

September 10, 2020

ADVISORY FOR BUILDERS: REINSTATEMENT OF BUILDER ARBITRATION FORUM PROCESSES

In line with Government of Ontario's Emergency Order that suspends certain statutory limitation periods and that is in place until September 11, 2020, the Builder Arbitration Forum (BAF) processes are scheduled to resume on September 11, 2020.

Under strict protocols based on the health and safety guidelines endorsed by the Government of Ontario, the BAF resumption will include necessary modifications to BAF processes, including:

- Until further notice, all hearings will be held virtually. Hearings may also be held in writing pursuant to BAF Procedural Rule 11 if mutually agreeable with the parties and arbitrator (please refer to the [BAF Procedural Rules](#)).
- Documents such as written case materials may be delivered electronically, subject to any specific requirements imposed by the Arbitrator assigned to your matter. Payment of the various BAF fees through physical cheques is still required.
- Timelines for certain steps in the proceeding may be unilaterally extended by Tarion as it adjusts to manage a backlog of appeals.
- Builders who require accommodations as a result of COVID-19 are asked to contact the Tarion representative assigned to the file, or Tarion's BAF co-ordinator if no representative has been assigned

Arbitrations that have commenced, but were suspended due to COVID-19

If you have an open BAF matter (i.e., where Tarion already delivered a "Form 4 – Tarion's Response"), Tarion's representative will contact the representative indicated on your Request to Arbitrate to set dates for the next step in the proceeding.

Arbitrations that have not commenced

If you previously contacted Tarion's BAF co-ordinator indicating your intention to appeal a Warranty Assessment Report upon resumption of BAF processes, Tarion's BAF co-ordinator will contact you to set dates for filing your complete Arbitration Package to initiate your appeal.

Challenging and reversing a chargeable conciliation for warranty assessment reports affected by the COVID-19 outbreak

The Government of Ontario's Emergency Order that suspends certain statutory limitation periods (including warranty submission timelines, requests for conciliation and builder repair periods) under the *Ontario New Home Warranties Plan Act* is in place until September 11, 2020. As the COVID-19 restrictions have been gradually eased and more businesses are resuming operations, Tarion carefully considered the ongoing impacts of delaying repairs on both homeowners and builders and determined that it should exercise its discretion to restart inspections and reinstate timelines.

A supplement to Builder Bulletin 20 establishes temporary changes to how and when Tarion will determine chargeability in situations where builder repair periods and conciliations were impacted by the Emergency Order that suspends certain statutory limitations periods. The Builder Bulletin 20 supplement is available [here](#)

If you wish to appeal a **warranty assessment** that the Builder Bulletin 20 temporary supplement applies to through the Builder Arbitration Forum, a Request to Arbitrate must be delivered to Tarion within 28 days of the issuance of the **Warranty Assessment Report**. To appeal a **chargeability determination** through the Builder Arbitration Forum, a Request to Arbitrate must be delivered to Tarion within 28 days of the issuance of the **Claim Inspection Report**. The other rules and guidelines in Builder Bulletin 41 and the BAF Procedural Rules continue to apply.

Tarion is monitoring COVID-19 developments and will update its policy based on guidance from the Government of Ontario.

Please do not hesitate to contact Simran Singh, the Builder Arbitration Forum Coordinator directly via email at BAF@tarion.com or via telephone at (416)-229-3835 if you have any questions.