

ADVISORY FROM TARION TO HOMEOWNERS AND BUILDERS ON COVID-19 PANDEMIC: PRE-DELIVERY INSPECTIONS AND DELAYED CLOSINGS

The health and safety of our people, homeowners, builders, and others is a top priority for Tarion. At the present time, health authorities are encouraging individuals and businesses to take measures to reduce interactions to help slow the spread of the coronavirus/COVID 19. In light of the extraordinary circumstances presented by this pandemic and in support of the public health directive, we are setting out the following advisory:

Pre-delivery Inspections

The Pre-Delivery Inspection (PDI) takes place before homeowners occupy their new home and is an opportunity for the builder to show homeowners how to use things, confirm the quality of home construction and for the homeowner to identify on the builder PDI form things that are damaged, missing or incomplete. The PDI is an important step in the process, as the PDI builder form serves as the official record of the condition of the home before the homeowner moves in and is to be referred to afterwards for warranty purposes.

Given the present circumstances, we do not consider it a requirement that the PDI must occur prior to a closing in the presence of both the builder and the homeowner.

If, due to the current environment, a homeowner and a builder cannot agree on a way to hold a PDI, we recommend that builders conduct the PDI on behalf of homeowners and document the condition of the home via the PDI form and photos. We also recommend that the homeowner conduct their own “delivery” inspection as soon as reasonably possible after taking possession. The homeowner should document the state of the home as close to occupancy as possible and identify any items of damage with detail (taking pictures or video would be helpful). This will help serve as a record of the state of the home close to occupancy and will be helpful in the event a dispute arises later as to whether an item of damage was caused by the homeowner or builder.

Delayed Closings

If a new home is in the midst of construction at this time, it is very possible that the pandemic will cause delays in the delivery of the home.

Under the unavoidable delay provisions of the Addendum (which forms part of the purchase agreement), the builder will be entitled to unilaterally extend critical dates. However, the builder must follow the rules set out in the Addendum to do so. Builders should follow the procedures outlined in the *Information Sheet for Builders: COVID-19 -- Possible Effects on Construction Schedules for New Homes*.

If the pandemic results in, for example, materials shortages, work stoppages or unavailability of governmental permits or approvals that affect timing of construction of a new home, then in

order to be allowed to extend the closing or occupancy date, the builder must send out two notices described below:

The **First Notice** is a written notice to the purchaser(s) setting out:

- 1) A brief description of the Unavoidable Delay (in other words, the specific situation associated with the pandemic that will affect the delivery of the home; and
- 2) An estimate of the duration of the total delay (if practicable).

Once the pandemic is declared over, then a builder must look at the facts in connection with the home and determine whether or not there is any additional delay due to the pandemic. In other words, in addition to the period of the pandemic itself, is there any additional *“period of delay directly caused by the pandemic which is beyond the builder’s reasonable control affecting this home.”* In this Advisory, this is called the **Remobilization Period**. This is a question which the builder and his or her advisors and contractors must determine. Note that it is not always easy to estimate the additional time which is likely to be lost as a result of a pandemic and which accrues after the pandemic itself. There may, for example, be a backlog of work to be done by trades. The builder may need some time to assess the Remobilization Period and total Unavoidable Delay Period. As a “rule of thumb,” if the home is affected by the pandemic, it is reasonable for the builder to take 30 days (or more if justified) to assess the **Remobilization Period**.

After the direct impacts of the pandemic are over, and full delay period is known, a second notice must be sent. The timing for sending the **Second Notice** is not until your builder has determined both: 1) the direct impacts of the pandemic are over; and 2) the length of the **Remobilization Period**.

The **Second Notice** to the purchaser must be in writing and include the following:

- A brief description of the Unavoidable Delay event (i.e., the pandemic);
- The end date of the Unavoidable Delay Period (i.e., the number of days of the direct impacts of the pandemic itself plus the **Remobilization Period**);
- The new critical dates.

Please Note: The Critical Dates listed in the Addendum can only be extended by the period of Unavoidable Delay, (i.e., the period of direct impacts of the pandemic time plus the **Remobilization Period**).

If the home is affected by the pandemic and the builder follows the rules set out in the Addendum and summarized above, then the vendor can unilaterally extend Critical Dates for your home (for the **Unavoidable Delay Period**).

While the builder can extend the current and future Critical Dates originally set out in the Addendum, the builder cannot reset the *original timeline framework* in the Addendum. For example, if the upcoming next critical date is the Second Tentative Closing Date or Firm Closing Date, the builder cannot go back and reset to a First Tentative Closing Date.



Other Concerns or Questions

- If you have any concerns or questions, contact Tarion's Customer Service team at 1-877-982-7466 or email covid19@tarion.com

We are continuously monitoring information from official health authorities and planning and adjusting for business continuity in an evolving environment.