

## **ADVISORY FROM TARION ON COVID-19 PANDEMIC: PRE-DELIVERY INSPECTIONS AND DELAYED CLOSINGS**

**Important Note:** *The information contained in this advisory is intended for general guidance and does not constitute legal or other professional advice. The reader is advised to seek legal advice from their own legal counsel to address their particular circumstances.*

The health and safety of our people, homeowners, builders, and others is a top priority for Tarion. Due to the recent increases in COVID-19 cases in the province, health authorities are continuing to advise individuals and businesses to take measures to reduce interactions. In support of the public health directive, we are setting out the following advisory:

### **Pre-delivery Inspections (PDI)**

The PDI is typically a surface review of the home by the builder and the home buyer before possession or occupancy in order to document the state of the home and identify any items of damage. It is also an opportunity for the builder to explain the home's systems to the home buyer. It is important to remember that a (PDI) is not a health and safety inspection or structural inspection of the home for the purpose of occupancy. The PDI is separate from municipal inspections.

In the warranty process, the PDI may be helpful to resolve a dispute about an item of surface damage (such as scratches or dents) where it is unclear if the problem was caused by the builder before possession/occupancy or the homeowner after they took possession/occupancy and began living in the home.

Given the present health circumstances, Tarion does not consider it absolutely necessary that the PDI occur prior to a closing in the presence of both the builder and the homeowner. However, it is Tarion's position that:

- in-person PDIs can happen if participants adhere to provincial health and safety and physical distancing guidelines,
- both parties agree to the conditions under which the PDI would be carried out,
- if one or both parties do not consent to an in-person PDI, we recommend that builders and homeowners each conduct their own separate reviews of the home.

In the event that both parties do not consent to an in-person PDI, we recommend that builders and homeowners each conduct their own separate reviews of the home.

Builders should complete their own review of the home or unit prior to the homeowner taking possession or occupancy and document the condition of the home. The homeowner should conduct their own "delivery" inspection as soon as reasonably possible after taking possession and document as best they can (including photos and/or video) any evident deficient work or materials, any missing or incomplete items or damages which they discover and believe were caused prior to when they took possession or occupancy.

The records of the homeowner and builder can serve as evidence of the state of the home close to occupancy and may be helpful in the event a dispute arises later as to whether an item of damage was caused by the homeowner or builder.

The PDI form is not a Tarion claim form, so if an item is not noted on the PDI form this does not necessarily impact its warranty coverage. If a homeowner notes an item on their 30-day form which is not on the PDI, the item noted will still form part of their warranty claim. The fact that it was not listed on the PDI will be relevant if is an item of damage such as a chip in a countertop that may have occurred after possession. In this case, it will be helpful for the homeowner to show that they noted the damage as close to taking possession or occupancy of the home as possible as noted above, in the event that the claim is not remedied by the builder and the matter comes to Tarion for resolution.

We urge all parties to approach the occupancy of the home and handling of the PDI in a reasonable way in light of the current health situation in the province.

### **Delayed Closings**

If a new home is in the midst of construction at this time, it is 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 may 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 or delivery 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 this case likely impacts associated with the pandemic that will affect the delivery of the home); and
- 2) An estimate of the duration of the total delay (not necessary if an estimate is not practicable).

Once the direct impacts of the pandemic are known, 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 direct impacts of the pandemic itself the builder and their advisors and contractors must determine if there is any additional “period of delay directly caused by the pandemic.” In this Advisory, this is called the **Remobilization Period**. 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 direct impacts of the pandemic itself. There may, for example, be a backlog of work to be done by trades, supply disruptions and backlogs

of municipal inspections. 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 the full delay period is known, a second notice must be sent. The timing for sending the **Second Notice** is not until the 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 aggregate 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 a period up to the length of the Unavoidable Delay Period, (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 builder can unilaterally extend Critical Dates for your home (for up to 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](mailto:covid19@tarion.com)

We are continuously monitoring information from provincial health authorities and planning and adjusting for business continuity in a changing environment.