

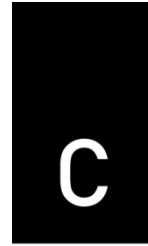


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PETER LEONG – ENGINEER, CONSTRUCTION

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PETER LEONG IS THE REGIONAL DIRECTOR,
BUILDINGS – WESTERN ONTARIO.

He is responsible for the direction, management, control of the Buildings Group (Structural, Mechanical, Electrical, Building Sciences, Project Management and Sustainable Design) in Western Ontario. He also participates in the development and execution of WSP's vision, strategy and objectives within the Buildings Group across Canada.

Peter began his career as a structural engineer designing office and industrial buildings. Peter then developed over 25 years' experience in building sciences and building envelope engineering. He has extensive experience in new building designs and repair/restoration projects, building deficiency claims and construction-related litigation.

His building envelope expertise includes roofs, exterior walls, and windows. Peter also has extensive concrete restoration experience with underground parking garages, balconies and shear walls.

Peter has been involved in the completion of numerous performance audits, building condition surveys, engineered reserve fund studies and specific investigation work on projects throughout Canada. Peter has supervised and/or participated in the review of over 600 buildings including public facilities, multi-unit residential structures (all types such as high-rises, townhouses, condominiums and co-ops), office towers, industrial buildings, recreation facilities and performing arts centres.

OFFICE: MARKHAM
MOBILE: 416.737.2526

TELEPHONE: 905.475.7270 EX 18500
E-MAIL: PETER.LEONG@WSPGROUP.COM

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CONDO: START TO FINISH™

STAGE 1 — PROJECT DESIGN + PRE-DEVELOPMENT

1. Economic impact of consultant selection on cost of construction and performance audit responses.
2. Bulletin-19 documentation.
3. Tarion projects under part 9 of Ontario Building Code.
4. Sustainable and LEED design program for residential construction.

STAGE 2 — MARKETING + SALES

1. Performance audit fees for property manager's disclosure budget.
2. Reserve fund allocation approval for property manager's disclosure budget.
3. Constructability confirmation through reviewing feature's list and marketing plans.

STAGE 3 — URBAN CONSTRUCTION

1. Monthly inspections and reports for bulletin 19 (suggest similar approach for non-bulletin 19 buildings).
2. Architectural specifications review for performance audit issues.
3. Changes and revisions to documentation during construction.
4. Construction method selection: in-house/general contractor/construction management.

STAGE 4 — PLANNING + LEGAL COMPLIANCE

1. Bulletin 19 on-going (if applicable).

STAGE 5 — CONDOMINIUM PRE-REGISTRATION + OCCUPANCY

1. Bulletin 19 on-going (if applicable).
2. Review of "as-built" drawings and specifications prior to turnover.
3. Pre-performance audit undertaking and merits for developer (optional).

ENGINEER'S PERSPECTIVE

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STAGE 6 — CONDOMINIUM REGISTRATION

1. Bulletin 19 on-going (if applicable).
2. Reserve fund study for turnover meeting (RF annual contribution for year 1 should match disclosure budget).

STAGE 7 — CONDOMINIUM POST-REGISTRATION

1. Final bulletin 19 report to declarant and condominium corporation immediately following condominium registration.
2. Review condominium corporation's performance audit, (fees should match disclosure budget).
3. Construction deficiency claims advice to declarant.
4. Performance audit tracking summary – performance audit response preparation (Tarion Builder Bulletin 49).
5. Performance audit issues resolution and recognizing Tarion's role (Tarion's Construction Performance Guidelines).

ENGINEER'S PERSPECTIVE

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SUPPLEMENTAL
MATERIALS

**Condos Start to Finish
Reference Material Index**

Prepared by Peter Leong, P.Eng.

- 01 Condominium Act of Ontario, 1998**
 - Performance Audits (Sec. 44)
 - Reserve Funds and Reserve Fund Studies (Sec. 93-95)(Reg. 27-33)

- 02 Tarion Common Element Warranty Guide**
 - One, Two and Seven Warranties

- 03 Tarion Builder Bulletin 19**
 - Condominium Projects – Design and Field Review Reporting
 - Pages 1- 8 of 70

- 04 Tarion Builder Bulletin 38R**
 - Lowrise Condominium Inspection Program

- 05 Tarion Builder Bulletin 40R**
 - Construction Performance Guidelines

- 06 Construction Performance Guidelines for Common Elements**
 - Pages 1-14 of 141

- 07 Construction Performance Guidelines for Condominium Units**
 - Pages 1-8 of 297

- 08 PA – Tarion Resolution – Strategies for Developers**

- 09 Tarion Builder Bulletin 49**
 - Claims Process – Condominium Common Elements

- 10 Tarion Builder Bulletin 49**
 - Performance Audit Tacking Summary

- 11 Ontario Ministry of Municipal Affairs and Housing**
 - Glass Panels in Balcony Guards FAQ (June 12, 2012)
 - Supplementary Standard SB-13 - Glass in Guards (June 12, 2012)



OFFICE CONSOLIDATION

CODIFICATION ADMINISTRATIVE

Condominium Act, 1998

Statutes of Ontario, 1998
Chapter 19

as amended by:
2000, Chapter 26, Sched. B, s. 7

Loi de 1998 sur les condominiums

Lois de l'Ontario de 1998
Chapitre 19

tel qu'il est modifié par :
l'art. 7 de l'annexe B du chap. 26 de 2000

May 5, 2001

5 mai 2001

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corporation prepared by the auditor, on behalf of the owners and at the expense of the corporation, as of the last day of the month in which the meeting is held. 1998, c. 19, s. 43 (7).

Application

(8) The corporation may make an application to the Superior Court of Justice for an order under subsection (9). 1998, c. 19, s. 43 (8); 2000, c. 26, Sched. B, s. 7 (5).

Court order

(9) The court, if satisfied that the declarant has, without reasonable excuse, failed to comply with subsection (4), (5) or (7),

- (a) shall order that the declarant pay damages to the corporation for the loss it incurred as a result of the declarant's acts of non-compliance with subsection (4), (5) or (7), as the case may be;
- (b) shall order that the declarant pay the corporation's costs of the application;
- (c) may order the declarant to pay to the corporation an additional amount not to exceed \$10,000; and
- (d) may order the declarant to comply with subsection (4), (5) or (7), as the case may be. 1998, c. 19, s. 43 (9).

Performance audit

44. (1) If the property of the corporation includes one or more units for residential purposes or if the corporation is a common elements condominium corporation, the board shall retain a person who holds a certificate of authorization within the meaning of the *Professional Engineers Act* or a certificate of practice within the meaning of the *Architects Act* to conduct a performance audit of the common elements described in the description on behalf of the corporation. 1998, c. 19, s. 44 (1).

Time for audit

(2) A performance audit shall be conducted no earlier than six months, and no later than 10 months, following the registration of the declaration and description. 1998, c. 19, s. 44 (2).

Cost

(3) The corporation shall pay the cost of the performance audit and it shall form part of the corporation's budget for the year following the registration of the declaration and description. 1998, c. 19, s. 44 (3).

Purpose

(4) The person who conducts the performance audit shall determine whether there are any deficiencies in the performance of the common elements described in the description after construction has been completed on them that,

- (a) may give rise to a claim for payment out of the guarantee fund under section 14 of the *Ontario New Home Warranties Plan Act* to the corporation; or

vérifiés de l'association que le vérificateur a établis, au nom des propriétaires et aux frais de l'association, au dernier jour du mois au cours duquel l'assemblée est tenue. 1998, chap. 19, par. 43 (7).

Requête

(8) L'association peut, par voie de requête, demander à la Cour supérieure de justice de rendre une ordonnance aux termes du paragraphe (9). 1998, chap. 19, par. 43 (8); 2000, chap. 26, annexe B, par. 7 (5).

Ordonnance du tribunal

(9) S'il est convaincu que le déclarant a, sans motif raisonnable, omis de se conformer au paragraphe (4), (5) ou (7), le tribunal :

- a) ordonne au déclarant de payer des dommages-intérêts à l'association pour la perte qu'elle a subie du fait que le déclarant ne s'est pas conformé au paragraphe (4), (5) ou (7), selon le cas;
- b) ordonne au déclarant de payer les frais engagés par l'association aux fins de la requête;
- c) peut ordonner au déclarant de payer à l'association un montant supplémentaire d'au plus 10 000 \$;
- d) peut ordonner au déclarant de se conformer au paragraphe (4), (5) ou (7), selon le cas. 1998, chap. 19, par. 43 (9).

Vérification du rendement

44. (1) Si la propriété de l'association comprend une ou plusieurs parties privatives affectées à l'habitation ou que l'association est une association condominiale de parties communes, le conseil fait appel à une personne titulaire d'un certificat d'autorisation au sens de la *Loi sur les ingénieurs* ou d'un certificat d'exercice au sens de la *Loi sur les architectes* pour effectuer, au nom de l'association, une vérification du rendement des parties communes décrites dans la description. 1998, chap. 19, par. 44 (1).

Délai

(2) La vérification du rendement est effectuée au plus tôt six mois et au plus tard 10 mois après l'enregistrement de la déclaration et de la description. 1998, chap. 19, par. 44 (2).

Coût

(3) L'association assume le coût de la vérification du rendement, lequel est porté à son budget pour l'année suivant l'enregistrement de la déclaration et de la description. 1998, chap. 19, par. 44 (3).

But

(4) La personne qui effectue la vérification du rendement décide si le rendement des parties communes décrites dans la description comporte des lacunes, après que leur construction est achevée, qui :

- a) soit pourraient donner lieu à une réclamation pour que soit effectué sur le fonds de garantie en vertu de l'article 14 de la *Loi sur le régime de garanties des logements neufs de l'Ontario* un paiement en faveur de l'association;

- (b) subject to the regulations made under this Act, would give rise to a claim described in clause (a) if the property of the corporation were subject to that Act. 1998, c. 19, s. 44 (4).

Duties

- (5) In making the determination, the person who conducts the performance audit shall,
- (a) inspect the major components of the buildings on the property which, subject to the regulations made under this Act, include the foundation, parking garage, wall construction, air and vapour barriers, windows, doors, elevators, roofing, mechanical system, electrical system, fire protection system and all other components that are prescribed;
 - (b) subject to the regulations made under this Act, inspect the landscaped areas of the property;
 - (c) review all final reports on inspections that the Corporation within the meaning of the Ontario New Home Warranties Plan Act requires be carried out on the common elements; and
 - (d) conduct a survey of the owners of the corporation as to what evidence, if any, they have seen of,
 - (i) damage to the units that may have been caused by defects in the common elements, and
 - (ii) defects in the common elements that may cause damage to the units. 1998, c. 19, s. 44 (5).

Powers for audit

- (6) The person who conducts a performance audit may, for the purpose of the audit,
- (a) enter onto the property at any reasonable time either alone or accompanied with any expert that the person considers necessary for the audit;
 - (b) require any person to produce any drawings, specifications or information that may on reasonable grounds be relevant to the audit;
 - (c) make all examinations, tests or inquiries that may on reasonable grounds be relevant to the audit; and
 - (d) call upon any expert for the assistance that the person considers necessary in conducting the audit. 1998, c. 19, s. 44 (6).

No obstruction

- (7) No person shall obstruct a person who is exercising powers under this section or provide false information or refuse to provide information to the person. 1998, c. 19, s. 44 (7).

- b) soit, sous réserve des règlements pris en application de la présente loi, donneraient lieu à une réclamation visée à l'alinéa a) si la propriété de l'association était assujettie à cette loi. 1998, chap. 19, par. 44 (4).

Fonctions

- (5) Avant de prendre sa décision, la personne qui effectue la vérification du rendement fait ce qui suit :
- a) elle inspecte les composantes majeures des bâtiments situés sur la propriété qui, sous réserve des règlements pris en application de la présente loi, comprennent les fondations, le garage de stationnement, la construction des murs, les pare-vent et les pare-vapeur, les fenêtres, les portes, les ascenseurs, la toiture, les installations techniques, les installations électriques, le système de protection contre les incendies et toutes les autres composantes prescrites;
 - b) sous réserve des règlements pris en application de la présente loi, elle inspecte l'aménagement paysager de la propriété;
 - c) elle examine tous les rapports définitifs des inspections des parties communes que la Société au sens de la *Loi sur le régime de garanties des logements neufs de l'Ontario* exige de mener;
 - d) elle mène un sondage auprès des propriétaires de l'association pour savoir s'ils ont constaté, le cas échéant :
 - (i) des dommages aux parties privatives qui pourraient avoir été causés par des déficiences dans les parties communes,
 - (ii) des déficiences dans les parties communes qui pourraient causer des dommages aux parties privatives. 1998, chap. 19, par. 44 (5).

