

Discussion Guide – 2021 Spring Consultation

On October 30, 2019, the Auditor General of Ontario released a Special Audit of Tarion Warranty Corporation. Tarion is committed to building a more transparent, fair, and accountable new home warranty and protection program for all Ontarians. We have made it a priority to implement the recommendations from the Auditor General’s report in a timely manner.

To date, Tarion has implemented 19 of 25 recommendations.

Tarion is consulting on proposals to address the remaining recommendations of the Auditor General, as well as an additional consumer protection initiative. Your feedback will help to determine Tarion’s implementation of the final recommendations.

Tarion is consulting on proposed changes, including:

- Two options for a new customer service standard to address Auditor General recommendation #6,
- A new policy on unfinished items at the time of possession to address Auditor General recommendation #5,
- A new process for information-sharing with municipalities to address Auditor General recommendation #17, and
- A new accommodation warranty for homeowners who have to relocate during repairs of a warranted item.

Please consider the consultation questions listed below and submit any feedback on the proposed changes to submissions@tarion.com by April 30, 2021.

While this consultation focusses on specific recommendations and questions, if you have additional comments related to any matter raised in the Auditor General of Ontario’s report please send them to submissions@tarion.com. Please title these with the subject “Additional Submissions”.

This document includes potential policy proposals and options. Tarion will consult on drafts of any required regulations on Ontario’s Regulatory Registry after feedback from this consultation is considered.

Tarion recognizes that not every topic will be relevant to each individual or organization. Please provide comments on the topics that are relevant to you or your organization.

A New Customer Service Standard - Auditor General Recommendation 6

Context: Tarion’s Customer Service Standard (CSS) is the key process for how claims are handled. The CSS was introduced in 2004 to add milestones, structure and certainty to the claims process.

The CSS includes the steps a homeowner must take to submit a claim, the timelines for submitting the claim, the repair period for builders to complete a warranty repair and the steps Tarion may take (e.g., conducting a conciliation to determine if a claim is warranted). If Tarion determines a claim is warranted following the conciliation (which usually involves an inspection by Tarion), the builder must resolve the claim. In these instances, the claim is considered “chargeable” and there are consequences to the builder unless an exception to chargeability

applies. Once the builder repairs the warranted item, Tarion may conduct a claim inspection to verify the repair.

In the five year period reviewed by the Auditor General of Ontario, 97% of the total forms received by Tarion (316,524) arrived within the required timeframes, while about 3% (9,700) of the forms submitted by homeowners to Tarion were rejected because they missed one of the submission deadlines (either the first 30 days or the last 30 days of the first year warranty period). Of the 3% (9,700) that missed the deadline, about 13% of them (1,300) missed the deadline by a day, and 70% (6,740) missed by a month or less.

The Auditor General's recommendation #6 is for Tarion to change the Customer Service Standard (CSS) to improve homeowners' ability to seek assistance from Tarion, and in particular for Tarion to:

- a) remove its two 30-day deadlines and allow homeowners to submit requests for assistance at any time during the first year of ownership;
- b) eliminate the 30-day deadline to request a home inspection (Request for Conciliation);
- c) permit homeowners to update their listing of unresolved defects after submitting the initial listing; and
- d) reduce the amount of time provided to builders to resolve defects before Tarion steps in to help homeowners.

Tarion sought public input on interim changes to the CSS from January to March of 2020, including hosting eight roundtables with over 250 homeowners and receiving over 100 written submissions. On September 14, 2020, Tarion implemented the following interim changes to better protect homeowners under the new home warranty and protection program, including:

- Increasing homeowners' ability to access help from Tarion by adding 10-day grace periods to:
 - The initial 30-day claim submission period;
 - The initial 30-day request for conciliation period;
 - The year-end claim submission period with written evidence the homeowner reported items to their builder during the first-year warranty period; and
 - The year-end request for conciliation period.
- Allowing homeowners to add additional items to forms during the 30-day and year-end claim submission periods;
- Tarion increased the types of claims that can be addressed anytime in the first year by expanding the definition of emergency claims to include any water penetration claims.

Tarion is now seeking further input on the continued improvement of the CSS by presenting two different options for a new CSS for consideration.

These two options can be found in the [Appendix 1: Proposed Options for New Customer Service Standard](#)

While these two options are used as the basis for the consultation, the final approach adopted may be different from either option based on the feedback received during the consultation process.

