

# Registrar Bulletin - No. 06C

## Condominium - Delayed Occupancy Warranty

Issue Date: February 1, 2021

Effective Date: February 1, 2021

### What This Bulletin is About

This Bulletin<sup>1</sup> explains how the Delayed Occupancy Warranty framework operates for condominiums. The framework is different depending generally on whether sales for a project begin: before July 1, 2008; between July 1, 2008 and October 1, 2012; or after October 1, 2012. Please see the transition rules below at section 14.

This 2012 revision to the Builder Bulletin 47 introduced two revised Addendum forms that will be applicable, generally speaking, for condominium projects after October 1, 2012 (see transition rules below at section 14). The new Addendum forms also:

provide greater flexibility for changing Critical Dates by mutual agreement (see section 7 below); and  
require builders to provide better disclosure of closing adjustments in a new Schedule "B" to the Addendum (see section 12 below).

New forms dated as of October 7, 2020 are also introduced as of February 1, 2021

This Registrar Bulletin 06C is effective February 1, 2021 is substantially the same as the 2012 version but references the new condominium addenda dated October 7, 2020. These Addenda recognize the role of the new home builder regulatory authority - the Home Construction Regulatory Authority (HCRA) and substitutes a reference to the HCRA licence in place of the previous Tarion registration.

The word "builder" when used in this Bulletin, includes both a vendor and a builder, as applicable.

Note: Capitalized terms in this Bulletin have the meanings given to them in the condominium Addendums referred to in section 2 below.

This Bulletin is divided into the following sections:

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<sup>1</sup> Please note that if there is any conflict or inconsistency between the terms of this Bulletin and the applicable Addendum or with provisions of the ONHWP Act or regulations, then the provisions of the Addendum and the ONHWP Act and regulations shall prevail, with the ONHWP Act and regulations being paramount.

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The Bulletin also contains the following appendices:

1. Appendix "A": Firm Closing Date Timeline Schematic
2. Appendix "B": Tentative Closing Date Timeline Schematic

### 1. Overview of Delayed Closing Warranty for Condominium Homes

The Delayed Occupancy Warranty is governed by the *Ontario New Home Warranties Plan Act* and its regulations (the "ONHWP Act") – specifically Regulation 165/08, a copy of which is available on the Tarion website. The obligations of builders are set out in the regulation and the statutorily mandated Addendum which must form part of each purchase agreement.

The Delayed Occupancy Warranty is intended to provide some protection to purchasers from the impact of delays in the Occupancy of their new condominium home. This objective is achieved by, among other things:

- Making clear the firm or tentative nature of the Occupancy date being promised. Builders must provide a specific Occupancy date in the purchase agreement, and must expressly tell the purchaser whether the date is firm or tentative (so the purchaser knows up front that the date may be changed);
- Limiting the builder's use of Early Termination Conditions in the purchase agreement;

- Disclosing in the purchase agreement the status of development approvals and the status of construction so the purchaser can better assess the risk that a delay may occur;
- Providing adequate notice to the purchaser when Occupancy is to be delayed;
- Compensating purchasers where a delay in excess of permitted delay has occurred; and
- Setting an Outside Occupancy Date beyond which the purchaser has a right to terminate the transaction.

The Delayed Occupancy Warranty is in addition to the basic obligation of a builder to take all reasonable steps to complete the construction of a condominium home and to close the purchase and sale transaction without delay.

These matters are addressed in the applicable Addendum form described in more detail below.

## **2. The Condominium Addendum Forms**

The Addenda (there are two forms) for new condominiums, set out standard contract provisions relating to Delayed Occupancy that must be included in all purchase agreements for new condominium homes in Ontario.

There are basically two condominium Addendum forms – one for purchase agreements offering a Firm Occupancy Date from the outset, and a second for purchase agreements which set a Tentative Occupancy Date and allows builders to extend as of right. The builder must choose one or the other of the Addendum forms to attach as part of the purchase agreement;

- Condominium Firm Occupancy Date
- Condominium Tentative Occupancy Date

Updated versions of these two documents dated as of October 7, 2020 are now available for condominium phases or projects, generally speaking, for which the purchase agreement is signed on or after February 1, 2021 (see Transition Rules at section 14).

A copy of each type of the Addendum can be found on Tarion's website at [www.tarion.com](http://www.tarion.com). The Addendum supplements the terms of the purchase agreement and sets out important obligations of a builder in respect of delays and should be read carefully.

The builder is required to complete all blanks in the applicable Addendum.

Failure to include an Addendum in a purchase agreement for a new condominium home, or to fill in all applicable blanks, is contrary to the terms and conditions of a builder's QFE Confirmation or Enrolment Confirmation. It may result

in the purchaser being able to terminate the purchase agreement and may result in licensing sanctions for the builder from the regulatory authority, HCRA.

