

## Discussion Guide

# Consultation on Improvements to Claims Process for Condominium Common Elements – Registrar Bulletin 02

Tarion is seeking public input on proposed changes to Registrar Bulletin 02 – Claims Process – Condominiums Common Elements (RB02).

This bulletin sets out a customer service standard for warranty claims made in relation to Common Elements (CE) for residential condominiums. It sets out the process for how condominium corporations can seek assistance from Tarion, including how condominium corporations must submit statutory warranty claims for Common Elements, establishes timelines within which builders must respond to and resolve claims, and the role of Tarion in the process.

RB02 helps promote consumer confidence in the new condominium sector by providing a consistent framework on how warranty issues can be identified and resolved. This process helps condominium corporations in their role while providing structure and allows for the efficient scheduling of trades and repair appointments for builders.

Tarion is now consulting on a number of proposed changes to RB02, specifically:

- Improved the Emergency Process reflecting the goal of expediting the warranty process for health and safety related matters by adding a clear process, including abridging timelines if required, and the addition of a meeting with all parties to review the emergency after Tarion is notified.
- Provide new information on decision letters, repair agreements, and claims processing to ensure all parties understand the warranty process.
- Additions to explain how a warranty claim should be submitted and identified, and the condominium corporation's warranty responsibilities to help streamline the warranty claim process and better support the condominium corporation.
- Include guidelines for updating the Performance Audit Tracking Summary (PATS), specifically a regular 90-Day update to encourage collaboration and communication between all parties.
- Clearly define the process after a warranted item is resolved by a builder and help address ambiguity around expectations when Tarion is settling a claim for the Condominium Corporation.

You can find greater details around the proposed changes below.

Please complete the review the consultation questions found in this document and **submit any feedback on the proposed changes to [submissions@tarion.com](mailto:submissions@tarion.com) by September 9, 2024.**

While this consultation focusses on specific proposed changes and questions, if you have additional comments, please send them to [submissions@tarion.com](mailto:submissions@tarion.com). Please title these with the subject “Additional Submissions”.

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.

## **Background and Context**

The Customer Service Standard for Common Elements of Condominiums is outlined in [RB02 - Claims Process - Condominium Common Elements](#).

The Common Elements (CE) Claims Process involves specific steps - steps condominium corporations must take to submit a Warranty Claim; repair periods for builders to perform work on warranted items; and steps Tarion will take to become involved if necessary.

Registrar Bulletin 02 (RB02) and the Customer Service Standard for Common Elements is a process that has not been reviewed since implemented in 2010. In applying the bulletin for the past 13 years the Tarion has identified a number of areas which could be improved to support condominiums corporations and consumers.

Tarion has identified the following five areas for improvement that Tarion feels strongly should be updated to allow for earlier and identification and resolution of warranty defects and better support condominium corporations in their role to manage the condominium:

1. [Emergency Process](#)
2. [New Bulletin Information](#)
3. [Clarity in Reporting Deficiencies](#)
4. [Performance Audit Tracking Summary \(PATS\)](#)
5. [Claim Resolution](#)

While the above issues are included in the current consultation, Tarion is also proposing to initiate a regular review process every 3-5 years to ensure that RB02 remains current and performs as intended.

## **Part 1 – Emergency Process**

The emergency process for condominium common elements is currently defined in RB02 and is intended to address issues that require immediate resolution.

Currently, the emergency process outlines situations whereby the condominium corporation notifies the vendor/builder and Tarion and, if the vendor/builder does not respond to the condominium corporation, the condominium corporation is permitted to carry out repairs.

The conciliation that follows the emergency process deals with reimbursement of costs and was modeled on the unit process defined in Registrar Bulletin 01 (Customer Service Standard - Freehold). Tarion is receiving more complex emergency claims and there can be confusion with stakeholders about how the emergency process works and relates to an item reported in the first- and second-year Performance Audit. The current process contemplates that an emergency item is reported and subsequently resolved at the time the emergency form is submitted, while in practice it is often that the issues are larger and unresolved at the time the emergency form is submitted. These factors have made the current process difficult to administer.

Tarion has considered in this review process that 1) some emergencies are a brand-new issue that have not previously been reported on a claim and require urgent attention, and 2) some emergencies stem from a performance audit item where the original condition has worsened, or a repair has failed, requiring urgent attention.