Stakeholder Impacts:

Homeowners

- Homeowners will benefit from enhanced consumer protection as these measures will help improve homeowners' ability to seek assistance from Tarion.
- The processes may be simpler to apply, and result in fewer timelines being missed.
- The processes may help the efficient communication of warranty services requests to builders, which will allow for the efficient scheduling of repairs.
- Increased opportunities for homeowners to access the warranty coverage may result in improved coverage.
- The costs of builders adjusting internal business processes and additional opportunities for homeowners to access coverage may be passed on indirectly to consumers via the purchase price of new homes.

Builders

- The processes may help the efficient communication of warranty services requests to builders, which will allow for the efficient scheduling of repairs.
- The processes may be simpler to apply, resulting in more consistent customer service and expectations.
- Builders will need to make changes to tracking systems/business processes to accommodate the proposed changes.
- Builders and their staff will require training on changes to the CSS.
- There may be more/different timelines that builders will need to track per home and potentially more conciliation inspections.

Tarion

- The processes may help the efficient communication of warranty services requests to builders, which will allow for the efficient scheduling of repairs.
- Tarion will need to make the necessary system changes.
- Tarion will need to ensure builders and their staff understand the new CSS.
- Tarion will need to develop new educational resources for homeowners to ensure they understand the new process and their rights and responsibilities.
- Tarion will need to resource any increases in inspections.

Questions to Consider:

- 1) Option 1 allows homeowners to add items to a list which will auto-submit at given intervals:
 - a. What challenges could this create?
 - b. Does this automatic submission help homeowners or not?
 - c. Should Tarion consider different intervals?
- 2) Option 2 allows homeowners to submit multiple lists, any time during the first year:
 - a. What challenges could this create?
 - b. Do these multiple submissions help homeowners or not?
- 3) Which option do you think most improves the warranty process overall?
- 4) Which option do you think best addresses the goal of making it easier for homebuyers to ask Tarion for assistance with warranty service requests?
- 5) Which option do you think strikes the right balance of an efficient process with the opportunity for homeowners to seek assistance from Tarion?
- 6) What is the reasonable amount of time a builder should be given to repair a defect when first reported? Why?

- 7) Tarion is proposing to eliminate the 30-day deadline to submit a Request for Conciliation inspection (RFC). Which option presents a better solution to the current RFC repair period?
- 8) Option 1 allows builders to review items which a homeowner has added to their defect list before it is submitted – will this encourage more proactive builder behaviour to address issues earlier in the process?
- 9) Which option do you prefer? Why?
- 10) Are there other considerations associated with implementing a new Customer Service Standard?
- 11) Which option do you feel best addresses the recommendations made by the Auditor General?

A New Warranty on Unfinished Items at the Time of Possession - Auditor General Recommendation 5

Context: In the October 2019 Special Audit of Tarion, the Auditor General of Ontario found that purchasers are sometimes obliged to take ownership of a home based on the Ontario Building Code (OBC) criteria for issuance of an occupancy permit. As a result, there may be unfinished non-OBC items at the date of possession for which the owners' warranty rights are potentially shortened.

In keeping with the agreement of purchase's closing date provisions, once the home meets the OBC's minimum occupancy requirements, the ownership transfer to the new home owners. The warranties under the Ontario New Home Warranties Plan Act (ONHWP Act) begin when the home is completed for the owner's possession. There is currently no separate warranty or extended warranty period for items that are not completed at the time the owner takes possession.

The main issue identified by the Auditor General was that the warranty coverage period for some items may be shortened by the amount of time it takes a builder to complete outstanding work after the day they require the owner to take possession of the unfinished home. To better protect owners who take possession of an unfinished home so that they retain their full warranty rights, the Auditor General recommended that Tarion consider one of the following approaches:

1. redefine "finished house" for the purposes of owners' warranty rights and coverage period so that the one-year warranty period commences only once the home meets this new definition of a finished house; or
2. develop a warranty that will protect owners for unfinished items in their homes once the home has met the minimum occupancy standard, and ensuring that the one-year warranty coverage begins only after the items are finished; or
3. work with the relevant ministries to expand what must be completed to meet the minimum occupancy requirement in the OBC so that owners are appropriately protected by their warranty rights.