### 3. Statement of Critical Dates

The first page of the Addendum is the *Statement of Critical Dates*. This document sets out Critical Dates related to Occupancy. The builder must complete the blanks in the Statement of Critical Dates or else the purchase agreement is not enforceable by the builder.

Tarion has provided a web-based calculator which can be found on the BuilderLink portal and Tarion's website at [www.tarion.com](http://www.tarion.com) to assist in calculating these dates. Tarion will also publish, from time to time, monthly paper calendars for builders and their staff without access to the Internet.

#### Firm Occupancy Date Option

For the Firm Occupancy Date option, the builder must specify a calendar date for each of the following:

- *Firm Occupancy Date* - the date by which the builder agrees to complete the condominium home and have it ready for occupancy.
- *Outside Occupancy Date* – the date agreed upon by the builder and the purchaser. If Occupancy has not been given to the purchaser by that date, the purchaser can elect to terminate the deal, all monies paid by the purchaser are to be returned with interest and the purchaser will be entitled to Delayed Occupancy Compensation.
- *End of the Purchaser's Termination Period* – this date is the end of the 30-day period during which the purchaser may terminate the transaction if the condominium home is not ready for occupancy by the Outside Occupancy Date.

#### Tentative Occupancy Date Option

For the Tentative Occupancy Date option, the builder must specify a calendar date for each of the following:

- *First Tentative Occupancy Date* – the date by which the builder expects the condominium home will be completed and ready for occupancy.
- *Outside Occupancy Date* – a date agreed upon by the builder and purchaser. If Occupancy has not been given to the purchaser by that date, the purchaser can elect to terminate the deal and all monies paid by the purchaser are to be returned with interest and the purchaser will be

entitled to Delayed Occupancy Compensation.

- *Notice of Delay beyond the First Tentative Occupancy Date* – this date is 90 days before the First Tentative Occupancy Date and is the last day by which notice must be given if a delay beyond the First Tentative Occupancy Date is expected.
- *End of the Purchaser’s Termination Period* – this date is the end of the 30-day period during which the purchaser may terminate the transaction if the condominium home is not ready for occupancy by the Outside Occupancy Date.

Schematics illustrating the timelines under each option of the condominium delayed Occupancy regimes are attached as Appendix “A” and “B”.

## 4. Disclosure Obligations

### When the Purchase Agreement is Signed

Builders must complete the blanks in the section of the Addendum titled “Information Regarding the Property.”

#### Zoning Approval

The first portion of the disclosure section of the Addendum requires the builder to disclose whether it has obtained Formal Zoning Approval for the condominium Building that is to be constructed. Formal Zoning Approval occurs when the zoning by-law required in order to construct the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and any appeals have been dismissed or approval affirmed.

The builder must give written notice to the purchaser within 10 days after the actual date of Formal Zoning Approval, if approval has not been obtained at the time the purchase agreement is signed.

#### Construction Status

Builders must disclose whether the Commencement of Construction of the Building has occurred, and if not, the date that Commencement of Construction of the Building is expected to occur. If construction has not yet begun at the time the purchase agreement is signed, the builder must give written notice to the purchaser within 10 days after the actual date of Commencement of Construction.

“Commencement of Construction” means the start of excavation for and/or construction of foundation components or elements (such as footings, rafts or piles) of the Building.

## Other Disclosure

There are other ongoing disclosure obligations set out in the balance of each Addendum. For example, there are specified informational requirements for: extending or accelerating any Critical Dates by mutual agreement, setting a new Occupancy Date in cases of Unavoidable Delay, and setting Delayed Occupancy Dates.

## 5. Conditions of Sale

### General

A condition is a term in a purchase agreement that sets out a situation in which the purchase agreement may terminate if a specified event either happens or does not happen.

The use of conditions of sale is regulated by the terms of the Addendum. Builders are permitted to include only certain specified types of conditions in their purchase agreement. These permissible types of conditions fall into four general categories:

- *Early Termination Conditions* – discussed in detail below;
- The usual condition regarding compliance with Planning Act subdivision control provisions; (by virtue of registration of the condominium declaration and description under the Condominium Act);
- Conditions which are rights of termination in a favour of a party due to the default of the other; and
- Purchaser conditions – conditions for the sole benefit of the purchaser.

### Early Termination Conditions

#### Non-waivable Conditions

The builder is permitted to make a purchase agreement conditional upon receipt of approval for:

- A change to the official plan, other governmental development plan or zoning by-law (including a minor variance);
- A consent to creation of a lot(s) or part-lot(s);
- A certificate of water potability or other measure relating to domestic water supply to the condominium home;

- A certificate of approval of septic system or other measure relating to waste disposal from the condominium home;
- Completion of hard services for the Property or surrounding area (e.g. roads, rail crossings, water lines, sewage lines, other utilities);
- Allocation of domestic water or storm or sanitary sewage capacity;
- Easements or similar rights serving the Property or surrounding area;
- Site plan agreements, density agreements, shared facilities agreements or other development agreements with approving authorities or nearby landowners and/or any development approvals required from an approving authority; and/or
- Site plans, plans, elevations and/or specifications under architectural controls imposed by an approving authority.