Pouvoirs

- (6) La personne qui effectue la vérification du rendement peut, aux fins de celle-ci, faire ce qui suit :
- a) pénétrer sur la propriété à toute heure raisonnable soit seule, soit accompagnée de tout expert qu'elle estime nécessaire aux fins de la vérification;
 - b) exiger de toute personne qu'elle produise des dessins, des devis descriptifs ou des renseignements qui, en se fondant sur des motifs raisonnables, peuvent se rapporter à la vérification;
 - c) procéder à tous les examens, à tous les essais ou à toutes les enquêtes qui, en se fondant sur des motifs raisonnables, peuvent se rapporter à la vérification;
 - d) demander à tout expert l'aide que la personne estime nécessaire pour effectuer la vérification. 1998, chap. 19, par. 44 (6).

Aucune entrave

- (7) Nul ne doit entraver une personne dans l'exercice des pouvoirs que lui confère le présent article, lui fournir de faux renseignements ou refuser de lui fournir des renseignements. 1998, chap. 19, par. 44 (7).

Contents

(8) The person who conducts a performance audit shall prepare a written report that includes,

- (a) a copy of the person's certificate of authorization within the meaning of the *Professional Engineers Act* or certificate of practice within the meaning of the *Architects Act*, as the case may be;
- (b) details of the inspection and findings made by the person in the course of conducting the audit;
- (c) a statement that the person has reviewed all final reports described in clause (5) (c);
- (d) a copy of the survey described in clause (5) (d) and a summary of the results of it;
- (e) the determination that subsection (4) requires the person to make; and
- (f) all other material that the regulations made under this Act require. 1998, c. 19, s. 44 (8).

Submission of report

(9) Before the end of the 11th month following the registration of the declaration and description, the person who conducts a performance audit shall,

- (a) submit the report to the board; and
- (b) file the report with the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* if the property is subject to that Act. 1998, c. 19, s. 44 (9).

Claim under other Act

(10) The filing of the report with the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* shall be deemed to constitute a notice of claim that the corporation gives to the Corporation within the meaning of that Act under the regulations made under that Act for the deficiencies disclosed in the report. 1998, c. 19, s. 44 (10).

OWNERS

Meetings

45. (1) Subject to the other requirements of this Act, anything that this Act requires to be approved by a vote of any of the owners shall be approved only at a meeting of owners duly called for that purpose. 1998, c. 19, s. 45 (1).

Note: Subsection (2) comes into force on a day to be named by proclamation of the Lieutenant Governor.

Annual general meeting

(2) The board shall hold a general meeting of owners not more than three months after the registration of the declaration and description and subsequently within six months of the end of each fiscal year of the corporation. 1998, c. 19, s. 45 (2).

See: 1998, c. 19, s. 187. The Lieutenant Governor has issued a proclamation naming July 4, 2001 as the day.

Contenu

(8) La personne qui effectue la vérification du rendement rédige un rapport qui comprend les éléments suivants :

- a) une copie de son certificat d'autorisation au sens de la *Loi sur les ingénieurs* ou de son certificat d'exercice au sens de la *Loi sur les architectes*, selon le cas;
- b) les détails de l'inspection et les conclusions auxquelles la personne est arrivée au cours de la vérification;
- c) une déclaration portant que la personne a examiné tous les rapports définitifs visés à l'alinéa (5) c);
- d) une copie du sondage visé à l'alinéa (5) d) et un résumé des résultats obtenus;
- e) la décision que la personne doit prendre selon le paragraphe (4);
- f) tous les autres documents qu'exigent les règlements pris en application de la présente loi. 1998, chap. 19, par. 44 (8).

Remise du rapport

(9) Avant la fin du 11^e mois suivant l'enregistrement de la déclaration et de la description, la personne qui effectue la vérification du rendement :

- a) d'une part, remet le rapport au conseil;
- b) d'autre part, dépose le rapport auprès de la Société au sens de la *Loi sur le régime de garanties des logements neufs de l'Ontario* si la propriété est assujettie à cette loi. 1998, chap. 19, par. 44 (9).

Réclamation prévue par une autre loi

(10) Le dépôt du rapport auprès de la Société au sens de la *Loi sur le régime de garanties des logements neufs de l'Ontario* est réputé constituer un avis de réclamation que l'association donne à la Société au sens de cette loi aux termes des règlements pris en application de cette loi à l'égard des lacunes divulguées dans le rapport. 1998, chap. 19, par. 44 (10).

PROPRIÉTAIRES

Assemblées

45. (1) Sous réserve des autres exigences de la présente loi, tout ce qui, aux termes de la présente loi, doit être approuvé par un vote des propriétaires ne doit être approuvé qu'à une assemblée des propriétaires dûment convoquée à cette fin. 1998, chap. 19, par. 45 (1).

Remarque : Le paragraphe (2) entre en vigueur le jour que le lieutenant-gouverneur fixe par proclamation.

Assemblée générale annuelle

(2) Le conseil tient une assemblée générale des propriétaires dans les trois mois qui suivent l'enregistrement de la déclaration et de la description et, par la suite, dans les six mois qui suivent la fin de chaque exercice de l'association. 1998, chap. 19, par. 45 (2).

Voir : 1998, chap. 19, art. 187. Le lieutenant-gouverneur a pris une proclamation fixant le 4 juillet 2001 comme jour de l'entrée en vigueur.

persons on the property, the corporation may do the work necessary to carry out the obligation. 1998, c. 19, s. 92 (3).

Cost

(4) An owner shall be deemed to have consented to the work done by a corporation under this section and the cost of the work shall be added to the owner's contribution to the common expenses. 1998, c. 19, s. 92 (4).

Reserve fund

93. (1) The corporation shall establish and maintain one or more reserve funds. 1998, c. 19, s. 93 (1).

Purpose of fund

(2) A reserve fund shall be used solely for the purpose of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 93 (2).

Designation not required

(3) A fund set up for the purpose mentioned in subsection (2) shall be deemed to be a reserve fund even though it may not be so designated. 1998, c. 19, s. 93 (3).

Contributions to fund

(4) The corporation shall collect contributions to the reserve fund from the owners, as part of their contributions to the common expenses. 1998, c. 19, s. 93 (4).

Amount of contributions

(5) Unless the regulations made under this Act specify otherwise, until the corporation conducts a first reserve fund study and implements a proposed plan under section 94, the total amount of the contributions to the reserve fund shall be the greater of the amount specified in subsection (6) and 10 per cent of the budgeted amount required for contributions to the common expenses exclusive of the reserve fund. 1998, c. 19, s. 93 (5).

Same, after first reserve fund study

(6) The total amount of the contributions to the reserve fund after the time period specified in subsection (5) shall be the amount that is reasonably expected to provide sufficient funds for the major repair and replacement of the common elements and assets of the corporation, calculated on the basis of the expected repair and replacement costs and the life expectancy of the common elements and assets of the corporation. 1998, c. 19, s. 93 (6).

Income earned

(7) Interest and other income earned from the investment of money in the reserve fund shall form part of the fund. 1998, c. 19, s. 93 (7).

Reserve fund study

94. (1) The corporation shall conduct periodic studies to determine whether the amount of money in the reserve fund and the amount of contributions collected by the corporation are adequate to provide for the expected costs of major repair and replacement of the common elements and assets of the corporation. 1998, c. 19, s. 94 (1).

propriété risquent de subir des lésions corporelles, l'association peut effectuer les travaux nécessaires pour s'acquitter de l'obligation. 1998, chap. 19, par. 92 (3).

Coût

(4) Un propriétaire est réputé avoir consenti à ce que l'association effectue des travaux aux termes du présent article. Le coût des travaux est ajouté à la contribution du propriétaire aux dépenses communes. 1998, chap. 19, par. 92 (4).

Fonds de réserve

93. (1) L'association crée et maintient un ou plusieurs fonds de réserve. 1998, chap. 19, par. 93 (1).

But du fonds

(2) Le fonds de réserve ne doit être affecté qu'aux réparations majeures à apporter aux parties communes et aux biens de l'association ainsi qu'à leur remplacement. 1998, chap. 19, par. 93 (2).

Désignation non obligatoire

(3) Les fonds constitués aux fins mentionnées au paragraphe (2) sont réputés des fonds de réserve même s'ils ne sont pas ainsi désignés. 1998, chap. 19, par. 93 (3).

Contribution au fonds

(4) L'association perçoit la contribution des propriétaires au fonds de réserve, comme partie de leur contribution aux dépenses communes. 1998, chap. 19, par. 93 (4).

Montant de la contribution

(5) Sauf disposition contraire des règlements pris en application de la présente loi, tant que l'association n'a pas effectué une première étude du fonds de réserve et mis en œuvre le plan proposé aux termes de l'article 94, le montant total de la contribution au fonds de réserve correspond au montant précisé au paragraphe (6) ou à 10 pour cent du montant de la contribution aux dépenses communes prévu au budget, à l'exclusion du fonds de réserve, selon celui des deux montants qui est supérieur à l'autre. 1998, chap. 19, par. 93 (5).

Idem, après la première étude du fonds de réserve

(6) Le montant total de la contribution au fonds de réserve après la période précisée au paragraphe (5) correspond au montant qui doit suffire dans les limites raisonnables aux réparations majeures apportées aux parties communes et aux biens de l'association ainsi qu'à leur remplacement, lequel est calculé sur la base des coûts de réparation et de remplacement prévus et de la vie utile des parties communes et des biens de l'association. 1998, chap. 19, par. 93 (6).

Revenu

(7) Les intérêts et autres revenus tirés du placement de sommes versées au fonds de réserve font partie du fonds. 1998, chap. 19, par. 93 (7).

Étude du fonds de réserve

94. (1) L'association effectue périodiquement des études afin d'établir si le montant versé au fonds de réserve et celui des contributions perçues par l'association suffisent à couvrir les coûts de réparation majeure et de remplacement prévus des parties communes et des biens de l'association. 1998, chap. 19, par. 94 (1).

Contents of study

(2) A reserve fund study shall be of the prescribed class, shall include the material that is prescribed for its class and shall be performed in accordance with the standards that are prescribed for its class. 1998, c. 19, s. 94 (2).

Updates

(3) For the purposes of this Act, an update to a reserve fund study shall constitute a class of reserve fund study. 1998, c. 19, s. 94 (3).

Time of study

(4) A corporation created on or after this section comes into force shall conduct a reserve fund study within the year following the registration of the declaration and description and subsequently at the prescribed times. 1998, c. 19, s. 94 (4).

Same, existing corporations

(5) A corporation created before the day this section comes into force shall conduct a reserve fund study at the prescribed times. 1998, c. 19, s. 94 (5).

Person conducting study

(6) A reserve fund study shall be conducted by a person of a prescribed class who shall have no affiliation with the board or with the corporation that is contrary to the regulations made under this Act. 1998, c. 19, s. 94 (6).

Cost of study

(7) The cost of conducting the study shall be a common expense which the board may charge to the reserve fund. 1998, c. 19, s. 94 (7).

Plan for future funding

(8) Within 120 days of receiving a reserve fund study, the board shall review it and propose a plan for the future funding of the reserve fund that the board determines will ensure that, within a prescribed period of time and in accordance with the prescribed requirements, the fund will be adequate for the purpose for which it was established. 1998, c. 19, s. 94 (8).

Copy of plan

(9) Within 15 days of proposing a plan, the board shall,

- (a) send to the owners a notice containing a summary of the study, a summary of the proposed plan and a statement indicating the areas, if any, in which the proposed plan differs from the study; and
- (b) send to the auditor a copy of the study, a copy of the proposed plan and a copy of the notice sent to the owners under clause (a). 1998, c. 19, s. 94 (9).

Implementation of proposed plan

(10) The board shall implement the proposed plan after the expiration of 30 days following the day on which the board complies with subsection (9). 1998, c. 19, s. 94 (10).

Contenu de l'étude

(2) L'étude du fonds de réserve fait partie de la catégorie prescrite, comprend les documents prescrits pour cette catégorie et est effectuée conformément aux normes prescrites pour cette catégorie. 1998, chap. 19, par. 94 (2).

