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PUBLICATION

Tarion Revised Builder Bulletins 24 and 27: Good and Bad News for Developers

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Revised Builder Bulletin 27

Effective July 1, 2012, new home enrolment fees are reduced by $150 per enrolled home under the Tarion Revised Builder Bulletin 27. This represents a return to pre 2010 rates. Enrolment of new homes and payment of fees continue to be required, in the case of a new freehold home, on or before issuance of building permit, and for multi-unit projects, at least 30 days before commencement of construction (dig).

Revised Builder Bulletin 24

Effective July 1, 2012, Tarion has implemented a significant overhaul to the Tarion Seven Year Warranty framework. Revised Builder Bulletin 24 makes effective 3 major changes. Firstly, it extends builder/vendor accountability for Major Structural Defects ("MSD") throughout the full seven year warranty period. Secondly, it expands on the existing definition of MSD. Thirdly, it sets out a detailed MSD claims process.

These changes will apply to new homes where the parties have signed an agreement of purchase and sale on or after July 1, 2012, and new condominium projects where the first arm's length purchase agreement is entered into on or after July 1, 2012.

BUILDER ACCOUNTABILITY

Prior to July 1, 2012, although the Tarion warranty period covers seven years from the warranty start date, builders/vendors were directly responsible for valid MSD claims made within the first two years from the warranty start date and Tarion carried responsibility for valid MSD claims made between years three through seven. Pursuant to the Revised Builder Bulletin 24, vendors/builders will now be required to make an election to be partially accountable for valid MSD claims arising during years three through seven of the seven year warranty period.

Builders/vendors must now elect to either (i) accept full responsibility for the claim, or (ii) reimburse Tarion in an amount referred to as the “co-share payment”. Builders/vendors will continue to be fully responsible for valid MSD claims made within the first two years from the warranty start date.

If a builder/vendor elects to reimburse Tarion by way of co-share payment or otherwise does not resolve a valid MSD claim where it elected to accept full responsibility, Tarion will report the MSD claim on the Tarion website. Conciliation fees may also apply.

For valid MSD claims arising in freehold homes and condominium dwelling units, the co-share payment is calculated as being the lesser of:

a) Tarion’s cost of resolving the MSD claim(s);

b) 5% of the sale price of the home or unit; and

c) $300,000.

For valid MSD claims arising in condominium common elements, the co-share payment is calculated as being the lesser of:

a) Tarion’s cost of resolving the MSD claim(s);

b) 5% of the aggregate sale price of all of the units in the condominium project; and

c) $750,000.

The co-share payment is calculated on a per project basis for condominium common elements claims and on a per home basis for freehold or condominium dwelling unit claims.

Both the co-share payment and website reporting will not apply to defects that are either (a) outside the builder/vendor’s control and the matter of an industry wide issue (determined on a case by case basis) or (b) related to unforeseeable changes in the groundwater table.

EXPANDED DEFINITION OF MSD

Revised Builder Bulletin 24 clarifies three tests for determining whether the claim represents a valid MSD claim:

1. **Failure Test**: defect(s) in work or materials that result in actual structural failure of a structural load-bearing element of a building.
2. **Function Test**: a defect that materially and adversely affects the ability of a load-bearing element of the building to carry, bear and resist applicable structural loads for the usual and ordinary service life of the element.
3. **Use Test**: any defect in work or materials that materially and adversely affects the use of a significant portion of the building (or home for freehold) for usual and ordinary

purposes of a residential dwelling and having regard to any specific use provision set out in the purchase agreement for the home.

An MSD claim may arise where a defect meets one of the above tests. Even where the claim meets one of these three tests, certain exclusions may apply such as for elevating devices, heating and cooling appliances (as opposed to systems) such as furnace, air conditioner or heat pump and the standard exclusions under section 13(2) of the *Ontario New Home Warranties Plan Act*.

MSD CLAIMS PROCESS

Revised Builder Bulletin 24 implements a thorough procedure for MSD claims and Tarion has issued a claims schematic that helps to understand the process. We encourage readers to refer to these new procedures as needed and to contact us for any specific issues related to MSD claims.