These conditions are for the benefit of both the builder and the purchaser and cannot be waived by either party.

The builder must provide written notice not later than 5 Business Days after the date specified for satisfaction of a condition that: (i) the condition has been satisfied; or (ii) the condition has not been

satisfied (together with reasonable details and backup materials), and that as a result the purchase agreement is terminated.

Also, if notice is not provided as set out above, then the condition is deemed not satisfied and the purchase agreement is terminated.

#### Waivable Conditions

The builder is also permitted to make the purchase agreement conditional upon:

- Receipt by the builder of confirmation that sales of condominium dwelling units have exceeded a specified threshold by a specified date;
- Receipt by the builder of confirmation that financing for the project on terms satisfactory to the builder has been arranged by a specified date;
- Receipt of approval for a basement walkout; and/or
- Confirmation the builder is satisfied that the purchaser has adequate financial resources to complete the transaction.

These conditions are for the benefit of the builder and may be waived by the builder in its sole discretion.

The builder must provide written notice on or before the date specified for satisfaction of the condition that: (i) the condition has been satisfied or waived; or (ii) the condition has not been satisfied or waived, and that as a result the purchase agreement is terminated.

Also, if notice is not provided as set out above, then the condition is deemed waived and the purchase agreement will continue to be binding on both parties.

The Non-waivable Conditions and Waivable Conditions referred to above are together called the Early Termination Conditions.

#### Set Out in the Addendum

To ensure that any Early Termination Conditions required by the builder are clearly communicated to the purchaser, all Early Termination Conditions must be listed in section 6 of the Addendum<sup>2</sup> or an appendix with the heading "Early Termination Conditions." Details of the Early Termination Conditions must also be included. For example, each Early Termination Condition must be set out separately, be reasonably specific as to the type of approval which is needed, and identify generally the approving authority. The builder is required to take all commercially reasonable steps to satisfy any Early Termination Conditions included in the purchase agreement.

#### Date for Satisfaction

The date for satisfaction of any Early Termination Condition must be no later than 90 days before the Firm Occupancy Date (or First Tentative Occupancy Date for a tentative transaction) with one exception: the condition regarding builder confirmation that the purchaser has the financial resources to complete the transaction must be satisfied within 60 days after signing the purchase agreement (or 60 days after a home sale condition has been satisfied or waived).

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<sup>2</sup> In the pre-2012 Addendum forms, Early Termination Conditions are set out in section 2.

## Other Builder Conditions

A purchase agreement may also be conditional upon the compliance with the subdivision control provisions (section 50) of the Planning Act, which compliance shall be obtained by the builder at its sole expense, on or before Closing.

A purchase agreement may also be conditional upon compliance with the subdivision control provisions (section 50) of the Planning Act, (by virtue of registration of the condominium declaration and description under The Condominium Act) which compliance shall be obtained by the builder at its sole expense, on or before closing.

A purchase agreement may also contain rights of termination where one or the other of the parties is at fault.

## Prohibited Conditions of Sale

For greater certainty, the builder is not permitted to make the purchase agreement conditional upon:

- Receipt of a building permit;
- Receipt of an occupancy permit; and
- Completion of the dwelling.

Only conditions expressly permitted by the Addendum are enforceable by the builder. Any other conditions will be deemed void and unenforceable by the builder but will not affect the validity of the balance of the purchase agreement.

## Purchaser Conditions

The purchase agreement may include any condition that is for the sole benefit of the purchaser which the parties may agree upon. Examples might include conditions in favour of the purchaser relating to: the sale of an existing dwelling; obtaining purchaser mortgage financing; or approval of a basement walkout.

## 6. Firm or a Tentative Occupancy Date Option

### Firm or Tentative Occupancy Transaction

Builders must elect to offer either: a Firm Occupancy Date from the outset; or a Tentative Occupancy Date i.e., specify an anticipated Occupancy Date which is tentative and which may be extended from time to time without the purchaser's consent as long as Occupancy is not extended beyond the Outside Occupancy Date.

## Firm Closing Date Option

A builder may choose to offer a Firm Occupancy Date. Where the Firm Occupancy Date option is chosen, the builder cannot extend the Firm Occupancy Date without paying compensation to the purchaser, except in cases of Unavoidable Delay (see section 8 below) or where the builder and purchaser mutually agree to amend the purchase agreement (see section 7 below).

Builders who offer a Firm Occupancy Date must use the Firm Occupancy Date version of the Addendum which is simpler as it does not contain provisions concerning tentative dates or multiple extensions of such dates.

## Tentative Occupancy Date Option

A builder may choose the Tentative Occupancy Date option. Builders who offer Tentative Occupancy Dates must use the Tentative Occupancy Date version of the Addendum. This version of Addendum contains terms relating to extensions of the Tentative Occupancy Dates, provision for notice of such extensions, and requirements for setting the Firm Occupancy Date.

