescribed by the Addendum).
- Schedule B has two separate parts:
 - First, is Part I, under the heading “Stipulated Amounts/Adjustments.” These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on closing, the dollar value which is stipulated in the Purchase Agreement and set out in the Addendum.
 - Secondly, is Part II, under the heading “All Other Adjustments – to be determined in accordance with the Purchase Agreement.” These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which are to be determined after signing the purchase agreement and otherwise in accordance with the terms of the purchase agreement.
- Please note: Only items set out in Schedule B (or an amendment to Schedule B) can be the subject of adjustment or change to the purchase price or balance due on closing. (In other words, adjustments or changes to the purchase price or balance due on closing must be disclosed in a single schedule – Schedule B.) However, not all details must be set out in Schedule B. As long as the item is disclosed, a cross-reference to another part of the purchase agreement for more details is acceptable.
- You as the builder also agree that you will not charge as an adjustment or readjustment to the purchase price, any reimbursement for a sum paid or payable by you to a third party unless the sum is ultimately paid to the third party either before or after Closing.⁸ If you as the builder charge an amount in contravention of this requirement, you must forthwith readjust with the purchaser. (This requirement however is subject to the express qualification that it will not restrict or prohibit payment for items disclosed in Part I of Schedule B which have a fixed fee; nor shall it restrict or prohibit the builder and purchaser from agreeing on how to allocate between them any rebates, refunds, or incentives provided by the federal government, a provincial and municipal government or an agency of any such government, before or after Closing. Therefore, if you are adjusting for an item, e.g., development charges which may result in rebates because of a government incentive program, you need to state expressly how rebates will be allocated. Otherwise, the rebates will be subject to readjustment.)

Other 2012 Changes

Other noteworthy changes to the 2012 Addendum form include:

- The 2008 rules placed several restrictions on what Critical Dates could be extended or accelerated and if so, on what basis. The new rules remove the restrictions as to what dates can be changed and lessen the restrictions on how the changes are accomplished (see section 7).
- If a builder neglects to set a Delayed Closing Date when required, then the form deems the Delayed Closing Date to be 90 days after the Firm Closing Date.
- To correspond with 2012 changes to the OBC, the builder now needs to simply provide the Occupancy Permit required by the OBC, or but only if no such permit is required, provide the purchaser a certificate from the builder that all conditions of occupancy under the OBC have been satisfied.

⁸ This is already a term and condition of registration as set out in Regulation 894.

13. HOW A HOMEOWNER MAKES A CLAIM

Compensation where there is Mutual Agreement

Delayed Closing Compensation may be payable in at least two circumstances. First, if a builder knows the Firm Closing Date cannot be met, the builder may speak to the purchaser and mutually agree upon a new Firm Closing Date. In this scenario compensation may be waived or payable in accordance with the amending agreement referred to in section 7 above.

Second, the builder may miss the Firm Closing Date, without amending the purchase agreement. Closing would occur on a Delayed Closing Date set by the builder (or deemed set if the builder fails to do so). In this scenario, the purchaser is asked to make a claim to the builder for compensation as soon as practicable, after Closing and must include any receipts which evidence any part of the purchaser's claim except daily living expenses for which receipts are not necessary and should not be submitted. The builder is required to assess the purchaser's claim by determining the amount of Delayed Closing Compensation payable based on the rules set out in the Addendum and the receipts provided by the purchaser, and the builder must promptly provide that assessment to the purchaser. The purchaser and the builder are required to use reasonable efforts to settle the claim and when the claim is settled, the builder must complete an acknowledgement provided by Tarion and signed by both parties which:

- Includes the builder's calculation of the Delayed Closing Compensation payable;
- Describes in reasonable detail the cash amount, goods, services, or other consideration which the purchaser accepts as compensation (the "Compensation"), if any; and
- Contains a statement by the purchaser that the purchaser accepts the Compensation in full satisfaction of any Delayed Closing Compensation payable by the builder.

A true copy of the signed acknowledgement must be provided by the builder to Tarion, if Tarion so request.

When the Parties Cannot Agree

If the builder and purchaser cannot come to terms, the purchaser may submit a claim to Tarion, up to one (1) year after Closing (or termination of the purchase agreement, if applicable). Tarion will process the claim in accordance with the rules and regulations relating to Delayed Closing Compensation set out in the Regulations and the Addendum and generally described as follows.

Upon receipt of Delayed Closing claim from a purchaser, Tarion will advise the builder of the claim and ask for the builder's input. Tarion will also ask the builder to resolve the claim within 30 days. If the claim is not resolved within such 30-day period Tarion will conduct a conciliation (usually a desk assessment) to assess the claim and thereafter issue a Warranty Assessment Report to the builder and the purchaser. If the claim is valid, Tarion will pay the compensation due to the purchaser. Tarion will then invoice the builder for such amount plus an administrative fee of \$500 and applicable taxes. If applicable, the conciliation will be assessed as a "chargeable conciliation" and if so, will be noted on the builder's record and Tarion's website.

Chargeable Conciliations

A conciliation will be deemed "chargeable" if Delayed Closing Compensation is payable and was not paid within the above-noted 30-day period.

A conciliation may be assessed as "not chargeable" if one of the following applies:

- The builder offers proper compensation in a timely manner but the purchaser rejects the offer.
- The builder and purchaser make an agreement for compensation but the purchaser refuses to sign an acknowledgement.