Based on the issues identified by the Auditor General, Tarion is proposing to address the recommendation by:

1. Extending the one-year, two-year and seven-year warranties for an item that is missing or incomplete on the date of possession;
2. Starting the extended warranties on the date on which the item is completed by the builder, or on the last possible date the builder could have made a repair.

For the proposed approach, Tarion would extend the warranties for items that are *missing* or *incomplete* on the date of possession.

- **A missing item** would be an item that is entirely missing on the date of possession. That item will have extended warranty coverage from the date the item is installed or constructed.
- **An incomplete item** would be an item that has a required element of the item's installation or construction missing on the date of possession. That missing element will have extended warranty coverage from the date the element is installed or constructed.

If all required elements of an item's installation or construction are in place on the date of possession, then the item is considered complete. Any defects in that completed item will have the usual warranty coverage but no extended warranty coverage.

Once submitted, Tarion will track the identified missing/incomplete items and the extended warranty. Homeowners or builders who are unsure of timelines would be able to use MyHome or Builderlink respectively to verify the new timelines.

If a *missing* or *incomplete* item reported within the first year is completed by the builder after possession, the item will have a one-year warranty from the date the item was completed. The builder is responsible for establishing the date on which the item was completed and for advising the owner of that date.

If there is insufficient information for Tarion to determine the date of completion, Tarion will set that date based on the last possible date the builder could have made a repair in the first-year CSS process (ie. the first-year warranty period plus the Builder Repair Period) and apply that date to all *missing* and *incomplete* items reported in the first year, regardless of when the items were actually completed.

To make a claim about the item under the extended warranties, the owner must submit a warranty form (which will be a new warranty form developed for this purpose) within the applicable warranty period starting from the date the item was completed by the builder. The claims process under the extended warranties will be similar to the CSS process for other warranty claim items, including builder repair periods, conciliation, and resolution by Tarion if the item is warranted and not resolved by the builder.

This is a description of a potential approach being considered. The final approach adopted may differ based on the feedback received during the consultation process.

Stakeholder Impacts:

Homeowners

- Homeowners would benefit from additional consumer protection, as this will help protect them and improve coverage of unfinished or incomplete items.
- Homeowners will have to track additional repair/submission timelines.

Builders

- Builders will have to ensure items are completed at the time of possession.
- There may be additional burden on builders to report/track when unfinished/incomplete items are finished.

Tarion

- Additional process created to track and monitor unfinished items and their new warranty timelines.
- Tarion would need to make the necessary regulatory changes.

Questions to Consider:

1. What steps can Tarion take to facilitate tracking extra repair/warranty timelines created by this change?
2. Should this extended warranty be limited to certain items?
3. When should a homeowner be required to report a missing or incomplete item?
4. What administrative impact on builders could be expected as a result of this change?
5. Should unfinished/incomplete items appear on the OBD?
6. Are there other considerations associated with this topic?

A New Policy for Information-Sharing with Municipalities - Auditor General Recommendation 17

Context: To help municipalities plan their inspections and improve builders' compliance with the Ontario Building Code (OBC), the Auditor General recommended that Tarion share information with municipalities on significant instances of builder non-compliance with the OBC identified by Tarion.

Tarion is currently engaged in establishing the process to ensure that information it has on significant OBC violations can be shared in an efficient and effective manner with municipalities. To accomplish this goal, Tarion has established a municipal working group with municipal partners to help guide the development of the information sharing process. After discussions with this stakeholder group Tarion has identified several potential options for sharing this information:

- **Option 1A – General Information on Website**
Tarion would publish general information and statistics on OBC non-compliance and other identified concerns on a portion of the Tarion website accessible to municipal building officials. This option would allow Tarion to update this information at regular intervals and provide municipalities the opportunity to review this information as frequently as they choose.
- **Option 1B – Specific Information on Website**
Tarion would publish detailed information regarding specific OBC concerns on a portion of the Tarion website accessible to municipal building officials. Notification of the posting could be sent to the subject municipality. Municipalities could choose to access the information at their convenience.
- **Option 2A – General Information Sent to Municipalities**
Tarion would distribute general information and statistics on OBC and other identified concerns to all individual municipal building departments. This option would allow Tarion to provide that information directly to municipalities at set intervals.
- **Option 2B – Specific Information Sent to Municipalities**

Tarion would provide detailed information on specific OBC concerns to individual municipal building departments directly, either on a regular basis or upon request. This option would allow Tarion to provide that information directly to municipalities as important issues are identified.