### Setting New Occupancy Dates under the Tentative Occupancy Date Option

With the Tentative Occupancy Date option, you start by agreeing upon a First Tentative Occupancy Date with your purchaser.<sup>3</sup> If the condominium home will not be ready by this time, you can extend the Occupancy Date by a period of time of your choosing. You can do so by either setting a subsequent Tentative Occupancy Date or

setting a Firm Occupancy Date. If you need to exercise this right to extend, you must notify your purchaser at least 90 days before the First Tentative Occupancy Date.

If you have set a subsequent Tentative Occupancy Date and the condominium home will still not be ready by this date, you are entitled to extend by properly setting subsequent Tentative Occupancy Dates as needed or, by setting a Firm Occupancy Date. Again, at least 90 days prior written notice is required.

These extensions are available to you (upon giving proper notice) so long as you do not go beyond the Outside Occupancy Date and you need not pay Delayed Occupancy Compensation. However, once you have set a Firm.

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<sup>3</sup> Set out in the Statement of Critical Dates

Occupancy Date, your only right to extend is to set a Delayed Occupancy Date and Delayed Occupancy Compensation will be payable.<sup>4</sup>

Notice for Setting a Subsequent Tentative Occupancy Date

To set a subsequent Tentative Occupancy Date, you must:

- Give written notice to your purchaser at least 90 days before the First Tentative Occupancy Date; and
- Choose a subsequent Tentative Occupancy Date or you can go straight to setting a Firm Occupancy Date.
- The subsequent Tentative Occupancy Date or Firm Occupancy Date, as the case may be, must be a Business Day prior to the Outside Occupancy Date.

Notice for Setting a Final Tentative Occupancy Date

No later than 30 days after completion of: the roof slab; or the roof trusses and sheathing of the Building; as the case may be, the builder must give written notice to the purchaser of the Final Tentative Occupancy Date.

To set a Final Tentative Occupancy Date, you must:

- Give written notice to your purchaser at least 90 days before the then-current Tentative Occupancy Date.
- The Final Tentative Occupancy Date can be any Business Day on or before the Outside Occupancy Date.

Notice for Setting a Firm Occupancy Date

If you have given proper notice of a Final Tentative Occupancy Date but still cannot complete the condominium home by this date, you may further extend Occupancy by up to an additional 120 days by setting a Firm Occupancy Date.

To set a Firm Occupancy Date at this stage, you must:

- Give written notice at least 90 days before the Final Tentative Occupancy Date; and
- Choose a Firm Occupancy Date that is 120 days or less after the Final Tentative Occupancy Date.

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<sup>4</sup> You may also be able to extend if both parties mutually agree to do so (see section 7 below) or in the case where Unavoidable Delay exists (see section 8 below).

### Possible Automatic Firm Occupancy Date

A Firm Occupancy Date may also be set automatically in two circumstances:

- If you fail to give a full 90 days written notice for the first extension, then the First Tentative Occupancy Date becomes the Firm Occupancy Date; and
- If you exercise the first extension properly but fail to give a full 90 days written notice for a subsequent extension, then the current Tentative Occupancy Date becomes the Firm Occupancy Date.

### **Setting a Delayed Occupancy Date**

In connection with either the Firm Occupancy Date Option or the Tentative Occupancy Date Option, if you cannot complete the home for occupancy by the Firm Occupancy Date, and your purchaser does not want to extend the Firm Occupancy Date by mutual agreement, you can still set a Delayed Occupancy Date despite your purchaser's wishes. You can do this because, by the terms of the Addendum, your purchaser was made aware that this could be necessary. However, if you delay the Occupancy this way, your purchaser is entitled to Delayed Occupancy Compensation.

To achieve this further extension you are required to:

- Choose a Delayed Occupancy Date; and
- Give at least 10 days written notice. If you do not provide 10 days prior written notice as required, Delayed Occupancy Compensation is payable for an additional 10 days (i.e., from the date the notice should have been given).

If you choose a Delayed Occupancy Date that is beyond the Outside Occupancy Date, then your written notice setting the Delayed Occupancy Date must include a statement explaining that your purchaser need not accept the full delay and will have the right to terminate the purchase agreement during the 30-day Purchaser's Termination Period after the Outside Occupancy Date. This right to terminate is further described in section 11 of this Bulletin.

## **7. Changing Critical Dates by Mutual Agreement**

The Addendum sets out a structure for setting, extending and/or accelerating<sup>5</sup> Critical Dates. Critical Dates may be amended by mutual agreement but only on the following basis:

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<sup>5</sup> The rules for extending and accelerating dates are more stringent for pre-2012 Addendum forms.