In some instances, Tarion has the ability under the Ontario New Home Warranties Plan Act (ONHWPA) to abridge or shorten repair period for emergencies but is looking to make improvements so that RB02 is clear regarding process.

### **Proposed Updates:**

Tarion is proposing to implement the below changes to the emergency process to ensure clarity and to help expedite the warranty process for health and safety related matters.

Tarion is proposing to update the emergency process to include:

- Clarifying that an emergency can occur and be reported at any time in the seven-year warranty period.
- Outlining the timelines after which the condominium corporation can take necessary steps to mitigate damages by coordinating repairs necessary to correct the emergency.
- Creating a Common Element (CE) Emergency Form that must be submitted by the condominium corporation which identifies the details of the emergency and indicates whether the emergency item was previously reported on a statutory claim form or if this is a newly reported item.
- Adding a new step that a CE meeting with all parties will be scheduled within three business days of Tarion receiving a CE Emergency Form.
- At the CE meeting, the details of the emergency will be discussed with all parties and:
  - if Tarion determines that the item reported meets the definition of an emergency, the builder repair period will be shortened to an appropriate timeframe to allow for the full repair of the defect in

accordance with the builder's warranty obligations and any costs incurred on the part of the condominium corporation will also be discussed.

- if Tarion determines that the item reported does not meet the definition of an emergency, Tarion will advise all parties and the item can continue in the regular stream of items, without abridgement of timelines.
- A CE meeting summary will be issued by Tarion to all parties to capture the details of the CE meeting and adjusted timelines if applicable.
- If Tarion determines that the item reported meets the definition of an emergency, and the builder does not address the emergency, a conciliation will be conducted on the reported emergency item and Tarion will determine warrantability and issue a Conciliation Assessment Report.
- This updated emergency process does not impact the condominium corporation's ability to request a conciliation for the non-emergency items in the regular Registrar Bulletin #02 process.

Please see [the full process outlined in Appendix A](#) below.

### **Stakeholder Impacts:**

#### *Condominium Corporation*

- The condominium corporation will benefit from a more streamlined process of reporting emergency issues. There will be clarity on the process and expectations.

#### *Builders*

- The builder will benefit from a more streamlined process of responding to emergency issues.

#### *Tarion*

- Tarion will benefit from a more streamlined process of managing emergency issues.

### **Questions for Stakeholders to Consider:**

1. Do you think this new process will allow condominium corporations and builders to better handle emergency issues?
2. Are there any concerns about the new CE Emergency process, or required CE Meeting and form?
3. Do you have any other feedback on the proposed changes?

## **Part 2 – Document and Process Updates**

Currently, there are parts of the common element process that are not referenced within RB02. Because these are important processes for consumer protection, Tarion believes RB02 should be updated to reflect additional aspects of the process.

Tarion issues decision letters automatically at the 150-day mark following a Conciliation Assessment Report (CAR) being issued. Currently this is not noted in RB02 as a formal process, although information is provided on the CAR cover letter.

Depending on the circumstances, Tarion allows willing parties to enter into repair agreements to extend a builder repair period, which can result in multiple requests for conciliation opportunities (e.g., initial request for conciliation window and then at the repair agreement request for conciliation window). Tarion is proposing to schedule conciliations automatically at the time of entering into a repair agreement, as that would resolve the need to request for conciliation again. The conciliation would be scheduled to allow for the builder repair period.

Additionally, the conciliation and chargeability fee noted in RB02 does not reference HST or provide rules on when it is refunded or charged.

### **Proposed Updates:**

Tarion is proposing to implement the below changes to RB02 to:

- Add new information about decision letters, specifically when they are to be issued to be consistent with current practices (i.e., these are automatically sent 150 days after the CAR is issued).
- Change the repair agreement to not include a request for conciliation timeline and instead automatically schedule a conciliation date.
- Clarify the conciliation and chargeability fee amounts – i.e., \$1,130.00 inclusive of taxes for a request for conciliation, and \$3,390.00 including of taxes payable by the builder as a result of a chargeable conciliation.

### **Stakeholder Impacts:**

#### *Condominium Corporations*

- The condominium corporation will benefit from additional clarify around these processes. They will also not risk missing the deadline for a subsequent Request for Conciliation. A scheduled conciliation should motivate both parties to work together to resolve outstanding items.