Mise à jour

(3) Pour l'application de la présente loi, la mise à jour d'une étude du fonds de réserve constitue une catégorie d'études du fonds de réserve. 1998, chap. 19, par. 94 (3).

Moment de l'étude

(4) L'association constituée à la date d'entrée en vigueur du présent article ou par la suite effectue une étude du fonds de réserve dans l'année qui suit l'enregistrement de la déclaration et de la description, et aux moments prescrits par la suite. 1998, chap. 19, par. 94 (4).

Idem, associations existantes

(5) L'association constituée avant le jour de l'entrée en vigueur du présent article effectue une étude du fonds de réserve aux moments prescrits. 1998, chap. 19, par. 94 (5).

Personne chargée d'effectuer l'étude

(6) L'étude du fonds de réserve est effectuée par une personne d'une catégorie prescrite qui ne doit avoir avec le conseil ou l'association aucun lien qui soit contraire aux règlements pris en application de la présente loi. 1998, chap. 19, par. 94 (6).

Coût de l'étude

(7) Le coût de l'étude constitue une dépense commune que le conseil peut imputer au fonds de réserve. 1998, chap. 19, par. 94 (7).

Plan visant le financement futur

(8) Au plus tard 120 jours après avoir reçu une étude du fonds de réserve, le conseil examine celle-ci et propose, en vue du financement futur du fonds de réserve, un plan qui, selon lui, garantira que, dans un délai prescrit et conformément aux exigences prescrites, le fonds sera suffisant pour réaliser les fins auxquelles il a été créé. 1998, chap. 19, par. 94 (8).

Copie du plan

(9) Au plus tard 15 jours après avoir proposé un plan, le conseil :

- a) d'une part, fait parvenir aux propriétaires un avis contenant un résumé de l'étude, un résumé du plan proposé ainsi qu'un état indiquant en quoi, le cas échéant, le plan et l'étude diffèrent;
- b) d'autre part, fait parvenir au vérificateur une copie de l'étude, une copie du plan proposé ainsi qu'une copie de l'avis qu'il fait parvenir aux propriétaires aux termes de l'alinéa a). 1998, chap. 19, par. 94 (9).

Mise en œuvre du plan proposé

(10) Le conseil met en œuvre le plan proposé après l'expiration d'un délai de 30 jours suivant le jour où il se conforme au paragraphe (9). 1998, chap. 19, par. 94 (10).

Use of reserve fund

95. (1) No part of a reserve fund shall be used except for the purpose mentioned in subsection 93 (2). 1998, c. 19, s. 95 (1).

Board's use

(2) The board does not require the consent of the owners to make an expenditure out of a reserve fund. 1998, c. 19, s. 95 (2).

No distribution

(3) The amount of a reserve fund shall constitute an asset of the corporation and shall not be distributed to the mortgagees of the units or, except on termination of the corporation, to the owners of the units. 1998, c. 19, s. 95 (3).

Warranties

96. (1) All warranties given with respect to work and materials furnished for a unit shall be for the benefit of an owner. 1998, c. 19, s. 96 (1).

Enforcement by corporation

(2) The corporation may enforce the warranties mentioned in subsection (1) on behalf of an owner if the corporation does work on behalf of the owner under section 92. 1998, c. 19, s. 96 (2).

Same, common elements

(3) All warranties given with respect to work and materials furnished for the common elements shall be for the benefit of the corporation. 1998, c. 19, s. 96 (3).

CHANGES TO COMMON ELEMENTS AND ASSETS

Changes made by corporation

97. (1) If the corporation has an obligation to repair the units or common elements after damage or to maintain them and the corporation carries out the obligation using materials that are as reasonably close in quality to the original as is appropriate in accordance with current construction standards, the work shall be deemed not to be an addition, alteration or improvement to the common elements or a change in the assets of the corporation for the purpose of this section. 1998, c. 19, s. 97 (1).

Changes made without notice

(2) A corporation may, by resolution of the board and without notice to the owners, make an addition, alteration or improvement to the common elements, a change in the assets of the corporation or a change in a service that the corporation provides to the owners if,

- (a) it is necessary to make the addition, alteration, improvement or change to comply with an agreement mentioned in section 113 or the requirements imposed by any general or special Act or regulations or by-laws made under that Act;

Utilisation du fonds de réserve

95. (1) Le fonds de réserve ne doit être utilisé qu'aux fins mentionnées au paragraphe 93 (2). 1998, chap. 19, par. 95 (1).

Utilisation par le conseil

(2) Le conseil n'a pas besoin du consentement des propriétaires pour prélever le montant d'une dépense sur le fonds de réserve. 1998, chap. 19, par. 95 (2).

Non-répartition

(3) Le montant du fonds de réserve constitue un bien de l'association et ne doit pas être réparti entre les créanciers hypothécaires des parties privatives ni, sauf à la dissolution de l'association, entre les propriétaires des parties privatives. 1998, chap. 19, par. 95 (3).

Garanties

96. (1) Les garanties relatives aux travaux effectués et aux matériaux fournis à l'égard d'une partie privative s'appliquent au profit du propriétaire. 1998, chap. 19, par. 96 (1).

Exécution par l'association

(2) L'association peut exécuter les garanties mentionnées au paragraphe (1) au nom d'un propriétaire si elle effectue des travaux en son nom en vertu de l'article 92. 1998, chap. 19, par. 96 (2).

Idem, parties communes

(3) Les garanties relatives aux travaux effectués et aux matériaux fournis à l'égard des parties communes s'appliquent au profit de l'association. 1998, chap. 19, par. 96 (3).

CHANGEMENTS APPORTÉS AUX PARTIES COMMUNES ET AUX BIENS

Changements apportés par l'association

97. (1) Si l'association a l'obligation de réparer les parties privatives ou les parties communes à la suite de dommages ou de les entretenir et qu'elle s'acquitte de son obligation en utilisant des matériaux dont la qualité se rapproche aussi raisonnablement que possible de celle des matériaux originaux compte tenu des normes de construction en vigueur, les travaux sont réputés, pour l'application du présent article, ne pas être un ajout, une transformation ou une amélioration faits aux parties communes ni un changement apporté aux biens de l'association. 1998, chap. 19, par. 97 (1).

Changements apportés sans avis

(2) L'association peut, par résolution du conseil et sans préavis aux propriétaires, faire un ajout, une transformation ou une amélioration aux parties communes, apporter un changement à ses biens ou apporter un changement à un service qu'elle fournit aux propriétaires si, selon le cas :

- a) l'ajout, la transformation, l'amélioration ou le changement sont nécessaires pour se conformer à une convention mentionnée à l'article 113 ou aux exigences d'une loi générale ou particulière ou de ses règlements d'application ou de règlements administratifs;



OFFICE CONSOLIDATION

CODIFICATION ADMINISTRATIVE

Regulations under the
Condominium Act, 1998

Règlements pris en application de la
**Loi de 1998 sur les
condominiums**

Ontario Regulation 49/01
Description and Registration

Ontario Regulation 48/01
General

July 6, 2001

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- (b) failure of the declarant to notify the warranty corporation or its insurer or insurers of the receipt of payments described in clause 81 (1) (b) of the Act;
- (c) failure of the warranty corporation to notify its insurer or insurers of the receipt of payments described in clause 81 (1) (b) of the Act;
- (d) breach of any term or condition of the deposit receipt; or
- (e) breach by the beneficiary or the declarant of any term or condition of a policy of insurance that the warranty corporation takes out to insure its obligation to pay under a deposit receipt. O. Reg. 48/01, s. 22 (7).

(8) Immediately upon receiving written notice of a claim by the beneficiary under a deposit receipt, the warranty corporation shall provide the beneficiary with forms upon which to make proof of loss. O. Reg. 48/01, s. 22 (8).

(9) If the warranty corporation receives written notice of a claim under subsection (8), it shall pay the beneficiary within 60 days after the right of the beneficiary to payment under the deposit receipt has been established. O. Reg. 48/01, s. 22 (9).

(10) The warranty corporation shall remain liable under a deposit receipt until,

- (a) the declarant delivers to the beneficiary a deed in registerable form to the unit in respect of which the beneficiary or a person on the beneficiary's behalf has made a payment described in clause 81 (1) (b) of the Act;
- (b) the declarant pays the beneficiary all money paid under clause 81 (1) (b) of the Act and interest on it payable by the declarant under the Act;
- (c) the warranty corporation pays to the beneficiary the amount of the loss to the extent of the warranty corporation's liability under the deposit receipt;
- (d) the beneficiary acknowledges in writing that,
 - (i) the beneficiary is not entitled to the payments made by or on behalf of the beneficiary under subsection 81 (1) of the Act in respect of a proposed unit in the corporation and the interest payable on the payments by the declarant, and
 - (ii) the insurer is no longer liable under the policy; or
- (e) a court of competent jurisdiction has made a final determination that the beneficiary is not entitled to the payments made by or on behalf of the beneficiary under subsection 81 (1) of the Act in respect of a proposed unit in the corporation and the interest payable on the payments by the declarant. O. Reg. 48/01, s. 22 (10).

(11) If the warranty corporation is required to make a payment under a deposit receipt, it shall pay interest to the beneficiary to the date of payment of the loss at the rate prescribed under subsection 19 (3). O. Reg. 48/01, s. 22 (11).

(12) A provision in a deposit receipt that derogates in any manner from any right or benefit that this section confers on a beneficiary is void to the extent that it derogates from the right or benefit. O. Reg. 48/01, s. 22 (12).

Lease of units

23. For the purpose of section 83 of the Act,

"lease" includes a sublease or assignment of lease. O. Reg. 48/01, s. 23.

Notice of lien

24. The notice that subsection 85 (4) of the Act requires the corporation to give to the owner for a lien mentioned in that subsection shall be in Form 14. O. Reg. 48/01, s. 24.

Changes to common elements

25. (1) In addition to the matters specified in clause 98 (1) (b) of the Act, the agreement described in that clause shall specify who will have the ownership of the proposed addition, alteration or improvement to the common elements under subsection 98 (2) of the Act. O. Reg. 48/01, s. 25 (1).

(2) For the purpose of clause 98 (2) (e) of the Act, the board must be satisfied that the proposed addition, alteration or improvement to the common elements under subsection 98 (2) of the Act will not contravene the by-laws or rules of the corporation and will not have an adverse effect on the rest of the common elements. O. Reg. 48/01, s. 25 (2).

Termination

26. Sections 122 and 123 of the Act do not apply to a corporation if the total of the proportions, expressed in percentages, of the common interests, as specified in the registered declaration, is not equal to 100 per cent. O. Reg. 48/01, s. 26.

PART IV RESERVE FUND STUDIES

Definitions

27. In this Part,

"component inventory" means an inventory, in a reserve fund study of a corporation, of each item of the common elements and assets of the corporation that requires, or is expected to require within at least 30 years of the date of the study, major repair or replacement where the cost of replacement is not less than \$500;

"comprehensive study" means a comprehensive reserve fund study that meets the requirements of this Regulation;

"updated study based on a site inspection" means a comprehensive study that has been revised so that it is current as of the date of the revision, where the revision is based on a site inspection of the property and where the revision has been conducted in accordance with the requirements of this Regulation;

"updated study not based on a site inspection" means a comprehensive study that has been revised so that it is current as of the date of the revision, where the revision is not based on a site inspection of the property and where the revision has been conducted in accordance with the requirements of this Regulation. O. Reg. 48/01, s. 27.

Classes

28. The following classes of reserve fund studies are established:

1. Comprehensive study.
2. Updated study based on a site inspection.
3. Updated study not based on a site inspection. O. Reg. 48/01, s. 28.

Contents of studies

29. (1) A reserve fund study shall consist of a physical analysis and a financial analysis. O. Reg. 48/01, s. 29 (1).

(2) The physical analysis shall consist of,

- (a) the component inventory of the corporation; and
- (b) an assessment of each item in the component inventory that states its actual or estimated year of acquisition, its present or estimated age, its normal expected life, its remaining life expectancy, the estimated year for its major repair or replacement, its estimated cost of major repair or replacement as of the date of the study, the percentage of that cost of major repair or replacement to be covered by the reserve fund and the adjusted cost resulting from the application of that percentage. O. Reg. 48/01, s. 29 (2).