- The builder and purchaser may at any time, after signing the purchase agreement, agree in writing to extend or accelerate one or more Critical Dates, (e.g., First Tentative Occupancy Date, Second Tentative Occupancy Date, Firm Occupancy Date or Delayed Occupancy Date), in each case to a new specified calendar date.
- The amendment must provide that it is being made voluntarily; that the builder and purchaser acknowledge that the purchaser has no obligation to sign the amendment; and that the purchase transaction will still be valid if the purchaser does not sign the amendment.
- The amendment must include a new revised Statement of Critical Dates.
- Also, since any such change may affect the Delayed Occupancy Warranty, any request by the builder to extend a Critical Date to a later date must include a written statement that:
  - I. Discloses to the purchaser that the signing of the amendment may result in the loss of Delayed Occupancy Compensation, as described in section 7 of the Addendum<sup>6</sup>
  - II. Unless there is an express waiver of compensation, describes in reasonable detail the cash amount, goods, services or other consideration which the purchaser accepts as compensation; and
  - III. Contains a statement that the purchaser waives compensation or accepts compensation, noted in item ii above, in either case, in full satisfaction of any Delayed Occupancy compensation otherwise payable by the builder.

Sample forms of amendment can be found on Tarion’s BuilderLink portal or upon request to Tarion.

If the purchaser for his or her own purposes requests the change(s) in date(s), the only requirements that apply are: that the amendment be in writing; that the new date(s) be calendar dates; that the amendment include a new Statement of Critical Dates; and that items i, ii and iii, immediately above, do not apply.

A builder is permitted to include a provision in a purchase agreement allowing the builder a one- time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, one (1) Business Day to avoid the necessity of tender where a purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed Occupancy Compensation will not be payable for such period and the builder may not impose any penalty or interest charge on the purchaser.

The purchaser and builder may agree in the purchase agreement to any unilateral extension or acceleration rights that are unilaterally exercisable by the purchaser.

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<sup>6</sup> Section 9 of the pre-2012 Addendum forms.

## 8. Unavoidable Delay

The builder may extend a First Tentative Occupancy Date, a subsequent Tentative Occupancy Date, a Final Tentative Occupancy Date, a Firm Occupancy Date and/or a Delayed Occupancy Date, as the case may be, without penalty, in certain circumstances if there is an Unavoidable Delay.

An Unavoidable Delay means a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which is beyond the reasonable control of the builder and is not caused or contributed to by the fault of the builder.

If Unavoidable Delay occurs, the builder may extend the relevant dates by no more than the length of the Unavoidable Delay Period. The builder can implement this extension without the approval of the purchaser and without the requirement to pay Delayed Occupancy Compensation in connection with the Unavoidable Delay, provided the requirements of the Addendum are met.

When an Unavoidable Delay arises, the builder must provide the purchaser with written notice describing the delay along with an estimate of the duration of the delay. The builder must advise the purchaser as soon as possible when the delay has ended. When the delay has ended, the builder must provide written notice to the purchaser setting out a brief description of the Unavoidable Delay, identifying the date of conclusion of the Unavoidable Delay Period, and setting new future Critical Dates (i.e., First Tentative Occupancy Date, subsequent Tentative Occupancy Date, Final Tentative Occupancy Date, Firm Occupancy Date, Delayed Occupancy Date, Outside Occupancy Date, and the last day of the Purchaser's Termination Period, as the case may be). The new dates are calculated by adding to the existing Critical Dates the number of days of the Unavoidable Delay Period, provided that the new Firm Occupancy Date or Delayed Occupancy Date (if applicable) must be at least 10 days after the giving of notice, unless the builder and purchaser agree otherwise. The notice must set out as calendar dates all the new or confirmed Critical Dates.

In the context of an Unavoidable Delay either the builder or the purchaser may request in writing earlier new dates, and the other party's consent to the earlier dates shall not be unreasonably withheld.

If an Unavoidable Delay occurs, the builder should review carefully the sections of the Addendum to ensure that all obligations are complied with. Failure to comply with the Addendum requirements may result in the builder having to pay Delayed Occupancy Compensation for the period for which an Unavoidable Delay is claimed.

## 9. Building Code – Conditions of Occupancy

On or before the Date of Occupancy, the builder is required to deliver to the purchaser either:

- An Occupancy Permit (as defined in the Addendum); or
- If an Occupancy Permit is not required under the Ontario Building Code (OBC), a signed written confirmation by the builder that all conditions of Occupancy under the OBC have been fulfilled and Occupancy is permitted under the Building Code.

However, if the builder and the purchaser agree that the purchaser shall be responsible for certain conditions of Occupancy, then without changing the statutory requirements for an Occupancy Permit, the purchaser may not be permitted to refuse to complete the interim occupancy closing on the basis that such conditions have not been completed. Also the builder is required to deliver a modified form of written confirmation which confirms completion of all OBC conditions of Occupancy but excluding any conditions which the purchaser agreed to complete.