Appeal Rights

If a purchaser does not agree with a Delayed Closing Warranty Assessment Report, he or she may request a Decision Letter and a right of appeal to the Licence Appeal Tribunal is available thereafter.

A builder who disputes a Delayed Closing Warranty Assessment Report and/or the chargeability of the conciliation may request an arbitration according to the rules and criteria of Tarion's "Builder Arbitration Forum" (see Builder Bulletin 41).

14. WHICH DELAYED CLOSING WARRANTY APPLIES

Timing Transition Rules

The Delayed Closing Warranty described in this Bulletin, applies to most purchase agreements for freehold homes that are entered into on or after July 1, 2008, but subject to the following transition rules.

- If a purchase agreement for the freehold home is signed before October 1, 2012, then the post 2008 Addendum forms apply.
- If a purchase agreement is signed on or after October 1, 2012, then the applicable 2012 Addendum form must be attached.
- However, it is also open to the vendor, despite the 2012 transition rule noted above, to elect to use the 2012 Addendum forms for any freehold home purchase agreement signed on or after July 1, 2012.

Type of Home

Subject to the timing rules noted above, the new Delayed Closing Warranty applies to:

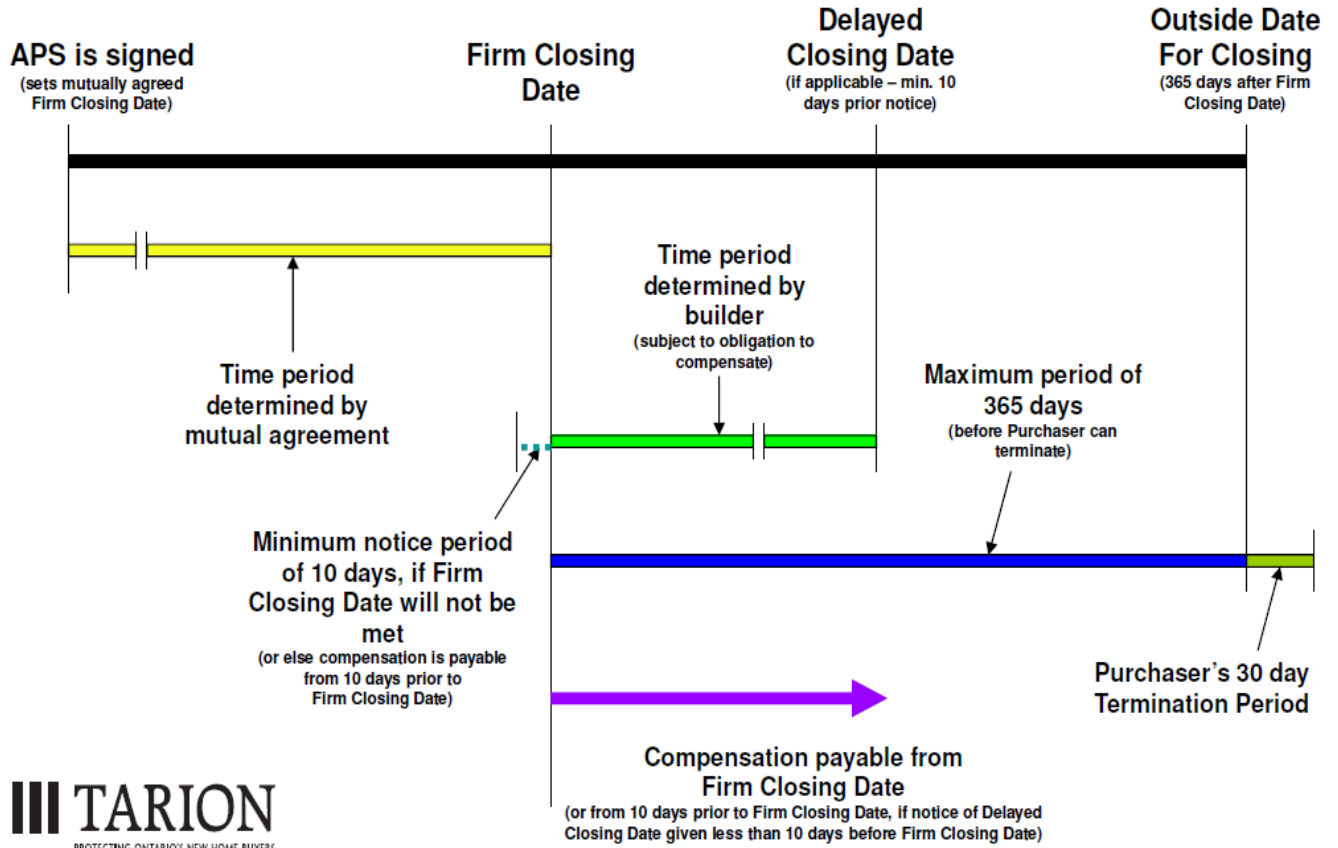
- Freehold homes;
- A vacant land condominium where the vendor builds on the vacant land, sells the parcel and freehold home together, and Closing and occupancy occur at the same time.

The Delayed Closing Warranty does not apply to contracted homes (sometimes called contract homes).

signed
"Howard Bogach"
Registrar

Appendix A

Freehold Firm Closing Date Timeline Schematic



Appendix B

Freehold Tentative Closing Date Timeline Schematic