(3) The financial analysis shall consist of,

- (a) a description of the financial status of the reserve fund as of the date of the study; and
- (b) a recommended funding plan projected over a period of at least 30 consecutive years, beginning with the current fiscal year of the corporation, that shows the minimum balance of the reserve fund during the period and, for each projected year,
 - (i) the estimated cost of major repair or replacement of the common elements and assets of the corporation based on current costs for the year in which the study is conducted,
 - (ii) the estimated cost of major repair or replacement of the common elements and assets of the corporation at the estimated time of the repair or replacement based on an assumed annual inflation rate,
 - (iii) the annual inflation rate described in subclause (ii),
 - (iv) the estimated opening balance of the reserve fund,
 - (v) the recommended amount of contributions to the reserve fund, determined on a cash flow basis, that are required to offset adequately the expected cost in the year of the expected major repair or replacement of each item in the component inventory,
 - (vi) the estimated interest that will be earned on the reserve fund based on an assumed annual interest rate,
 - (vii) the annual interest rate described in subclause (vi),
 - (viii) the total of the amounts described in subclauses (v) and (vi),
 - (ix) the increase, if any, expressed as a percentage, in the recommended amount of contributions to the reserve fund over the recommended amount of contributions for the immediately preceding year, and
 - (x) the estimated closing balance of the reserve fund. O. Reg. 48/01, s. 29 (3).

(4) In preparing or updating the component inventory of the corporation, the person conducting the study shall review,

- (a) the declaration and description;
- (b) if any, the current by-laws or proposed by-laws of the corporation establishing what constitutes a standard unit; and
- (c) if there is no by-law described in clause (b), a copy of the schedule that the declarant intends to deliver or has delivered to the board under clause 43 (5) (h) of the Act. O. Reg. 48/01, s. 29 (4).

(5) In preparing or updating the financial analysis described in subsection (3), the person conducting the study shall review,

- (a) the most recent audited financial statements of the corporation or, if section 60 of the Act does not require the corporation to appoint auditors, the most recent financial statements of the corporation;
- (b) all reciprocal cost sharing agreements, if any, of the corporation;
- (c) the most recent reserve fund study of the corporation; and
- (d) the most recent notice, if any, of future funding of the reserve fund sent to the owners under clause 94 (9) (a) of the Act. O. Reg. 48/01, s. 29 (5).

Method of conducting studies

30. (1) The person conducting a reserve fund study shall sign it. O. Reg. 48/01, s. 30 (1).

(2) A comprehensive study or an updated study based on a site inspection shall be based on,

- (a) a visual site inspection of the property, including a visual inspection of each item in the component inventory where practicable;
- (b) all other inspections of each item in the component inventory that the person conducting the study considers appropriate or necessary;
- (c) a verification of records of the corporation; and
- (d) interviews with those of the corporation's directors, officers, employees and agents that the person conducting the study considers appropriate. O. Reg. 48/01, s. 30 (2).

(3) As part of preparing the assessment described in clause 29 (2) (b) in a comprehensive study or updating the assessment in an updated study based on a site inspection, the person conducting the study shall review,

- (a) all existing warranties, guarantees and service contracts for each item in the component inventory;
- (b) the as-built architectural, structural, engineering, mechanical, electrical and plumbing plans for the property that are in the custody or under the control of the corporation;
- (c) the as-built specifications for the buildings that are in the custody or under the control of the corporation;
- (d) the plans for underground site services, site grading, drainage and landscaping, and television, radio or other communications services for the property that are in the custody or under the control of the corporation;
- (e) the repair and maintenance records and schedules in the custody or under the control of the corporation; and
- (f) all other records of the corporation that the person conducting the study requires in order to prepare the assessment. O. Reg. 48/01, s. 30 (3).

(4) An updated study not based on a site inspection shall be based on a verification of records of the corporation and interviews with those of its directors, officers, employees and agents that the person conducting the study considers appropriate. O. Reg. 48/01, s. 30 (4).

(5) In addition to the material that a reserve fund study is required to contain, the study may contain all further information and analysis that the person conducting the study or the board considers appropriate or necessary. O. Reg. 48/01, s. 30 (5).

Time for studies

31. (1) A corporation created before the day section 94 of the Act comes into force shall conduct a comprehensive study within three years of that day except if,

- (a) on that day it has a comprehensive study that meets the requirements of this Regulation; and
- (b) it conducts an updated study based on a site inspection within three years of that day. O. Reg. 48/01, s. 31 (1).

(2) The reserve fund study that subsection 94 (4) of the Act requires a corporation created on or after the day section 94 of the Act comes into force to conduct within the year following the registration of the declaration and description shall be a comprehensive study. O. Reg. 48/01, s. 31 (2).

(3) A corporation shall conduct a reserve fund study within three years of completing the reserve fund study that it is required to conduct under subsection (1) or (2), as the case may be, and after that, within every three years after completing the immediately preceding reserve fund study. O. Reg. 48/01, s. 31 (3).

(4) A reserve fund study that a corporation is required to conduct under subsection (3) shall be,

- (a) a comprehensive study;
- (b) an updated study not based on a site inspection, if the immediately preceding reserve fund study for the corporation was a comprehensive study or an updated study based on a site inspection; or
- (c) an updated study based on a site inspection, if the immediately preceding reserve fund study for the corporation was an updated study not based on a site inspection. O. Reg. 48/01, s. 31 (4).

Person conducting studies

32. (1) Subject to subsection (2), the following classes are prescribed as persons who may conduct a reserve fund study:

- 1. Members of the Appraisal Institute of Canada holding the designation of Accredited Appraiser Canadian Institute.
- 2. Persons who hold a certificate of practice within the meaning of the *Architects Act*.
- 3. Members of the Ontario Association of Certified Engineering Technicians and Technologists who are registered as certified engineering technologists under the *Ontario Association of Certified Engineering Technicians and Technologists Act, 1998*.
- 4. Members of the Real Estate Institute of Canada holding the designation of certified reserve planner.
- 5. Persons who hold a certificate of authorization within the meaning of the *Professional Engineers Act*.
- 6. Graduates of Ryerson Polytechnic University with a Bachelor of Technology (Architectural Science) — Building Science Option or Architecture Option.
- 7. Members of the Canadian Institute of Quantity Surveyors holding the designation of professional quantity surveyor.
- 8. Members of the Association of Architectural Technologists of Ontario holding the designation of architectural technologist, architecte-technologue or registered building technologist under the *Association of Architectural Technologists of Ontario Act, 1996*. O. Reg. 48/01, s. 32 (1).

(2) A person who conducts a reserve fund study shall not,

- (a) be a director, officer or property manager of the corporation;
- (b) directly or indirectly, have an interest in,
 - (i) a contract or transaction to which a director or officer of the corporation is a party in a capacity other than as a director or officer of the corporation, or
 - (ii) a proposed contract or transaction to which a director or officer of the corporation will be a party in a capacity other than as a director or officer of the corporation;
- (c) be the spouse, same-sex partner, son or daughter of a director or officer of the corporation or son or daughter of the spouse or same-sex partner of a director or officer of the corporation;
- (d) be an owner as defined in the Act in relation to the corporation; or

(e) be a person who lives on the property managed by the corporation under section 17 of the Act. O. Reg. 48/01, s. 32 (2).

(3) In subsection (2),

"same-sex partner" means either of two persons of the same sex who live together in a conjugal relationship outside marriage;

"spouse" means,

- (a) a spouse as defined in section 1 of the *Family Law Act*, or
- (b) either of two persons of the opposite sex who live together in a conjugal relationship outside marriage. O. Reg. 48/01, s. 32 (3).

(4) A person who conducts a reserve fund study shall be insured under a policy of liability insurance that includes,

- (a) coverage for liability for errors, omissions and negligent acts arising out of conducting or not conducting a reserve fund study, subject to the exclusions, conditions and terms that are consistent with normal insurance industry practice;
- (b) a policy limit for each single claim of not less than \$1 million per occurrence;
- (c) an aggregate policy limit in the amount of not less than \$2 million per year for all claims in the year or an automatic policy limit reinstatement feature; and
- (d) a maximum deductible amount of \$3,500 per occurrence. O. Reg. 48/01, s. 32 (4).

(5) A person who conducts a reserve fund study shall ensure that the policy of liability insurance is valid at the time the reserve fund study is completed and is kept valid for a period of at least three years after that time. O. Reg. 48/01, s. 32 (5).

(6) Upon request, the person shall provide to the corporation a certificate of the policy of liability insurance. O. Reg. 48/01, s. 32 (6).

Plan for future funding

33. (1) Except in the case of a corporation to which subsection (2) applies, the prescribed period of time for the purpose of subsection 94 (8) of the Act shall be the fiscal year of the corporation following the fiscal year in which the reserve fund study is completed. O. Reg. 48/01, s. 33 (1).

(2) In the case of all reserve fund studies that a corporation created before the day section 94 of the Act comes into force is required to conduct after that date under subsection 31 (1) and within 10 years after the date of the first reserve fund study that it is required to conduct after that coming into force date, the prescribed period of time for the purpose of subsection 94 (8) of the Act shall be 10 years from the date of that first reserve fund study. O. Reg. 48/01, s. 33 (2).

(3) The notice that the board is required to send under subsection 94 (9) of the Act shall be in Form 15. O. Reg. 48/01, s. 33 (3).

PART V AMALGAMATION

Conditions for amalgamation

34. (1) No corporations may amalgamate unless,

- (a) they are standard condominium corporations;
- (b) in respect of each of the amalgamating corporations that is a phased condominium corporation, all phases have been completed or more than 10 years have passed since the registration of the declaration and description that created the corporation;

- (c) reasonable legal costs and reasonable expenses in the amount of \$..... incurred by the Condominium Corporation in connection with the collection or attempted collection of the amounts described in clauses (a) and (b). The amount claimed under clause (c) consists of
(set out particulars).

If the total amount of \$....., together with interest on the unpaid common expenses at \$..... (set out amount) per day from the date of this notice to the date of payment, is not paid by (set out the date of the day that is at least 10 days after this notice is given), the Condominium Corporation is entitled to register a certificate of lien against the unit (or in the case of a common elements condominium corporation: the Parcel) and additional amounts, including the costs of preparing and registering the certificate of lien and a discharge of it, will become payable and will be secured by the lien.

The lien may be enforced in the same manner as a mortgage.

Dated this day of

..... Condominium Corporation No.

.....
(signature)

.....
(print name)

.....
(signature)

.....
(print name)

[Affix corporate seal or add a statement that the persons signing have the authority to bind the corporation.]

O. Reg. 48/01, Form 14.

Form 15

Condominium Act, 1998

NOTICE OF FUTURE FUNDING OF THE RESERVE FUND (under subsection 94 (9) of the Condominium Act, 1998)

TO: All owners in (identify condominium plan)

OR

[For all condominium corporations except common elements condominium corporations:

TO: The owners of Unit(s), Level(s) (identify condominium plan)]

[In the case of a common elements condominium corporation:

TO: The owners of a common interest in (name of condominium corporation) attached to
(describe parcel(s) of land affected)]

The board has received and reviewed a (specify class of reserve fund study) dated, prepared by
(state name of person conducting the reserve fund study), and has proposed a plan for the future funding of the reserve fund that the board has determined will ensure that, in accordance with the regulations made under the Condominium Act, 1998, the reserve fund will be adequate for the major repair and replacement of the common elements and assets of the corporation.

This notice contains:

1. A summary of the reserve fund study.
2. A summary of the proposed funding plan.
3. A statement indicating the areas, if any, in which the proposed funding plan differs from the reserve fund study.

At the present time the average contribution per unit (or in the case of a common elements condominium corporation: per common interest) per month to the reserve fund is \$ Based on the proposed funding plan, the average increase in contribution per unit (or in the case of a common elements condominium corporation: per common interest) per month will be \$ (state the amount of the increase for each of the three fiscal years following the year in which the reserve fund study is completed. If the contribution is to be increased in the fiscal year in which the reserve fund study is completed, also state the amount of that increase.)

OR

The board of (name of condominium corporation) has reviewed the (specify class of reserve fund study) dated prepared by (name of person conducting the reserve fund study) for the corporation (known as the "Reserve Fund Study") and has proposed a plan for the future funding of the reserve fund that the board has determined will ensure that, in accordance with the regulations made under the *Condominium Act, 1998*, the reserve fund will be adequate for the major repair and replacement of the common elements and assets of the corporation.

The board has adopted the funding recommendations of the Reserve Fund Study and will implement them as set out in the Contribution Table.

The total annual contribution recommended under the proposed funding plan for the current fiscal year is \$....., which

(strike out whichever is not applicable: is the same amount that has already been budgeted OR represents an increase of% over the amount already budgeted).