These options are not exclusive of one another. Additional options or a combined approach could be adopted based on the feedback received during the consultation process.

Stakeholder Impacts:

Municipalities

- Municipalities may benefit from having additional information available to them on builders operating in their areas.

Homeowners

- Homeowners may benefit from additional consumer protection, as the information may result in municipalities being better able to target their inspections, which could result in improved building practices.

Builders

- Builders may benefit from better coordination between Tarion and municipalities as it relates to the assessment of building code violations.

Tarion

- Assisting municipalities to have better information relating to significant OBC violations could improve the long-term quality of construction which is consistent with Tarion's mandate.

Questions to Consider:

1. What should be considered "significant instances" of builder non-compliance with the OBC? For example, should this focus on violations of the OBC that relate to health and safety, and structural issues?
2. How often do municipalities want to receive this information?
3. If a builder does not agree with Tarion's assessment of the OBC violation, should they be given an appeal process before the information is shared (i.e. the Builder Arbitration Form)?
4. Are there privacy concerns with sharing this information with municipalities?
5. Are there any other considerations associated with this topic?

Creation of a New Accommodation Warranty for Homeowners – Consumer Protection Initiative

Context: In addition to the recommendations identified by the Auditor General, and as consulted on in 2020, Tarion is seeking further input on changes to relocation compensation for homeowners.

Homeowners occasionally must leave their home during a repair or remediation of a warranted item due to an issue which makes their home uninhabitable. While out of their home, homeowners may incur expenses for temporary accommodation, food, and storage costs.

Relocation and accommodation costs are not currently directly covered in the statutory warranty but recognizing this is an important aspect of consumer protection, Tarion has been providing a Temporary Relocation Allowance to help contribute towards a homeowner's expenses as a customer service gesture.

Based on the feedback from the previous consultation, Tarion is proposing to create a new accommodation warranty based on:

- An amount of up to \$150 per day with a cap of \$25,000 (or \$150/day for a maximum of 23 weeks)
- The accommodation warranty would be triggered where, as a result of a warranted condition or repairs to warranted items undertaken by a builder or Tarion, the home, or an essential part of the home, cannot be used for the purpose for which it was intended and is in effect rendered uninhabitable.
- Homeowners would be required to show the number of days they are out of the home to qualify for the reimbursement.
- This warranty would not prohibit the builder from entering into an agreement with the homeowner to provide alternative relocation compensation.

Under this proposed new warranty, Tarion would consider the home “uninhabitable” if the home or an essential part of the home cannot be used for the purpose for which it was intended. A home may be determined to be uninhabitable if, for example, the warranted item or the repair or remediation of that item has the following impact for more than one day:

- renders the kitchen unusable;
- renders all toilets and/or all bathtubs/showers unusable;
- renders the staircase to the upper floor unusable or unsafe;
- adversely affects the structural integrity of the home;
- involves remediation of mould or another harmful substance; or
- renders all or an essential part of the home unusable because an occupant of the home has a disability.

Builders would be required to provide this compensation, and this new warranty would fall within the existing maximum statutory warranty coverage limit.

This is a description of a potential approach being considered. The final approach adopted may differ based on the feedback received during the consultation process.

Stakeholder Impacts:

Homeowners

- Homeowners would benefit from additional consumer protection, as this compensation would now be eligible under the warranty.
- Homeowners may have these warranted items resolved sooner as this may incentivize builders to make repairs in a more efficient manner.

Builders

- There may be additional costs to builders to provide compensation in these instances.

Tarion

- Additional communications and educational resources will be developed for all impacted stakeholders.

- Tarion would need to make the necessary process and regulatory changes.

Questions to Consider:

1. Is \$150 per day an appropriate amount for a homeowner that needs to leave the home?
2. Are there justifiable reasons that the maximum cap of \$25,000 should be raised/lowered?
3. Should the amount of relocation compensation be tied to the number of individuals impacted? (i.e. individual vs family)
4. Should the amount of relocation compensation be tied to geographic areas. (i.e. costs could be higher in some parts of the province)?
5. What type of documentation would be fair to ask a homeowner to provide?
6. How much of a benefit is having this process simple and easy to access, for example using a fixed amount of 150 times the numbers of days not in the home, vs having the process be specific and exact (requiring a review of receipts and validation of expenses for every claim)?
7. What types of impacts should Tarion consider when determining what is “uninhabitable”?
8. Are there any other considerations associated with this topic?

