

ESCALATING CONSEQUENCES

WHAT THIS BULLETIN IS ABOUT

This Builder Bulletin applies to you as a vendor or vendor/builder (builder) as defined in the *Ontario New Home Warranties Plan Act* (the Act). This Bulletin provides details of the repercussions (Escalating Consequences) for builders who fail to comply with the minimum Customer Service Standard contained in *Builder Bulletin 42: Customer Service Standard*.

The Escalating Consequences apply to builders who fail to comply with the Customer Service Standard and will affect the terms and conditions of registration that are imposed by the Ontario New Home Warranty Program (ONHWP) on those builders. They come into effect and will be based on all Conciliation Reports, including Warranty Review Reports, dated on or after October 1, 2004, one year after the implementation of the Customer Service Standard. The purpose of this delayed implementation is to ensure that builders have an opportunity to adjust their customer service to the new system.

The Escalating Consequences described here are already imposed by ONHWP when any builder's performance deteriorates and the associated risk to ONHWP increases.

This Bulletin was developed following consultation with builders, the Ontario Home Builders' Association, consumers and government. Nothing in this Bulletin should be construed to limit the authority of the Registrar to impose terms and conditions of builders' registration or renewal.

RATIO OF CHARGEABLE CONCILIATIONS TO NUMBER OF POSSESSIONS

If a builder fails to complete the necessary warranty repairs within the required Builder Repair Periods under the Customer Service Standard, the builder will have a chargeable conciliation, as defined in *Builder Bulletin 42*. The builder's ratio of the number of such chargeable conciliations to the number of possessions over the past three years provides an objective indicator of whether the builder is complying with the Customer Service Standard.

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

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

Examples

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

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

CALCULATE YOUR CHARGEABLE CONCILIATION RATIO

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

If this ratio is higher than 0.04, i.e., 0.05 or 0.06 or higher, then a builder has crossed the “unacceptable” threshold, and is subject to the Interview/Audit (preliminary stage before Escalating Consequences).
If this ratio is 0.04 or lower, i.e., 0.04 or 0.03 or less, the builder’s ratio is acceptable and the builder is NOT subject to the Interview/Audit or the Escalating Consequences.

INTERVIEW/AUDIT: PRELIMINARY STAGE BEFORE ESCALATING CONSEQUENCES

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

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

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

THREE LEVELS OF ESCALATING CONSEQUENCES

Level 1

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

1. Provide a written commitment to improve the builder's service to meet the minimum Customer Service Standard, including the Warranty Service Rules, with an appropriate action plan to accomplish that goal;
2. Where appropriate, attend a course(s) for improving warranty service (e.g., customer service, construction practices, business skills); and
3. Carry out their warranty service within the provisions of the minimum Customer Service Standard.

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

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

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

Level 2

Builders in Level 2 will be required to carry out their warranty service within the provisions of the *Restricted Warranty Service Rules*. Under the *Restricted Warranty Service Rules*, the builder Repair Period after Conciliation, as described in *Builder Bulletin 42*, is not available to the builder. Once ONHWP has delivered the Conciliation Report to the homeowner and to the builder, the builder will no longer have the additional 30 days to make the necessary repairs. Instead, ONHWP will settle the warranty claim directly with the homeowner. The claim will be made against the ONHWP guarantee fund and the builder will be invoiced for the value of the claim, plus a 15 per cent administration fee and applicable taxes.

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

- Security requirements in addition to any security already required according to the builder's risk assessment (see *Builder Bulletin 28* for details on ONHWP's builder risk assessment process); and/or
- Restrictions on the number of future enrolments that will be approved by ONHWP (i.e., restriction on the number of homes the builder may build), in addition to any current enrolment limits imposed by ONHWP on that builder.

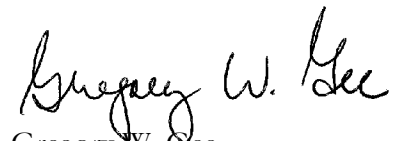
A builder who demonstrates sustained compliance with the Customer Service Standard over a period of at least one year will be moved back to Level 1. A builder will be moved to Level 3 if any warranty Claim (as defined in *Builder Bulletin 42*) is paid by ONHWP on the builder's behalf while the builder is in Level 2.

Level 3

A builder placed in Level 3 will be subject to a Notice of Proposal (NOP) to revoke or suspend their registration. The NOP will be based on the builder's demonstrated failure to perform their obligation to meet the minimum Customer Service Standard. The NOP is in addition to any other remedies available to the Registrar, and other circumstances in which the Registrar may issue a Notice of Proposal under the Act or Regulations. Under the Act, a builder has the right to appeal an NOP to the License Appeal Tribunal (LAT).

FOR MORE INFORMATION

A list of ONHWP Offices is included on the back of this Bulletin.



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Registrar

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