OR

The board has not adopted the funding recommendations of the Reserve Fund Study and has proposed a plan for the future funding of the reserve fund as set out in the Contribution Table based on the following:

Opening Balance of the Reserve Fund:	\$.....
Minimum Reserve Fund Balance during the projected period	\$.....
Assumed Annual Inflation Rate for Reserve Fund Expenditures: %
Assumed Annual Interest Rate for interest earned on the Reserve Fund: %

The total annual contribution recommended under the proposed funding plan for the current fiscal year is \$....., which

(strike out whichever is not applicable: is the same amount that has already been budgeted OR represents an increase of% over the amount already budgeted).

The Proposed Plan for Future Funding of the Reserve Fund can be examined (set out details: e.g. whether a written request and reasonable notice are required as set out in subsection 55 (3) of the *Condominium Act, 1998*, where and when it can be examined).

CONTRIBUTION TABLE

Year	A Annual Contribution*	% Increase Over Pre- vious Year	B Other Contribution (e.g. special assessment, loan)	A + B Total Contribution Each Year to Reserve Fund
Show each of 30 consecutive fiscal years, beginning with the current fiscal year			(provide amount, description and when in the fiscal year each item is to be contributed)	

*The term "annual contribution" means the amount to be contributed each year to the reserve fund from the monthly common expenses.

DIFFERENCES BETWEEN THE RESERVE FUND STUDY AND THE PROPOSED PLAN FOR FUTURE FUNDING OF THE RESERVE FUND

The Plan for Future Funding of the Reserve Fund proposed by the board differs from the Reserve Fund Study in the following respects:
..... (specify differences).

O. Reg. 48/01, Form 15.

Form 16

Condominium Act, 1998

CONSENT TO ATTACHMENT OF A COMMON INTEREST (SCHEDULE B TO DECLARATION FOR A COMMON ELEMENTS CONDOMINIUM CORPORATION) (under clause 140 (c) of the *Condominium Act, 1998*)

I (We) have a mortgage registered as Number in the Land Registry Office for the Land Titles (or Registry) Division of against a parcel of land (known as the "Parcel") to which a common interest in a common elements condominium corporation

At the present time the contribution in respect of your unit(s) *(or in the case of a common elements condominium corporation: in respect of your common interest(s))* per month to the reserve fund is \$..... Based on the proposed funding plan, the increase in contribution in respect of your unit(s) *(or in the case of a common elements condominium corporation: in respect of your common interest(s))* will be \$..... *(state the amount of the increase for each of the three fiscal years following the year in which the reserve fund study is completed. If the contribution is to be increased in the fiscal year in which the reserve fund study is completed, also state the amount of that increase.)*

The proposed funding plan will be implemented beginning on *(set out the date of a day that is more than 30 days after the day on which this notice is sent to the owners).*

Dated this day of

..... Condominium Corporation No.

.....
(signature)

.....
(print name)

.....
(signature)

.....
(print name)

(Affix corporate seal or add a statement that the persons signing have the authority to bind the corporation.)

SUMMARY OF RESERVE FUND STUDY

The following is a summary of the *(specify class of reserve fund study)* dated, prepared by *(name of person conducting the reserve fund study)* for *(name of condominium corporation)* (known as the "Reserve Fund Study").

Subsection 94 (1) of the *Condominium Act, 1998*, requires the corporation to conduct periodic studies to determine whether the amount of money in the reserve fund and the amount of contributions collected by the corporation are adequate to provide for the expected costs of major repair and replacement of the common elements and assets of the corporation. As a result, the corporation has obtained the Reserve Fund Study.

The estimated expenditures from the reserve fund for the next thirty (30) years are set out in the CASH FLOW TABLE. In this summary, the term "annual contribution" means the total amount to be contributed each year to the reserve fund, exclusive of interest earned on the reserve fund. The recommended annual contribution for *(set out the fiscal year following the year in which the study is completed, unless the contribution is to be increased in the current fiscal year, then set out the current fiscal year)* is \$....., based on the estimated expenditures and the following:

Opening Balance of the Reserve Fund:	\$
Minimum Reserve Fund Balance during the projected period	\$
Assumed Annual Inflation Rate for Reserve Fund Expenditures: %
Assumed Annual Interest Rate for interest earned on the Reserve Fund: %

The Reserve Fund Study can be examined *(set out details e.g. whether a written request and reasonable notice are required as set out in subsection 55 (3) of the Condominium Act, 1998, where and when it can be examined).*

CASH FLOW TABLE

Opening Balance of the Reserve Fund:	\$
Minimum Reserve Fund Balance (as indicated in this table)	\$
Assumed Annual Inflation Rate for Reserve Fund Expenditures: %
Assumed Annual Interest Rate for interest earned on the Reserve Fund: %

Year	Opening Balance	Recommended Annual Contribution	Estimated Inflation Adjusted Expenditures	Estimated Interest Earned	Percentage Increase in Recommended Annual Contribution	Closing Balance
Show each of 30 consecutive years, beginning with the current fiscal year						

SUMMARY OF PROPOSED PLAN FOR FUTURE FUNDING OF THE RESERVE FUND

The following is a summary of the board's proposed plan for the future funding of the reserve fund.

Condominium Common Elements Warranty

A Guide for Residential Condominium Corporations

Protecting Your Most Important Investment

Your new condominium must meet or surpass the structural and health and safety standards set out in the Ontario Building Code. Like every new home in Ontario, it is protected by mandatory warranties provided by your vendor/builder and backed by Tarion Warranty Corporation (Tarion). The warranties include your condominium's common element areas—which are described in the condominium corporation's Declaration and Description and include the areas shared by all residents (for example, hallways, parking facilities, amenities such as swimming pools or squash courts, and in some cases electrical and mechanical facilities that operate as part of the condominium's infrastructure, or the building's exterior envelope).

In accordance with the Ontario New Home Warranties Plan Act ("the *Act*"), the condominium corporation is considered to be the owner of the common elements. It is therefore important that condominium corporations are aware of and understand their rights and responsibilities under the *Act*.

What is Tarion?

Tarion is a non-profit, private corporation established in 1976 to protect new home buyers by administering the *Act*. Not only does the *Act* require vendors to provide warranty coverage for all new homes built in Ontario, but they must also be registered with Tarion and enroll every new home or condominium project prior to the start of construction. In addition, the *Act* requires Tarion to manage a guarantee fund to compensate owners when vendors fail to honour the required warranties.

Warranty Coverage

The warranty is provided by one, two and seven year coverage periods where condominium corporations can apply to Tarion and their vendor to address problems that may arise after the condominium corporation has been registered. Warranty coverage on common elements begins on the date the condominium corporation's Declaration and Description is registered.

The total amount payable out of the guarantee fund for common elements claims for a condominium project is the lesser of \$2.5 million, or an amount equal to \$50,000 multiplied by the number of condominium units in the building. The maximum amount of warranty coverage includes capped amounts, for example, amounts paid for claims related to environmentally harmful substances or hazards like mould, which are capped at \$100,000.

The *One Year Warranty* requires that the home be:

- Constructed in a workmanlike manner and free from defects in material.
- Fit for habitation.
- Constructed in accordance with the Ontario Building Code.

The *Second Year Warranty* covers:

- Water penetration through the basement or foundation walls.
- Defects in materials, including windows, doors and caulking, or defects in work that result in water penetration into the building envelope.
- Defects in work and materials in the electrical, plumbing and heating delivery and distribution systems.
- Defects in work or materials which result in the detachment, displacement or deterioration of exterior cladding (such as brickwork, aluminum or vinyl siding, EIFS).
- Violations of the Ontario Building Code affecting health and safety, including, but not limited to, violations relating to fire safety and the structural adequacy of the home).

The *Seven Year Warranty* covers:

- Major structural defects (MSD)

A major structural defect is defined in the *Act* as any defect in work or materials that results in the failure of a load-bearing part of the home's structure or materially and adversely affects its load-bearing function; or any defect in work or materials that materially and adversely affects the use of the building as a home.

The MSD warranty includes significant damage due to soil movement, major cracks in basement walls, collapse or serious distortion of joints or roof structure and chemical failure of materials. In addition to general exclusions such as damage/defect due to homeowner action, normal wear and tear, third-party damage, secondary/consequential damage or supplementary warranties/agreements, the MSD warranty specifically excludes: dampness not arising from failure of a load-bearing portion of the building; damage to drains or services; and damage to finishes.

Design and Field Reporting for Condominium Projects

Under Builder Bulletin 19R—the major component of Tarion's Risk Management Strategy for Condominiums—vendor must provide required reports at specific times for all Designated Condominiums enrolled under the *Act*.

Designated Condominiums are those described as Type C (includes both Part 9 and Part 3 OBC construction requirements) and Type D (includes only Part 3 OBC construction requirements) in Tarion Builder Bulletin 28.

All reports and documents (included in this information package) must be submitted to the condominium corporation at the turnover meeting. A copy of the Final Report should also be provided to the performance auditor.

All Tarion Builder Bulletins can be accessed on www.tarion.com.

Claims Process

Tarion is responsible for ensuring that vendors provide the warranty coverage that condominium corporations are entitled to under the *Act*, and for ensuring that they follow minimum customer service standards to repair or otherwise resolve warranted items. Under the *Act*, Tarion becomes involved in a claim at the condominium corporation's request when a Statutory Warranty Form is submitted to Tarion.

In addition, residential condominium corporations are required to submit a Performance Audit in compliance with the *Condominium Act* between 6 – 10 months following the registration of the condominium corporation's Declaration and Description. Tarion reviews this document and requests that the builder response to all issues identified. Once the vendor has set out its response on the tracking summary, Tarion will arrange a common element meeting with all parties to discuss the issues and schedule periodic updates.

The intent of the meeting is to try and determine what issues remain unresolved and outstanding. When the vendor and the condominium corporation cannot agree on any of these issues, the condominium corporation may request a conciliation inspection. At the conciliation, a Tarion representative will inspect each disputed item and issue a report with detailed findings as to whether an item is warranted. A copy of the warranty assessment report will be provided to both the vendor and the condominium corporation. The vendor will be given a deadline to resolve all issues covered under the warranty. Refer to Builder Bulletin 49 at www.tarion.com for more details.

Emergency assistance may be requested any time. Refer to the Emergency Form in this package for more information.

After Conciliation Inspection

If the condominium corporation disagrees with Tarion's assessment following the conciliation inspection, it may request a Decision Letter. Condominium corporations have the right to appeal decisions made by Tarion to the Ontario Licence Appeal Tribunal (LAT), an independent tribunal created by the Ontario government to provide an impartial appeals process for consumers.

If the builder does not agree with the conciliation report, it can be disputed through the Builder Arbitration Forum (BAF). In this case, Tarion will resolve all warranted claims on behalf of the builder. If the builder is identified as unwilling or unable to honour its warranty obligations, Tarion will settle the claims on the builder's behalf directly with the condominium corporation.

Builder Bulletin

19
Revised

Issue Date: June 2010

Effective Date: July 1, 2010

CONDOMINIUM PROJECTS: DESIGN AND FIELD REVIEW REPORTING

This Bulletin replaces Builder Bulletin 19R (Revised), issued May 1, 2001.

WHAT THIS BULLETIN IS ABOUT

This bulletin and its related documents replace Builder Bulletin 19R (Revised) that was in effect from March 1, 1995 until June 30, 2001.

This bulletin sets out the requirements for reports and information that must be provided to the Tarion Warranty Corporation ("Tarion") by Field Review Consultants and the vendor/builders of 'Designated Condominiums' enrolled under the *Ontario New Home Warranties Plan Act*. Designated condominiums are those condominiums described in the table on page 2 of this introduction as Types C and D.

Provision of information, certificates and reports relating to the design and field review phases of a condominium project are conditions of continued registration of the vendor/builder.

This bulletin contains a number of changes and additions to the previous Builder Bulletin 19R that was effective until June 30, 2010. The changes seek to bring more clarity and greater consistency to the nature and scope of reports supplied to Tarion by Field Review Consultants (FRCs) acting on behalf of vendor/builders.

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HERE'S WHAT'S CHANGED

Steps have been taken to provide more structure to the FRC reporting requirements by establishing consistent reporting formats and by employing objective quality assessment standards.

