

Is Your Notice to Purchaser Sufficient to Avoid Delayed Closing Compensation Under Tarion?

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Working within the Tarion delayed closing warranty parameters, vendors are generally aware of the delayed closing compensation that may be available under Tarion to new home purchasers where the vendor has failed to meet the technical notice requirements or deliver up occupancy or possession by the applicable critical date (as defined in the Tarion Addendum).

From a practical perspective, however, notice to the purchaser of a change in critical date (eg. extension of tentative or firm occupancy date) can be tricky. We have traditionally recommended that vendors use both registered *and* regular mail for delivery of any notice required under the Tarion Addendum and/or the agreement of purchase and sale, to defend any assertion by the purchaser that the notice was not received (or often, avoided pick up). We must however consider other forms of communication in order to keep up with technology. Today's purchasers communicate more often by email, and less often by fax transmission - which was an earlier effective means of confirming speedy delivery of notice to the purchaser or his or her lawyer.

The Tarion Addendum in all its new and revised forms sets out the requirements for notice delivery and time of receipt, and contemplates personal delivery, email, fax, courier or registered mail to either the purchaser directly or to his or her solicitor. The challenge has always been and continues to be - confirming that delivery. In a recent Licence Appeal Tribunal Decision (Anatram, Feb 2012), the Tribunal concluded that if the vendor was made aware that a notice was not received by the purchaser, the vendor must take *reasonable steps* to resend the notice. Reasonable steps, suggests the Tribunal, include phoning or emailing the purchaser to obtain a new address, or attempting delivery by alternate method, to ensure the notice is received before the deadline. We continue to recommend that all notices to purchasers prior to occupancy are sent by registered mail (except in the case of a postal strike) or courier, and post occupancy are sent to the purchasers' solicitors by courier or fax with transmission confirmation,

and that vendors remain diligent in confirming delivery and obtaining delivery receipts for each purchaser in the event of a dispute as to delivery that could lead to a claim under Tarion.