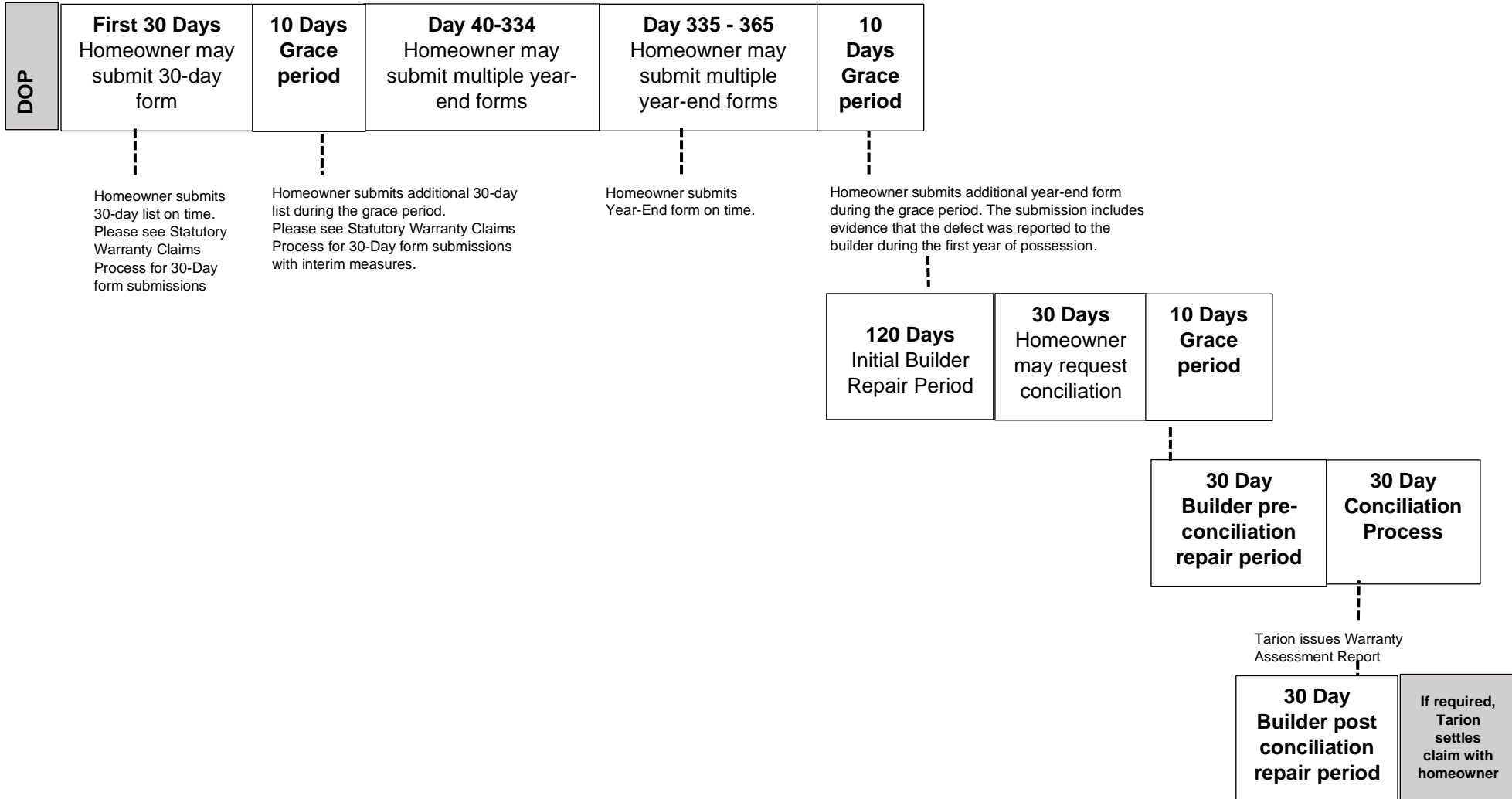
Appendix 1: Proposed Options for New Customer Service Standard