FRC Builder Bulletin 19R Qualification Status (BQS)

From the date of this bulletin consultants wishing to undertake field review work for vendor/builders engaged in the construction of designated condominiums need to be qualified within the terms of Bulletin 19R (see Module 1). When a vendor/builder uses an FRC that does not hold BQS, Tarion will take that factor into consideration when assessing the release of security.

FRC's engaged in providing Bulletin 19R services shall not undertake the task of preparing a performance audit for the same project.

Scope of Work

A 'Scope of Work' submission will replace the former field review contract. It details the level of effort and areas of review Field Review Consultants commit to. (The Scope of Work is explained in Module 2.)

Reporting Requirements

The requirement for the submission of monthly reports to Tarion has been removed. The main reporting requirement now falls within the Milestone Reports. (Milestone Reports are explained in Module 4.)

Milestone Reports will be supplemented by briefer reports giving outline information. They will be submitted every 60 days. (60 Day Reports are explained in Module 4.) The requirement for a Design Review and the submission of a Bulletin 19R Final Report remains. There shall be individual reporting for multiple towers under one enrolment. All field tests must be carried out by a qualified consultant within their discipline.

GENERAL

The provisions of Builder Bulletin 19R apply equally to both vendors and builders of condominiums described as Type C and Type D in the following table. Such condominiums are required, under the Ontario Building Code (OBC), to be designed by an architect and professional engineer. The Registrar reserves the right to designate any condominium project as being subject to the provisions of this bulletin.

Description of Condominium Type

The chart set below is an extract from Builder Bulletin 28 (Revised 2001) - 'Tarion Requirements for Receipt and Release of Security'.

Category	Description
Condo: Type A	Project has only Part 9 OBC construction requirements and is a lot-line condominium.
Condo: Type B	Project has only Part 9 OBC construction requirements and is NOT a lot-line condominium
Condo: Type C	Project has both; Part 9 and Part 3 OBC construction requirements.
Condo: Type D	Project has only Part 3 OBC construction requirements.

Voluntary submissions for Type A and Type B condominiums

Tarion is prepared to receive and process applications from vendor/builders of Type A and Type B condominiums that wish to voluntarily follow the provisions of Builder Bulletin 19R. For further information on this matter contact the Manager of Tarion's Condominium Group.

Voluntary submissions for Type C and Type D condominiums

Tarion recommends that the vendor/builder and/or FRC submit a copy of the construction schedule and its updates (as available) with each Milestone Report, providing Tarion with an overview of the duration of construction and required reporting documents.

Definitions

In this bulletin and any related modules or other documents the following terms shall have the meanings set out below.

"Tarion" means Tarion Warranty Corporation.

"FRC" means the Field Review Consultant designated by the vendor/builder for the applicable condominium project.

"BQS" means the certification given to an FRC who qualifies under the terms of this bulletin and in particular Modules 1 and 1a.

"Prime Consultant" means one or more duly qualified architects and/or engineers designated by the vendor/builder to provide the advice, authorizations, declarations and certificates permitted or required by this Builder Bulletin 19R.

The term "vendor/builder" applies to vendors, builders, and those persons who are both. The terms "vendor" and "builder" are both defined in the *Ontario New Home Warranties Plan Act*.

Notices, submissions

Any notices or other communications with Tarion's Condominium Group shall be addressed to: Tarion Warranty Corporation 5160 Yonge Street, 12th Floor, Toronto, Ontario M2N 6L9, Attention: Condominium Group.

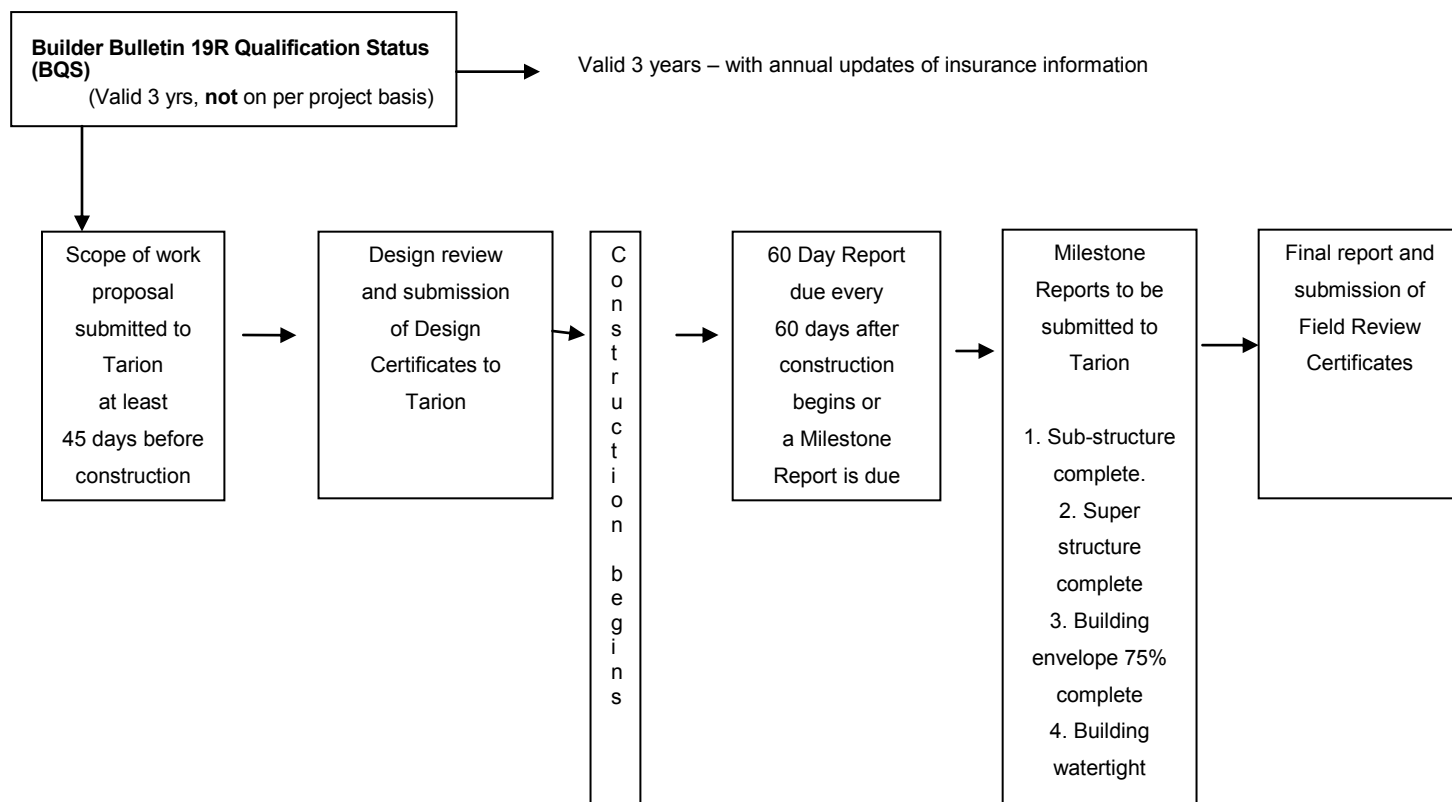
Submit

Means to deliver Statutory Warranty Forms and other documents in accordance with the Regulations. Acceptable methods of delivery are by hand, courier, facsimile transmission or except during a general interruption of postal service, regular mail or registered mail. In the case of regular mail, delivery is effective on the postmark date as long as Tarion receives it within 10 days of the expiry of the applicable period. Registered mail is effective on the postmark date. Facsimile transmission is effective on the date sent whether or not it is a business day. Delivery by hand or courier is effective on the date Tarion receives it if it is a business day and otherwise on the next business day.

PROOF OF SUBMISSION AND DELIVERY

If there is a dispute concerning delivery, the onus is on the builder to establish when delivery occurred. To avoid confusion, builders are encouraged to use methods of delivery (such as registered mail or courier) which will ensure that the builder will have proof of delivery.

THE BUILDER BULLETIN 19R PROCESS



It is assumed that FRCs observing the terms of this bulletin have attained BQS. (BQS is explained in Module 1.) The following documents must be completed and submitted to Tarion throughout the design and construction phases of the condominium:

Scope of Work Proposal

As the first stage of the Bulletin 19R process the Scope of Work Proposal outlines the level of effort and number of visits an FRC commits to as part of monitoring identified risk areas. It must be submitted at least 45 days in advance of the start of construction and is subject to review and approval by Tarion. Tarion will respond to submitted Scope of Work proposals within 30 days of receipt. (The Scope of Work proposal is explained in Module 2.)

Risk areas and factors within the Scope of Work were identified following examination of Tarion's complaints, claims, dispute resolution history and practical experience within the industry and the contributions of representatives of the FRC community.

-
1. Tarion will review and respond to proposal within 30 days.
 2. Design certificates may be submitted on a phased basis - see Module 4a.
 3. No 60 Day Report will be required where a Milestone Report is completed within that 60 day period.
-

Design Review and Certificates

Design Certificates confirm that the design complies with the Ontario Building Code and good architectural and engineering practice. Individual certificates must be completed by each of the various design professionals who produce the construction documents as they relate to the identified risk areas laid out in the Scope of Work. The vendor/builder must submit each certificate to Tarion at least 30 days prior to the commencement of the work covered by that portion of the design. (A sample Design Certificate can be found in Module 4a.)

60 Day Reports

The 60 Day Reports provide a tracking mechanism designed to assist Tarion in assessing the progress of a project's construction without placing too large an administrative workload on the FRC. The reports are to be completed according to instructions found at the head of the report template. (A sample report template can be found in Module 4b.)

Milestone Reports

Comprehensive reports must be completed and submitted to Tarion as soon as possible and, in any event, within 30 days of specified stages (milestones) of construction being completed. The reports will contain information on all outstanding deficiencies in existence at that point in time. An initial Milestone Report will be in two parts. The first part is a form giving deficiency tracking information and a summary of the issues. The second part, appended to the first, will be a narrative section giving general information about the construction as it relates to the element of the project in question. It will give full details of any deficiencies relating to it and list recommendations by the Prime Consultant for their correction. The definition of 'deficiency' as it relates to Builder Bulletin 19R is appended to Module 4.) Subsequent Milestone Reports will have an additional tracking sheet that provides information on progress made to rectify previously identified deficiencies. The Milestone Report shall identify all major design change orders that have been made during the reporting period affecting focus areas. The FRC shall keep on file copies of the design change orders for future use. The Milestone Report shall identify the design details which have been changed and whether or not the appropriate Prime Consultant has authorized those changes. Tarion will review each Milestone Report and report back to the FRC and vendor/builder within 30 days if further information is required.

Milestone Reports form the basis for establishing consistency in FRC reporting. The quality and content of reports will be scrutinized by Tarion and FRCs will be advised if shortfalls in reporting standards are identified. (For a fuller explanation of an FRC's responsibilities regarding the quality of reports, please refer to the sections entitled 'FRC Bulletin 19R Qualification Status' and 'Application for Bulletin 19R Qualification Status' in Module 1.)

All work required to correct deficiencies noted in any of the reports will be the responsibility of the vendor/builder and may influence the amount of security released following submission of the Bulletin 19R Final Report. Satisfactory repairs must be confirmed as complete by the FRC and referenced in the next Milestone Report(s) that falls due.

The Final Report

The Final Report consists of a bound copy of the following documents:

- All Milestone Reports associated with the project
- The Condominium Declaration as filed with the Land Titles Office
- All Design Certificates
- Field Review Declaration
- As built project drawings, specification, equipment operating manuals, and extended warranty certificates for any building components, if any.

(As built drawings, specifications, equipment operating manuals, and extended warranty certificates as above are to be submitted directly to the elected board not Tarion.)

It will also include the following documents as applicable:

- Design Architect's final clearance
- Site Work Engineer's final clearance
- Structural Engineer's final clearance
- Mechanical Engineer's final clearance
- Electrical Engineer's final clearance
- Acoustical Engineer's final clearance
- Occupancy permits - if available

The FRC submits this Final Report to the vendor/builder in the first instance and must notify Tarion as soon as this has occurred. The vendor/builder then submits this report to Tarion once construction of the condominium has been completed, the condominium declaration and description have been registered and all reports and information due to Tarion have been received.

The Field Review Declaration forms a part of the Final Report and among other things verifies that review of the identified risk areas contained in the Scope of Work as they relate to the construction project have been completed to the satisfaction of the FRC and the Prime Consultants. All Prime Consultants engaged in the review of the identified risk areas contained in the scope of work shall complete and sign off the Field Review Declaration, as well as providing all relevant documentation required under the *Condominium Act, 1998 (Ontario)* (A sample Final Field Review Declaration is appended to Module 4d.)