If the builder cannot satisfy these requirements, the builder is required to set a Delayed Occupancy Date (or new Delayed Occupancy Date) on a date that the builder reasonably expects to have satisfied the requirements, and to comply with the provisions of the Addendum dealing with setting Delayed Occupancy Dates and paying Delayed Occupancy Compensation. Delayed Occupancy Compensation is not payable, however, if the inability to provide Occupancy is caused by the failure of a purchaser to fulfill any conditions of Occupancy for which the purchaser is contractually responsible.

## 10. Delayed Closing Compensation

The builder warrants to the purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement in writing as described in section 7 of this Bulletin or as a result of Unavoidable Delay), then the builder must compensate the purchaser up to a total amount of \$7,500, which amount includes: (i) payment to the purchaser of a set amount of \$150 a day for living expenses for each day of delay until the date of Occupancy or the date of termination of the purchase agreement (if applicable); and (ii) any other expenses (supported by receipts) incurred by the purchaser due to the delay.

Delayed Occupancy Compensation is payable only if:

- Occupancy occurs, or the purchase agreement is terminated under specified circumstances (see section 11 below); and

- The purchaser's claim is made within one (1) year after Occupancy; or after termination of the purchase agreement, as the case may be. (See section 12 below).

If the builder gives written notice of a Delayed Occupancy Date to the purchaser less than 10 days before the Firm Occupancy Date, Delayed Occupancy Compensation is payable from 10 days before the Firm Occupancy Date.

If the builder gives written notice of a Delayed Occupancy Date to the purchaser more than 90 days before the Final Tentative Occupancy Date instead of setting a Firm Occupancy Date, Delayed Occupancy Compensation is payable from the date that is 120 days after the Final Tentative Occupancy Date.

Living expenses are direct living costs such as costs for accommodation and meals. A set daily amount of \$150 per day for living expenses is payable and receipts are not required. The purchaser must, however, provide receipts in support of any claim for other Delayed Occupancy Compensation, such as for moving and storage costs. Submission of false receipts may disentitle the purchaser to any Delayed Occupancy Compensation in connection with a claim.

## **11. Termination of the Purchase Agreement**

### **Termination on Consent**

The builder and the purchaser may terminate the purchase agreement at any time by mutual written consent.

### **Termination after Outside Occupancy Date**

If for any reason (other than breach of contract by the purchaser), Occupancy of the condominium home has not been given to the purchaser by the Outside Occupancy Date then the purchaser has 30 days to terminate the purchase agreement by written notice to the builder. If the purchaser does not provide written notice of termination, then the Delayed Occupancy Date is the date set by the builder in the written notice or if the builder fails to set a date, the Delayed Occupancy Date is deemed to be 90 days after the Firm Occupancy Date.

### **Termination for Failure to Specify Dates**

The purchaser may terminate the purchase agreement by written notice to the builder if all applicable Critical Dates in the Statement of Critical Dates are not completed with calendar dates; or any Critical Date is expressed as being subject to change depending upon the happening of an event.

## Termination Relating to Conditions of Sale

If the purchase agreement is subject to Early Termination Conditions, the purchase agreement may terminate if an Early Termination Condition is not satisfied (and is not waived in the limited instances where the Addendum permits a condition to be waived), by the required date. The builder is obliged to take all commercially reasonable steps within the builder's power to satisfy such Early Termination Conditions.

## Return of Monies on Termination

If the purchase agreement is terminated (other than as a result of breach of contract by the purchaser), the builder must return all monies paid by the purchaser, including deposits and monies for extras and upgrades, within 10 days with interest from the date each amount was paid to the builder to the date of return of the amount.

## 12. 2012 Changes

### Disclosure of any Closing Adjustments

The Addendum sets out obligations on the builder with respect to disclosure of any and all adjustments or changes to the purchase price or balance due on Closing. These include:

- There must be a Schedule B attached (in the form prescribed by the Addendum).
- Schedule B has two separate parts:
  - First, is Part I, under the heading "Stipulated Amounts/Adjustments." These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on closing, the dollar value which is stipulated in the Purchase Agreement and set out in the Addendum.
  - Secondly, is Part II, under the heading "All Other Adjustments – to be determined in accordance with the Purchase Agreement." These are additional charges, fees or other anticipated adjustments to the final purchase price or balance due on Closing which are to be determined after signing the purchase agreement and otherwise in accordance with the terms of the purchase agreement.
- Please note: Only items set out in Schedule B (or an amendment to Schedule B) can be the

subject of adjustment or change to the purchase price or balance due on closing. (In other words, adjustments or changes to the purchase price or balance due on closing must be disclosed in a single schedule – Schedule B.) However, not all details must be set out in Schedule B. As long as the item is disclosed, a cross-reference to another part of the purchase agreement for more details is acceptable.