	Option 1	Option 2
<p>Phase 1 Submission of Items by Homeowner</p>	<p>Homeowners can submit items at any time during the first year. No items submitted during the first year would be rejected for missing a timeline.</p> <p>Items will be tracked by being added to a running list of items, and all entries are “warranty requests to the builder”. These are viewable at any time by the builder, for early action/intervention.</p> <p>At given intervals during the year, the list will be automatically consolidated and sent to the builder which starts the Builder Repair Period.</p> <p>This will be at a minimum of:</p> <ul style="list-style-type: none"> • 41 days (30 days plus 10 day grace period) • 182 days (6 months) • 375 days (1 year plus 10 day grace period) <p>Any items added after will be added to the item list and auto-submitted at the next interval, unless it is the year-end. For the year-end form all items identified but not submitted on a previous form are bundled onto a final form and automatically submitted</p> <p>Additionally, builders can request consolidated lists on shorter timeframes if desired. For example - weekly or monthly.</p> <p>Both the builder and homeowner can provide comments/assessments on listed items.</p> <p>For example, the builder can identify items they considered repaired/closed or where they dispute that the item falls under the warranty. Homeowners could then indicate agreement or disagreement with the builder’s assessment. This information would be used by Tarion later on for conciliation inspections.</p>	<p>Homeowners can submit items at any time during the first year. No item submitted during the first year would be rejected for missing a timeline.</p> <p>Items could be entered into a list and that list would be submitted by the homeowner.</p> <p>Homeowners will be able to:</p> <ul style="list-style-type: none"> • Submit the list anytime in the first year, • submit additional lists as often as required. <p>Each submitted list will generate its own Builder Repair Period.</p> <p>If the item is an emergency or health and safety concern, Tarion will have the ability to abridge timelines and ensure the item is addressed promptly.</p>