The declarant is required to deliver to the board of the Corporation the documents referred to in section 43(5) of the *Condominium Act (Ontario)* and in particular

- (i) proof, in the form, if any, prescribed by the Minister, that the units and common elements have been enrolled in the Plan within the meaning of the *Condominium Act, 1998 (Ontario)* in accordance with the regulations made under the *Condominium Act, 1998 (Ontario)*, and
- (ii) a copy of all final reports on inspections that the Corporation within the meaning of the *Condominium Act, 1998 (Ontario)* requires be carried out on the common elements;

The vendor/builder must deliver a copy of the Bulletin 19R Final Report to the owner-elected condominium board of directors at the turnover meeting and the report may be referred to at a later date if warranty problems arise.

Even if the final B19R report is not available in its entirety at the time of the turnover meeting, copies of all available documents shall be supplied to the elected board e.g., copies of all milestone reports, design certificates, and as built drawings.

All documents must be signed off to acknowledge and confirm that they have been received.

BUILDER BULLETIN 19R AND THE RELEASE OF SECURITY

All information, reports, and certificates must be submitted to Tarion within the time periods specified. The release of security is conditional upon Tarion receiving the documentation as specified in this bulletin and in Builder Bulletin 28 (which deals with such matters as unsold units and evidence of transfer of title for sold units, etc.) and is further conditional upon Tarion accepting that the contents of those documents accurately reflect the actual conditions on site.

Tarion will review the Bulletin 19R Final Report within 30 days of receipt and notify the vendor/builder of any further technical requirements or adjustments to the required security depending on the extent of any outstanding deficiencies as well as any outstanding administrative or non-technical matters. If Tarion is satisfied there are no outstanding deficiencies, the release of security, subject to the requirements in Builder Bulletin 28, will be completed within 45 days of receipt of all the required documentation.

The FRC will assess the likely costs of rectifying outstanding matters based on current sub-trade prices for such rectification and provide them to Tarion. Tarion will then review the costs provided and retain an appropriate amount of the security. The amount retained will reflect the likely cost of rectification in the event that Tarion was required to give effect to any remediation and will also take into account any outstanding administrative and non-technical costs.

If Tarion does not receive the Bulletin 19R Final Report, it will continue to hold the vendor/builder's security for a maximum of seven years or until such time as Tarion is satisfied that the building is constructed in accordance with the vendor/builder's warranty obligations under Section 13, *Ontario New Home Warranties Plan Act*.

For full information regarding Tarion's requirements for the receipt and release of security, please refer to Builder Bulletin 28 (Revised, 2001).

Tarion reserves the right to use the vendor/builder's security to ensure that the requirements of this bulletin are met on a continuing basis. With appropriate notice Tarion may, at its sole discretion and dependent on the situation, either recognize the original Scope of Work submission or secure the services of another qualified FRC.

TARION UNDERTAKINGS

This bulletin places a number of time based performance requirements on FRCs. In return Tarion is committed to completing elements of its administrative functions within specified periods of time. Generally, these functions relate to the processing and review of applications and submitted reports.

WHERE TO FIND THE FORMS FOR BULLETIN 19R

Standardized reporting formats are crucial to consistent reporting. Tarion has developed templates for all required reports and a link to these can be found on our web site at:
<http://www.tarion.com>

signed
"Howard Bogach"
Registrar

Builder Bulletin

38

(Revised)

Issue Date: June, 2010

Revised: July 1, 2010

LOW-RISE CONDOMINIUMS INSPECTION PROGRAM

This Bulletin replaces Builder Bulletin 38, issued January 01, 1995.

What this Bulletin is about

Effective January 1, 1995, the Ontario new Home Warranty Program (ONHWP) [now Tarion Warranty Corporation ("Tarion")], implemented the Low-Rise Condominium Inspection Program to provide on-site technical coaching and training at benchmark stages of construction to help new and problem builders make informed decisions on good construction practice.

Developed as an element of Tarion's prevention strategy, the focus of the Low-Rise Condominium Inspection Program is not as much on the project as it is on the builder's performance over the long term. It enables Tarion both to monitor and assess the technical competence of new builders joining Tarion and to monitor and correct the construction practices of problem builders.

Builders planning to build low-rise condominium projects who, after evaluation by Tarion, are assessed as "new" or "problem" builders must participate in the Low-Rise Condominium Inspection Program. In addition to the criteria listed below, any builder may be considered a problem builder at the discretion of the Registrar. Failure to comply with Low-Rise Condominium Inspection Program requirements will result in the Registrar issuing a Notice of Proposal to Refuse or Revoke Registration.

Note: Low-rise condominium means a project where all of the units and all of the common elements are designed and constructed under Part 9 of the Ontario Building Code (OBC).

The Low-Rise Condominium Inspection Program does not apply to high-rise condominium projects required to meet the provisions of Builder Bulletin 19, nor freehold units, required to meet the provisions of Builder Bulletin 31.

What has changed

This Bulletin was revised to clarify the application of applicable taxes to inspection fees.

What's Involved

"New" Builder Requirements

Based on the information gained through the registration interview and technical test (see [Builder Bulletin 30, Revised](#)), Tarion may decide that a Low-Rise Condominium Inspection Plan is one of the terms and conditions of registration for a builder new to or re-entering the low-rise condominium construction industry. If an inspection plan is required, the applicant will receive notification from the Registrar. Some new builders will be exempt

because they have demonstrated a high level of business skill and construction knowledge in their interviews and technical tests. A Technical Representative will initiate the Inspection Plan and may conduct the inspections personally. Tarion reserves the right to employ a qualified fee-for-service inspector to conduct the inspections under the supervision of the Technical Representative. Low-Rise Condominium Inspection Plan fees for the total number of inspections required for the entire condominium project are payable at the time of its enrolment.

“Problem” Builder Requirements

For problem builders, the Low-Rise Condominium Inspection Plan development process is more complex. The Technical Representative will thoroughly research and analyze the builder's file to pinpoint past performance issues. An appropriate inspection plan will be implemented or, in some cases, custom designed, depending on the builder's past performance. Participation in the Low-Rise Condominium Inspection Program becomes an amendment to the terms and conditions of registration. The inspection plan will begin on the next condominium project submitted to Tarion for enrolment. The Regional Manager and Technical Representative will meet with the builder to outline the reasons for implementation and to review the inspection plan requirements. Inspections will be conducted by the Technical Representative.

In all instances, Tarion will make every effort to respond within 24 hours to inspection or re-inspection requests. However, responsibility lies with builders to ensure that their staff is present on-site at the pre-arranged time.

Definition of a New Builder

Applicants to Tarion who meet any of the following conditions are defined as “new” builders:

- New applicants who have never registered with Tarion.
- Applicants whose registration has been expired for three years or more.
- Previously-registered applicants who have unsettled claims outstanding.
- Applicants who have been previously refused or revoked by the Registrar but have satisfied Tarion that their circumstances have changed materially.
- Applicants who are re-registering and changing their status from “Vendor Only” to “Vendor/Builder”.
- Previously-registered applicants who have made a significant change in principals, including those responsible for construction or the day-to-day operations of the company.
- Applicants who are presently registered with Tarion but have no experience in the low-rise condominium construction industry.

Definition of Problem Builder

Builders whose track record with Tarion demonstrates either of the following criteria during the previous 12 months are classified as problem builders:

- Any paid warranty claim. Regional Managers have discretionary power to waive the problem builder classification in certain situations, e.g., if a homeowner has refused entry to the builder, and, with the builder's agreement, Tarion makes the repair and charges back to the builder.
- Unacceptable ratio of chargeable conciliations to possessions according to the builder rating system in the Home Buyer's Guide to After Sales Service. The current formula for the “below average” rating, i.e., a ratio of two or more chargeable conciliations in 25 possessions or fewer will also apply to builders who are not rated in the home Buyer's Guide.

The Registrar may also target any builder as a problem builder if, for example, there is an unacceptable ratio of complaints to possessions or if a builder receives consistently unfavourable results in field inspections carried out by Tarion staff.

Inspection Plans

Building on the experience of the Targeted Inspection Program for freehold homes, low-rise condominium inspections will focus on Tarion's most costly and frequent claims.

Inspections can be held at the five key stages in the construction process: excavation, foundation, framing, prior to drywall and completion. Depending on the builder's level of technical knowledge or track record with Tarion, Regional staff will select one of the following four levels of inspection:

Level	Stages for Project
Minimum	<ul style="list-style-type: none"> • Foundation • Prior to drywall • Completion
Moderate	<ul style="list-style-type: none"> • Excavation • Foundation • Prior to drywall • Completion
Maximum	<ul style="list-style-type: none"> • Excavation • Foundation • Framing • Prior to drywall • Completion
Custom	<ul style="list-style-type: none"> • Designed to address specific concerns based on the builder's claims history.

Timing of Inspections

The following guidelines have been established for the timing of the inspection at each benchmark stage in the construction process:

Stage	Timing
Excavation	After excavation is completed but prior to the erection of foundation walls.
Foundation	Prior to backfill, with damp-proofing applied.
Framing	After roof framing is completed and sheathing installed but prior to insulation and/or vapour barrier being installed.
Prior to drywall	Prior to drywall being applied but with insulation and air/vapour barrier installed.
Completion	When the home is ready for occupancy and exterior grading has been completed.

Note: Incomplete seasonal work may be exempted from the completion inspection.

Inspections

The single most important purpose of the Low-Rise Condominium Inspection Program is the teaching or coaching opportunity that the inspection provides. The Technical Representative will use the review to provide appropriate technical information for the builder to make an informed decision on good building practice. In other words, the inspector focuses on the “builder” not the “project” for the long-term improvement of the builder’s performance.

Each inspection has its own checklist which is based on Tarion’s claims experience and includes the most common construction defects. By keeping track of recurring defects Tarion will be able to revise the checklists and adjust the focus of the inspections accordingly.

Checklists will also include appropriate diagrams to help the Technical Representative explain good construction practice to the builder as well as reference the Ontario Building Code (OBC). Although warranty defects are not always specific OBC infractions, they may have their origins there. Copies of the checklists will be distributed to the builder’s site representative and to the person managing the construction supervision.

When the builder’s construction performance improves to an appropriate level, low-rise condominium inspections will be discontinued. If a problem builder fails to improve, the documentation gathered through the Low-Rise Condominium Inspection Program will be added to the case for revocation of registration.

Fee Structure

Builder Category	Inspection Plan		Inspection Fees/Project (plus applicable taxes)
New Builder	Minimum	at least 6 inspections (3 inspections x 2 units + common elements)	\$ 750.
	Moderate	at least 12 inspections (4 inspections x 3 units + common elements)	\$1,500.
	Maximum	at least 15 inspections (5 inspections x 3 units + common elements)	\$1,875.
Problem Builder	Minimum	at least 6 inspections (3 inspections x 2 units + common elements)	\$1,350.
	Moderate	at least 12 inspections (4 inspections x 3 units + common elements)	\$2,700.
	Maximum	at least 25 inspections (5 inspections x 5 units + common elements)	\$5,625.

Note: Low-rise Condominium Inspection Plan fees are comparable to total inspection fees by both category and plan required under the Targeted Inspection Program for freehold homes (see Builder Bulletin 31).

Low-Rise Condominium Inspection Plan fees for the total number of inspections required for a project are payable at the time of its enrolment, or, will be invoiced if the project is already enrolled but construction has not yet begun. Applicable taxes must be added to the fees.

For more information regarding this Bulletin, please contact Tarion.

Addendum Date: April 20, 1995 (original October 3, 1994)
Excavation Inspection Forms not included with online version.

signed
"Howard Bogach"
Registrar

CONSTRUCTION PERFORMANCE GUIDELINES FOR THE ONTARIO HOME BUILDING INDUSTRY

This bulletin replaces Builder Bulletin 40, which introduced the first edition of the Construction Performance Guidelines (the “Guidelines”) on April 2, 2003. This revised Builder Bulletin 40 is being issued in conjunction with the publication of the second edition of the Guidelines.

WHAT THIS BULLETIN IS ABOUT

The Guidelines provide information on the requirements of the warranties described in the *Ontario New Home Warranties Plan Act* (the “statutory warranty”). The Guidelines are intended to be a communication tool in the form of a handy reference guide for builders and homeowners. The purpose of the Guidelines is not to set new standards, but to provide advance information as to how the Ontario New Home Warranty Program (the “Warranty Program”) will render decisions regarding disputes between builders and homeowners about work or materials.