#### *Builders*

- The builder will benefit from additional clarify around these processes. A scheduled conciliation should motivate both parties to work together to resolve outstanding items.

#### *Tarion*

- Tarion will benefit since all parties will better understand the processes. It is common element groups' goal that both parties can work together to resolve their items without conciliation being necessary.

**Questions for Stakeholders to Consider:**

4. Do you think this new information about Decision letters will help condominium boards and/or builders?
5. Do you think this new information about Repair Agreements will help condominium boards and/or builders?
6. Do you have any other feedback on the proposed changes?

## **Part 3 – Clarity in Reporting Deficiencies**

In reviewing information submitted to Tarion as part of a claim, there were concerns with how some CE claims are vague in nature, not specific to locations, are unsubstantiated, and/or require significant time at conciliation to assess.

Unlike with freehold homes or condominium units, there is an onus of proof for a condominium corporation and there is a requirement for engineering professionals preparing performance audits under the act to report actual defects, as well as their locations.

Changes to RB02 to clarify what is required and set expectations for reporting warranty claims could help address this.

### **Proposed Updates:**

Tarion is proposing to add information to RB02 that would help clarify:

- Requirements for condominium corporations to be specific when reporting the scope of an item (e.g., should not report items too generally as systemic or throughout, unless they are)
- The onus of proof requirements that are currently the condominium corporation's responsibility.

### **Stakeholder Impacts:**

#### *Condominium Corporations*

- The condominium corporation will benefit from clearer guidance on the requirements for reporting and onus of proof, so that items may potentially be addressed sooner and more directly by the builder.

#### *Builders*

- The builder will benefit from a better understanding of the issues so they can focus their attention on deficiencies and be efficient in their repairs.

#### *Tarion*

- Tarion will benefit from more clarity in the how defects are reported and will be able to better support condominium corporations to have their deficiencies resolved.

### **Questions for Stakeholders to Consider:**

7. Do you have any concerns with more clear reporting requirements?
8. Do you have any other feedback on the proposed changes?

## **Part 4 – Performance Audit Tracking Summary (PATS)**

Performance Audit Tracking Summary (PATS) is a tool used by Condominium Corporations, builders, and Tarion to track the status of Common Elements warranty claims made to Tarion and encourages communication between all parties to resolve warranty issues. In instances where parties utilize the communication and update PATS tool, resolution of deficiencies is more effective and streamlined (i.e., 90-day updates).

However, not all parties utilize these functions of the PATS and there is potential for better deficiency resolution if more condominium corporations and builders use to tool to its full potential.

### **Proposed Updates:**

Tarion is proposing to improve PATS reporting by:

- Adding clearer language to RB02 providing information about the advantages of regular 90-Day Updates. This includes guidelines on who updates first, and how to respond to comments.

### **Stakeholder Impacts:**

#### *Condominium Corporations*

- The condominium corporation will benefit from understanding the value of regular updates to the PATS. Tarion finds that resolution occurs most often on files with effective communication.

#### *Builders*

- The builder will benefit from understanding the value of regular updates to the PATS. Tarion finds that resolution occurs most often on files with effective communication.

#### *Tarion*

- Tarion will benefit from both parties communicating more effectively. It is common element groups' goal that both parties can work together to resolve their items.

### **Questions for Stakeholders to Consider:**

9. Are there challenges to regularly updating the PATS?
10. Do you have any suggestions for how Tarion could facilitate better updates and communication from condominium corporations and builders?
11. Do you have any other feedback on the proposed changes?



## **Part 5 – Claim Resolution**

Currently, there is little information in RB02 regarding the process when Tarion resolves a claim should the builder not take action to resolve a deficiency.

For this reason, builders and condominium corporations are not always certain regarding how and when items will be resolved.

To expedite to claims resolutions process, Tarion is exploring changes to RB02 to provide clearer guidance on the process once a deficiency is resolved and when may need to be involved in settling a claim. Specifically, scheduling a common element claim inspection at the time of issuing a Conciliation Assessment Report (CAR) will help to remind all parties of the next step in the process.

### **Proposed Updates:**

Tarion is proposing to add clearer language to RB02 to better define the process.