- You as the builder also agree that you will not charge as an adjustment or readjustment to the purchase price, any reimbursement for a sum paid or payable by you to a third party unless the sum is ultimately paid to the third party either before or after Closing. If you as the builder charge an amount in contravention of this requirement, you must forthwith readjust with the purchaser. (This requirement however is subject to the express qualification that it will not restrict or prohibit payment for items disclosed in Part I of Schedule B which have a fixed fee; nor shall it restrict or prohibit the builder and purchaser from agreeing on how to allocate as between them, any rebates, refunds, or incentives provided by the federal government, a provincial and municipal government or an agency of any such government, before or after Closing. Therefore, if you are adjusting for an item, e.g., development charges which may result in rebates because of a government incentive program, you need to state expressly how rebates will be allocated. Otherwise, the rebates will be subject to readjustment.)

## Other 2012 Changes

Other noteworthy changes to the 2012 Addendum form include:

- The 2008 rules placed several restrictions on what Critical Dates could be extended or accelerated and, if so, on what basis. The new rules remove the restrictions as to what dates can be changed and lessen the restrictions on how the changes are accomplished (see section 7).
- If a builder neglects to set a Delayed Occupancy Date when required, then the form deems the Delayed Occupancy Date to be 90 days after the Firm Occupancy Date.
- To correspond with 2012 changes to the OBC, the builder now needs to simply provide the Occupancy Permit required by the OBC, or but only if no such permit is required, provide the purchaser a certificate from the builder that all conditions of occupancy under the OBC have been satisfied.
- If Delayed Occupancy Compensation is payable, it need not be paid until Closing of the sale

transaction – although interest will be payable on such amount (see s.7(g) of the Addendum).

## 13. How a Homeowner Makes a Claim

### Compensation where there is Mutual Agreement

Delayed Occupancy Compensation may be payable in at least two circumstances. First, if a builder knows the Firm Occupancy Date cannot be met, the builder may speak to the purchaser and mutually agree upon a new Firm Occupancy Date. In this scenario compensation may be waived or payable in accordance with the amending agreement referred to in section 7 above.

Second, the builder may miss the Firm Occupancy Date, without amending the purchase agreement. Occupancy would occur on a Delayed Occupancy Date set by the builder (or deemed set if the builder fails to do so). In this scenario, the purchaser is asked to make a claim to the builder for compensation as soon as practicable, after Occupancy and must include any receipts which evidence any part of the purchaser's claim except daily living expenses for which receipts are unnecessary and should not be submitted. The builder is required to assess the purchaser's claim by determining the amount of Delayed Occupancy Compensation payable based on the rules set out in the Addendum and the receipts provided by the purchaser, and the builder must promptly provide that assessment to the purchaser. The purchaser and the builder are required to use reasonable efforts to settle the claim and when the claim is settled, the builder must complete an acknowledgement provided by Tarion and signed by both parties which:

- Includes the builder's calculation of the Delayed Occupancy Compensation payable;
- Describes in reasonable detail the cash amount, goods, services, or other consideration which the purchaser accepts as compensation (the "Compensation"), if any; and
- Contains a statement by the purchaser that the purchaser accepts the Compensation in full satisfaction of any Delayed Occupancy Compensation payable by the builder.

A true copy of the signed acknowledgement must be provided by the builder to Tarion, if Tarion so requests.

### When the Parties Cannot Agree

If the builder and purchaser cannot come to terms, the purchaser may submit a claim to Tarion, up to one (1) year after Occupancy (or termination of the purchase agreement, if applicable).

Tarion will process the claim in accordance with the rules and regulations relating to Delayed Occupancy Compensation set out in the Regulations and the Addendum and generally described as follows.

Upon receipt of Delayed Occupancy claim from a purchaser, Tarion will advise the builder of the claim and ask for the builder's input. Tarion will also ask the builder to resolve the claim within 30 days. If the claim is not resolved within such 30-day period Tarion will conduct a conciliation (usually a desk assessment) to assess the claim and thereafter issue a Warranty Assessment Report to the builder and the purchaser. If the claim is valid, Tarion will pay the compensation due to the purchaser. Tarion will then invoice the builder for such amount plus an administrative fee and applicable taxes. If applicable, the conciliation will be assessed as a "chargeable conciliation" and if so, will be noted on the builder's record and the Ontario Builder Directory maintained by HCRA.

### **Chargeable Conciliations**

A conciliation will be deemed "chargeable" if Delayed Occupancy Compensation is payable and was not paid within the above-noted 30-day period.

A conciliation may be assessed as "not chargeable" if one of the following applies:

- The builder offers proper compensation in a timely manner, but the purchaser rejects the offer.
- The builder and purchaser make an agreement for compensation, but the purchaser refuses to sign an acknowledgement.

### **Appeal Rights**

If a purchaser does not agree with a Delayed Occupancy Warranty Assessment Report, he or she may request a Decision Letter and a right of appeal to the Licence Appeal Tribunal is available thereafter.