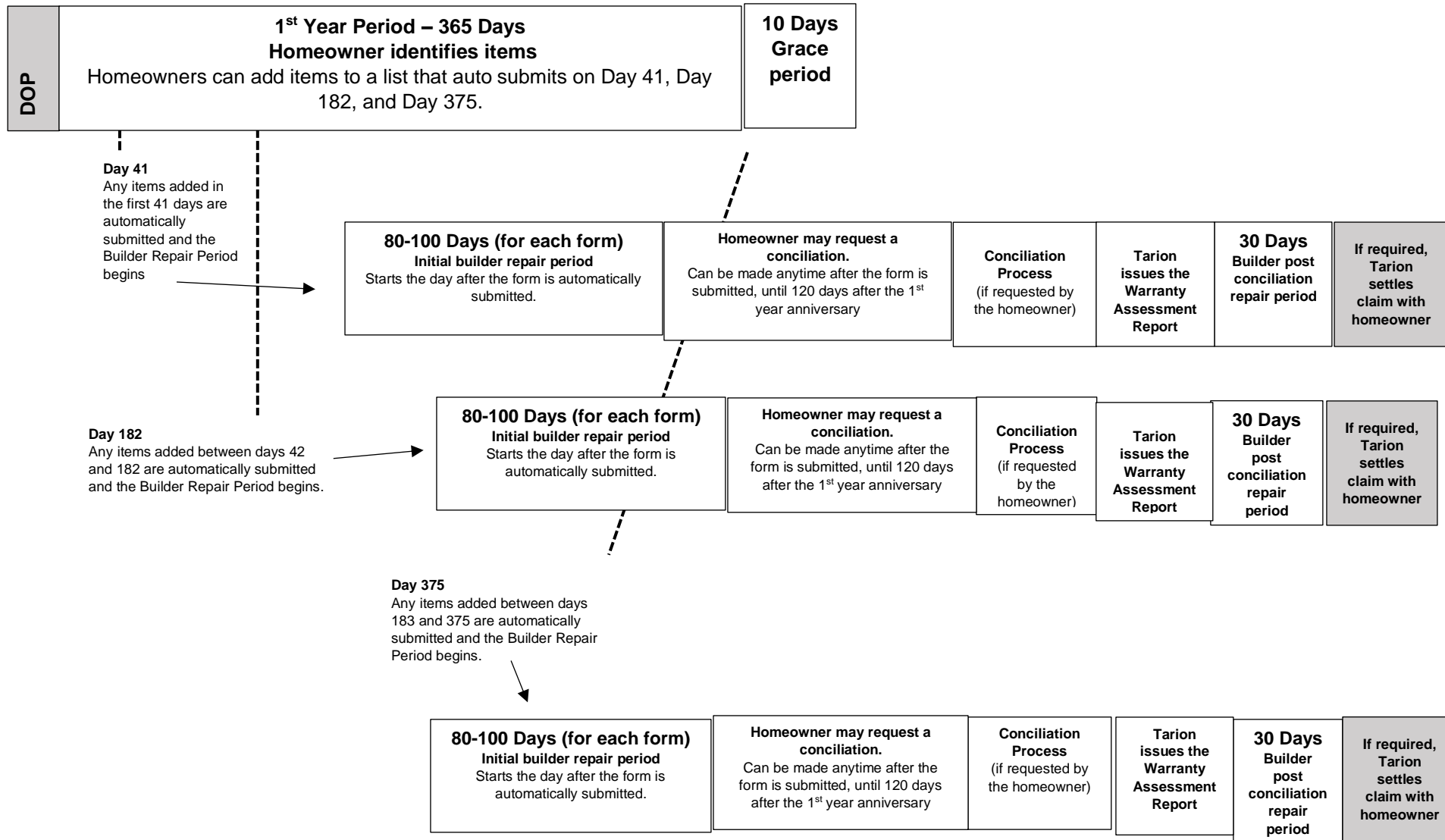
	If the item is an emergency or health and safety concern, Tarion will have the ability to abridge timelines and ensure the item is addressed promptly.	
Phase 2 Builder Repair Period	<p>The Builder Repair Period (BRP) will be reduced from 120 days to something between 60-100 days. With this reduction, the current requirement for homeowners to provide reasonable access still exists.</p> <p>Consolidated/submitted lists would start the BRP. However, items identified by the homeowner are viewable at any time by the builder, for early action/intervention by the builder.</p> <p>There will no longer be a post Request for Conciliations (RFC) repair period. The BRP will be the length of time before the scheduled conciliation.</p> <p>Tarion will commit to scheduling the conciliation within 30 days of the RFC.</p>	<p>The Builder Repair Period (BRP) will be reduced from 120 days to 90 days. With this reduction, the current requirement for homeowners to provide reasonable access still exists.</p> <p>Each submitted list will generate its own BRP.</p> <p>There will no longer be a post Request for Conciliations (RFC) repair period. The BRP will be the length of time before the scheduled conciliation.</p> <p>Tarion will commit to scheduling the conciliation within 30 days of the RFC.</p>
Phase 3 Request for Conciliation	<p>Request for Conciliations (RFC) can be made at any time, but:</p> <ul style="list-style-type: none"> the first conciliation will not be scheduled until after the Initial BRP--- unless the RFC relates to an emergency/major issue. conciliation is limited to the items listed on the last submitted list for the purpose of “chargeability” or assessing builder compliance or customer service levels. For example - if a homeowner submits a list with a door issue on their first form, but does not include that on their final submission, Tarion would assume that the item has been dealt with. <p>New items listed after the last list has been submitted can be added to the conciliation and reviewed by Tarion at an inspection and Tarion can give direction to the builder.</p>	<p>Regardless of the number of lists submitted by the homeowner, the Request for Conciliation (RFC) can <u>ONLY</u> be made twice – once in the first year of the warranty coverage and once after the end of the first year.</p> <p>The RFC can be made up to 120 days after the close of the first year.</p> <ul style="list-style-type: none"> One year + 90 day BRP + 30 days grace period

	<p>However, the review of these items would not go against the builder's record in terms of CSS compliance.</p> <p>If the RFC relates to an emergency/major issue (i.e. water penetration, major structural defects, mould, radon, or OBC health and safety) then the matter will be referred to Tarion to gather more information and create a custom approach that matches the issue.</p>	<p>Additionally, Tarion will encourage discussion of items at time of RFC, and create a new builder response form.</p> <p>This will provide the builders a chance to respond to the submitted items, and based on that, Tarion could determine the appropriate response.</p>
<p>Phase 4 Post-Conciliation and Claims</p>	<p>The builder will have 30 days after conciliation to resolve any warranted items.</p> <p>Unresolved warranted items will be directly resolved by Tarion.</p>	<p>The builder will have 30 days after conciliation to resolve any warranted items.</p> <p>Unresolved warranted items will be directly resolved by Tarion.</p>

Current Customer Service Standard



Proposed Customer Service Standard – Option 1



Proposed Customer Service Standard – Option 2