- Specifically, Tarion will schedule a claim inspection at the time of issuing a CAR with warranted items, to create a timeline for a resolution by the builder. It would be scheduled to allow for the builders' post conciliation repair period and can be rescheduled if a repair agreement is entered into, or cancelled if items are resolved. If a claim inspection is not required, the condominium corporation can cancel it.

### **Stakeholder Impacts:**

#### *Condominium Corporations*

- Condominium Corporations will benefit from having the claim scheduled sooner, should it be necessary. This enhances customer service and reduces delays in repairs.
- Condominium corporations will be required to inform Tarion and the builder if deficiencies remain unresolved after a builder repair.

#### *Builders*

- Builders will know sooner if deficiencies remain after the resolve an item.

#### *Tarion*

- Reduced timelines for resolution of files.

### **Questions for Stakeholders to Consider:**

12. Do you have any concerns with Tarion putting more structured timelines in place for claim inspections?
13. Do you have any other feedback on the proposed changes?

## APPENDIX A

### Proposed changes to CE Emergency process

*\*Underlined sections are generally new\**

- 1) An emergency can occur and be reported at any time in the seven-year warranty period. A condominium corporation that believes there is an emergency situation should contact the builder and Tarion. The condominium corporation should follow the builder's instructions in attempting to handle the emergency situation. This process does not replace the potential need for emergency responders to become involved. The condominium corporation and condominium manager should be alerting the appropriate authorities for issues related to health and safety of building occupants.
- 2) The builder is permitted up to 24 hours to resolve the emergency and to ensure that the situation has been made safe and secure and to prevent any further damage from occurring. As an example, a plumbing failure resulting in a leak is expected to have the source of the leak resolved, as well as appropriate clean up of water and mitigation of further damage.
- 3) If the builder cannot be reached within 24 hours or if the builder has been contacted but has not resolved the emergency within 24 hours, the condominium corporation should contact Tarion for further direction. The condominium corporation should take necessary steps to ensure that the emergency portion of any situations meeting the definition of an emergency is addressed and that the situation is made safe. In order to mitigate damages, the condominium corporation may be responsible to perform or arrange for the performance of repairs necessary to correct the emergency, i.e., any repairs necessary to make the identified common elements safe and secure and to prevent any further damage in the near future.
- 4) Tarion will request that a Common Element (CE) Emergency Form be submitted. The CE Emergency Form will identify the details of the emergency and indicate whether the emergency item was previously reported on a statutory claim form or if this is a newly reported item. The CE Emergency Form can identify a claim that has not already been submitted within an applicable warranty period. For that reason, this form is considered to be:
  - a. A first-year form if submitted during the first-year claim period.
  - b. A second-year form if submitted during the second-year claim period, or
  - c. A major structural defect form if submitted during the major structural defect claim period.

Once Tarion receives a CE Emergency Form it will be reviewed by the CE representatives assigned to the project. A CE meeting with all parties will be scheduled within 3 (three) business days.

- 5) At the CE meeting, the details of the emergency will be discussed with all parties. If Tarion determines that the item reported meets the definition of an emergency, the builder repair period will be shortened to an appropriate timeframe to allow for the full repair of the defect in

accordance with the builder's warranty obligations. Any costs incurred on the part of the condominium corporation will also be discussed, and it is expected that the condominium corporation is reimbursed by the builder for appropriate actions taken to stop the emergency and mitigate damages. If Tarion determines that the item reported does not meet the definition of an emergency, Tarion will advise all parties. The item can continue in the regular stream of items, without abridgement of timelines. A CE meeting summary will be issued to capture the details of the CE meeting and adjusted timelines if applicable.

- 6) If Tarion determines that the item reported meets the definition of an emergency and the builder does not address the full repairs related to the emergency item to the satisfaction of the condominium corporation, a conciliation will be conducted on the reported emergency item. At that time, Tarion will make an assessment of the outstanding item and determine warrantability. A Conciliation Assessment Report will be issued. If the item is warranted, shortened timelines may apply to the post conciliation builder repair period. If the item is still unresolved after that timeframe, a claim inspection will occur and Tarion will resolve the item directly with the condominium corporation. The builder will be invoiced for the amount of the compensation paid plus an administration fee of 15 per cent and any applicable taxes. This conciliation does not affect the condominium corporation's ability to request conciliation for the non-emergency items in the regular Registrar Bulletin 02 process.