A builder who disputes a Delayed Occupancy Warranty Assessment Report and/or the chargeability of the conciliation may request an arbitration (see Registrar Bulletin 08 - Builder Arbitration Forum (formerly Builder Bulletin 41)).

## **14. Which Delayed Closing Warranty Applies**

### **Timing Transition Rules**

The Delayed Occupancy Warranty described in this Bulletin, applies to most purchase agreements for condominium homes that are entered into on or after July 1, 2008, but subject to the following transition rules.

- If the first arm's length purchase agreement in a condominium project (or a phase of a phased condominium) is signed before July 1, 2008, then the whole project (or that phase of the project) is subject to the old (pre-2008) delayed Occupancy rules.
- If the first arm's length purchase agreement in the condominium project (or a phase of the condominium) is signed on or after July 1, 2008 and before October 1, 2012, then the post 2008 Addendum forms apply to the whole project (or that phase of the project).
- If the first arm's length purchase agreement in the condominium project (or a phase of a phased condominium) is signed on or after October 1, 2012, then the 2012 Addendum forms must be used.
- However, it is also open to the builder, despite the 2012 transition rules noted above, to elect to use the 2012 Addendum forms for any unit purchase agreement signed on or after July 1, 2012.)
- Any purchase agreement in the condominium project (or a phase of a phased condominium) signed on or after February 1, 2021 must use the October 7, 2020 Addendum forms.

## Type of Condominium

Subject to the timing rules noted above, the new Delayed Occupancy Warranty applies to:

- Freehold condominiums; and
- Leasehold condominiums.

The Delayed Occupancy Warranty does not apply to:

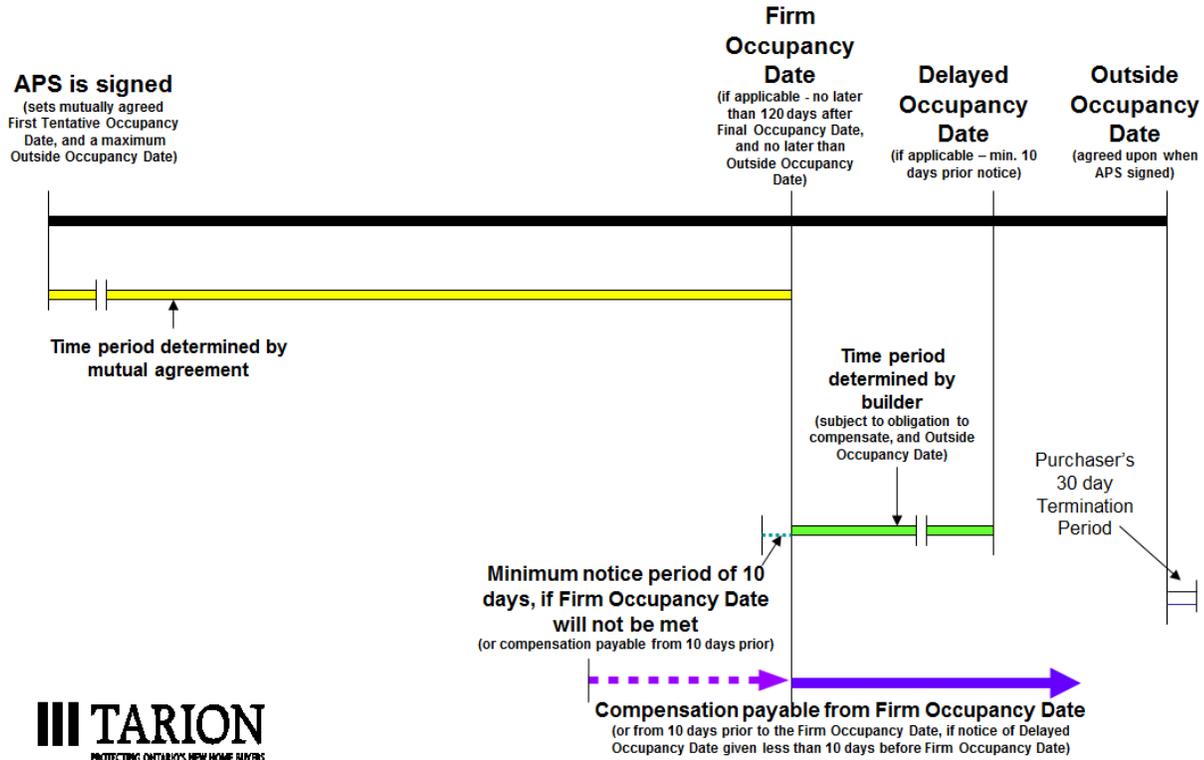
- Vacant land condominiums where vacant parcels are sold; or
- Vacant land condominiums where a vacant parcel is sold and a contracted home is built on it.

Registrar

"Peter Balasubramanian"

Appendix A

Condominium Firm Occupancy Date  
Timeline Schematic



## Appendix B

# Condominium Tentative Occupancy Date Timeline Schematic

