



Backgrounder to the Report of the Special Committee on Delayed Closings

In January 2006, the Minister of Government Services requested that Tarion undertake a review of the delayed closing provisions of the *Ontario New Home Warranties Plan Act and Regulations* and propose reforms that would address recognized problems with the existing delayed closing warranty.

The Minister's request was prompted by concerns raised in the media, in consumer research and by new home purchasers, about whether the current delayed closing provisions are outdated and not sufficiently clear, transparent and consistent with the requirements of the marketplace. The current delayed closing regime as provided under the Regulations to the *Ontario New Home Warranties Plan Act* dates back to 1988, and has not kept pace with developments in the marketplace.

In response to the Minister's request, Tarion formed an independent Special Committee of experts in March 2006. The Committee's mandate was to ensure the delayed closing regime protects purchasers from undue delays in the completion of residential homes and compensates them when delays do occur. The goal was also to ensure that the Committee's recommendations reflect the requirements of the new home marketplace today.

While the review encompassed both freehold and condominium homes, it was recognized that the condominium market operates differently and, generally, under circumstances that are well understood by consumers.

The Committee

Chaired by the Honourable Frank Iacobucci, former Justice of the Supreme Court of Canada, the 12-member Special Committee was composed of a cross-section of affected stakeholders including builders of both freehold homes and condominiums of various sizes from across the province, land developers, as well as condominium law experts and consumers.

The Committee was assisted in its work by representatives from Tarion and by outside legal counsel from Torys. A list of Committee members is attached in Appendix A.

The Committee conducted a comprehensive review of the delayed closing and delayed occupancy regimes during nine half-day sessions that were held throughout the spring and early summer 2006. The review addressed the causes of delay, market realities that can make delays inevitable and the differences that arise between condominium and freehold markets. An interim report was prepared and circulated to stakeholders. Home buyers were asked to make their comments through the Consumer's Council of Canada and builders through the Ontario Home Builders' Association. Submissions from each group were received and considered by the Committee culminating in the Final Report of the Special Committee on Delayed Closings.

The Report

The report represents a consensus of the views of all panel members, and although some compromise was required, all Committee members believe that the regime will be improved substantially by these recommendations. Together, the recommendations constitute an update of the entire delayed closing regime and should be considered as a package.

Tarion's Board of Directors reviewed the Committee's interim report and the Final Report. The recommendations from the Final Report were approved by the Board in February 2007.

The proposed changes provide improved clarity, transparency, fairness and balance between the needs of purchasers and builders. Most particularly, they address concerns that the current regime does not give consumers sufficient certainty about the process and clarity about the rules. Key aspects of the proposed new regime are spelled out in clear language.

The following are highlights of the proposed delayed closing warranty for freehold homes. Other changes are described in the Report which has been circulated to representative stakeholder groups for comment.

Improved Disclosure

- Builders must disclose to their home buyers key development and construction milestones that can lead to delays, such as whether the Plan of Subdivision has been approved and/or registered, whether a building permit has been issued and the estimated date when construction will begin.

Greater Clarity on the Closing Date

- Builders must specify in the purchase agreement a closing date which is a calendar date and that is either a *tentative* or *firm* Closing Date.
- If a tentative date is specified, there are clear rules as to when this date must be replaced with a firm date.
- The closing of a freehold home or condo will only be allowed to be conditional in certain specific circumstances. The home buyer will be given 3 business days to consult their lawyer if the purchase deal is conditional. Condo buyers will have the existing 10 day "cooling off" period.

Better Notice

- Standard rules apply for notice periods and extensions so that consumer understanding about timing is improved.
- If builders elect to stipulate a Tentative Closing Date, then at least 90 days before that date, builders must give written notice to home buyers of a firm Closing Date.
- If written notice is not given in the required timeframe, the Tentative Closing Date automatically becomes the Firm Closing Date.

Clarity on Permissible Delays

- If the builder opts for the tentative route, it can extend the closing two times, in each case by up to 120 days.
- The Firm Closing Date must be no later than 120 days after the Tentative Closing Date or no later than 240 days if the builder exercises the second extension right.
- As short term delays often do arise, builders retain the ability to delay closing or occupancy for short periods but compensation is paid for each day of delay (and additional days if at least 10 day's notice is not given). The 5-day grace period whereby a builder could arbitrarily extend the closing date by up to 5 days without notice or compensation has been eliminated.

Clarity on Methods of Changing the Firm Closing Date

- To provide greater clarity, once a Firm Closing Date has been set it can be changed only in one of *three* ways:
 - By mutual written agreement of the builder and the home buyer;
 - By the setting of a Delayed Closing Date, and only on the basis that the builder will pay delayed closing compensation; or
 - If an “unavoidable delay” such as a fire, pandemic or labour strike occurs, the builder can delay generally for the period of the unavoidable delay unless the builder and home buyer agree otherwise.

Improved Delayed Closing Compensation

- Compensation is payable to the home buyer up to a total amount of \$7,500 including payment of \$150 per day for living expenses. This is a change from the current rates of \$5,000 and \$100 respectively and roughly equates to an increase based upon inflation since 1988.

Termination of the Purchase Agreement

- To create a proper and fair incentive to complete the home on time, neither the builder nor the home buyer is permitted to terminate the purchase agreement unilaterally because of delays.
- There are two narrowly defined exceptions:
 - If the builder does not identify a specific closing date in the purchase agreement, or
 - For freehold, if closing is delayed for one year or more beyond the fixed closing date (for fixed closing deals) or the last tentative closing date (for tentative deals).

Process

New regulations on delayed closings are not expected to take effect before the end of 2007, at the earliest.

In addition to making information about these new policies available on its website and in its consumer publications, Tarion will undertake an extensive training program for home builders to ensure they are able to inform new home buyers about their warranty rights.

Conclusion

The proposed new regime is the product of long and considered effort by some of the most pre-eminent industry representatives and industry stakeholders. Better structured disclosure and communication as well as new standard rules should lead to improved relations between builders and home buyers.

The recommended changes give Ontario the most sophisticated and modern regime for delayed closings in Canada.

Appendix A

Members of the Special Committee on Delayed Closings:

Tony Azar

President and CEO
Raymax Construction
Windsor, Ontario

Deborah Brown (member ex-officio)

Acting Director
Sector Liaison Branch
Ontario Ministry of Government Services
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