The Guidelines were developed in consultation with various industry experts and following extensive research into the construction performance standards used by other North American new home warranty programs. The proposed Guidelines were then scrutinized by a sub-committee of Ontario Home Builders’ Association (“OHBA”) members, various technical experts, Warranty Program Board members and staff to ensure they were appropriate for Ontario.

A MORE OBJECTIVE WAY TO RESOLVE WARRANTY DISPUTES

When it comes to home construction, builders and homeowners approach matters from different perspectives, so they don’t always see eye to eye. In most cases, a builder and a homeowner can work together and resolve warranty problems in a friendly, professional way. When issues can’t be resolved, the Warranty Program, at the request of a homeowner or builder, will step in to settle the matter. (A homeowner can ask the Warranty Program to investigate a dispute which the Warranty Program may decide requires conciliation, or a builder may request a warranty review.)

The Guidelines have been published and made accessible to both builders and homeowners to provide a clear understanding of how Warranty Program representatives make decisions about warranty disputes. Until publication of the Guidelines, these decisions were based on their expertise and knowledge of industry standards including those in the Ontario Building Code (the “Code”).

HOW THE GUIDELINES CAN HELP BUILDERS AND HOMEOWNERS

The Guidelines can help a builder and a homeowner understand how the Warranty Program evaluates warranty disputes as well as assist in other ways.

The Guidelines can help builders:

- establish the construction standard that their trades must adhere to (builders can reference the Guidelines in their contracts with their trades);
- assess their own work, and that of their trades; and,
- answer queries from homeowners in a way that is seen to be objective.

The Guidelines can help homeowners:

- understand what is and is not covered under the statutory warranty in their new home; and,
- determine if items in their home have been installed and are working properly.

STANDARDS IN THE GUIDELINES

The Guidelines contain two types of standards for assessing components of the home:

1. Standards Based on Measurement

These apply to anything that can be measured. For example:

12.2

Condition: Floor is Uneven

Acceptable Performance/Condition

Applied finished flooring shall be installed without *visible* ridges or depressions. Where visible ridges or depressions occur, the variation from the *specified plane* shall not exceed +/- 6 mm.

Warranty

One Year – Work and Material

- Ridges and depressions caused by *normal* shrinkage of materials are excluded from the statutory warranty

Action

Visible ridges or depressions exceeding the acceptable condition shall be *repaired*.

Remarks

The *homeowner* must maintain finished flooring in accordance with manufacturer's recommendations and prevent the accumulation of water on flooring.

2. Standard Based on Construction Performance

These apply to items that cannot be measured. For example:

1.14

Condition: Foundation Wall Leaks

Acceptable Performance/Condition

Foundation walls shall allow no water penetration.

Warranty

Two Year – Basement Water Penetration

- Water leakage resulting from improper maintenance, exterior grade alterations made by the *homeowner*, an act of God or failure of municipal services or other utilities is excluded from the statutory warranty. Secondary damage to property or any personal injury resulting from the water penetration is also excluded from the statutory warranty.

Action

Water penetration through the basement or foundation shall be *repaired*.

Remarks

Only actual water penetration through the foundation is warranted; dampness caused by condensation or other causes is not considered to be water penetration and is not covered by the statutory warranty. The *homeowner* must take immediate steps to prevent damage to their property and report any losses to their *home* insurance provider.

HOW THE GUIDELINES ARE USED IN WARRANTY DISPUTES

When the Warranty Program becomes involved in a warranty dispute between the builder and the homeowner, the Guidelines will be consulted.

If the dispute relates to something that is found not to meet the standards laid out in the Guidelines, the Warranty Program will decide that remedial work needs to be done. In such case, the builder is responsible for making repairs.

If the dispute relates to something that is found to meet or exceed the standards laid out in the Guidelines, the Warranty Program will decide that no remedial work needs to be done. In such case, the builder is not responsible for making repairs.

On those occasions where a standard does not apply, the Warranty Program, using good industry practice will decide if something is covered under the statutory warranty.

The Guidelines contain standards that apply to most new homes in Ontario, but given the wide variety of homes that are built, it would be impossible for standards to apply to every type of home or every component of construction.

WHEN THE GUIDELINES WILL BE APPLIED

The Guidelines apply to conciliations (including warranty reviews) and claim inspections related to deficiencies in work and material conducted by the Warranty Program on or after April 2, 2003. The first edition of the Guidelines will apply to a conciliation or claim inspection conducted between April 2, 2003 and November 30, 2003 and the second edition will apply to a conciliation or claim inspection conducted on or after December 1, 2003 until the effective date of the next edition of the Guidelines.

THE GUIDELINES WILL CHANGE OVER TIME

The Guidelines will be reviewed periodically and expanded or updated to reflect legislative changes and/or changes in construction materials and technologies. Over the years, new editions of the Guidelines will be published. The Warranty Program will base its decisions on the most recent edition of the Guidelines in effect at the time that a conciliation (including a warranty review) or claim inspection is conducted.

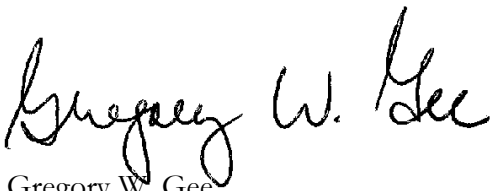
The effective date of each edition is set out on both the front cover and on the bottom of every page in the Guidelines. For example, the front cover of the first edition states that it is effective April 2, 2003, and the front cover of the second edition states that it is effective December 1, 2003.

MAKE SURE YOU HAVE THE CORRECT EDITION

The most recent edition of the Guidelines is available on the Warranty Program Web site at ***www.newhome.on.ca*** or by calling 1-800-668-0124.

FOR MORE INFORMATION

If you have any questions about the Guidelines, please contact the Warranty Program at 1-800-668-0124. A member of our staff will be happy to assist you.



Gregory W. Gee
Registrar

ONTARIO NEW HOME WARRANTY PROGRAM

CONTACT INFORMATION

Toll Free: 1-800-668-0124

Web site: *www.newhome.on.ca*

Email: *info@newhome.on.ca*

CORPORATE OFFICE

5160 Yonge Street, 6th Floor
TORONTO ON M2N 6L9
Telephone: 416-229-9200
Fax: 416-229-3800

CONDOMINIUM OFFICE

1091 Gorham Street
NEWMARKET ON L3Y 7V1
Telephone: 905-836-6715
Fax: 905-836-0314

EAST CENTRAL REGION

1091 Gorham Street
NEWMARKET ON L3Y 7V1
Telephone: 905-836-5700
Fax: 905-836-5666

NORTHWEST REGION

1205 Amber Drive, Suite 206
THUNDER BAY ON P7B 6M4
Telephone: 807-345-2026
Fax: 807-345-2014

EASTERN REGION

1600 Scott Street, Suite 400
OTTAWA ON K1Y 4N7
Telephone: 613-724-4882
Fax: 613-724-3669

SOUTHWEST REGION

140 Fullarton Street, Ground Floor
LONDON ON N6A 5P2
Telephone 519-660-4401
Fax: 519-660-3556

NORTHEAST REGION

1895 LaSalle Blvd.
SUDBURY ON P3A 2A3
Telephone: 705-560-7100
Fax: 705-560-7111

WEST CENTRAL REGION

2 County Court Blvd., Suite 435
BRAMPTON ON L6W 3W8
Telephone: 905-455-0500
Fax: 905-455-0169



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Construction Performance Guidelines: For New Homes and Condominium Common Elements

Like it? Share it!

To help homeowners and builders determine which work and material defects are covered by the statutory warranty, Tarion provides two detailed reference guides.

Construction Performance Guidelines for New Homes and Condominium Units



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Entire Document

These helpful guidelines outline work and material deficiencies in new homes and residential condominium units that are covered under the statutory warranty.

Condominium Common Element Construction Performance Guidelines



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Entire Document

These helpful guidelines outline work and material deficiencies in condominium common elements that are covered under the statutory warranty.

Construction Performance Guidelines for New Homes and Condominium Units

The purpose of the *Guidelines* is to provide advance guidance as to how Tarion will decide disputes between homeowners and builders about defects in work or materials. The *Guidelines* are intended to complement the Ontario Building Code and are supplemented by any applicable guidelines or standards produced by industry associations. They do not replace manufacturer warranties.

The Third Edition of the Construction Performance Guidelines apply to conciliations, claim inspections and warranty reviews conducted by Tarion on or after January 1, 2013. The dates of possession or enrolment do not matter.

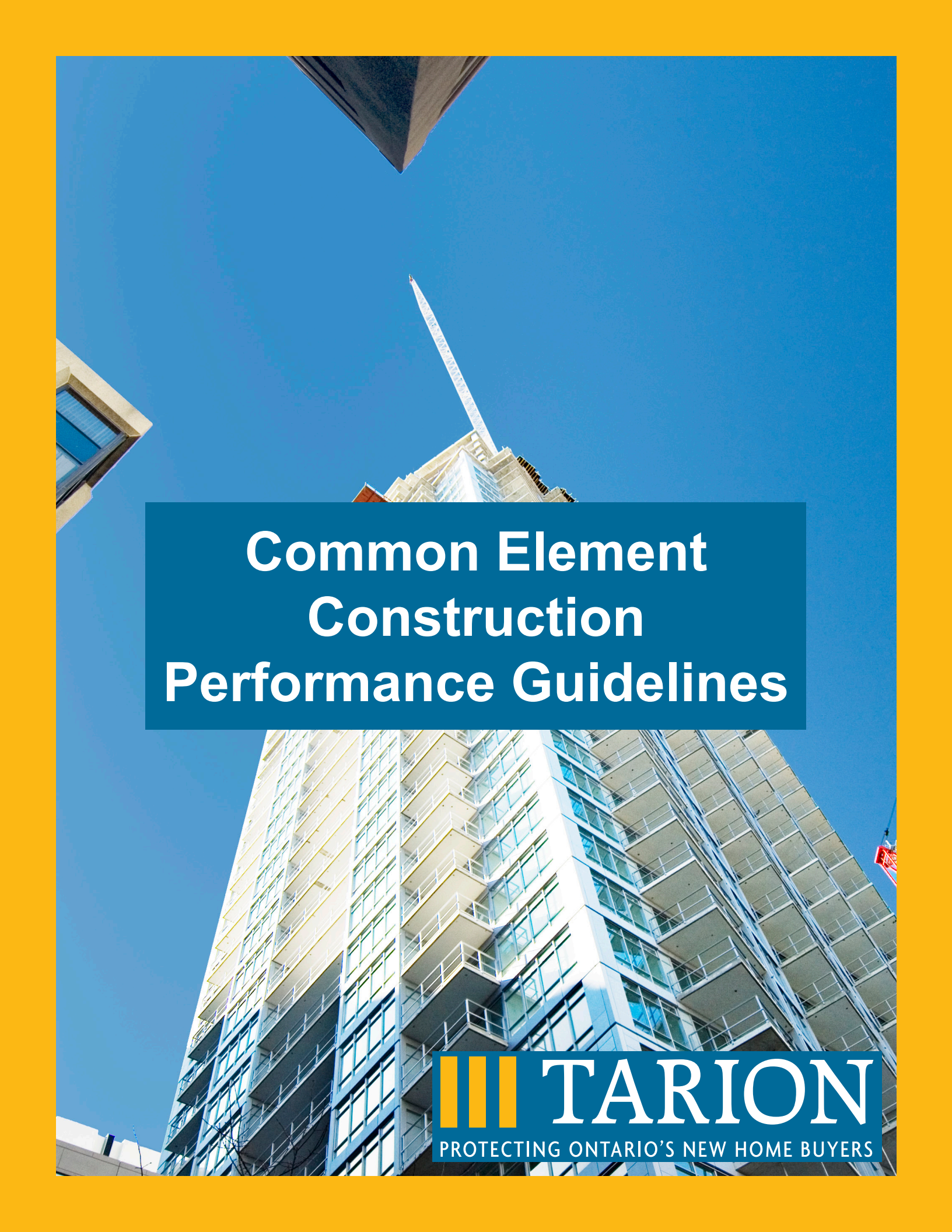
Previous Versions

Since the *Guidelines* were last revised in 2003, Tarion has collected input based on the most common issues encountered by consumers, builders and employees who use this reference manual. This culminated in a number of changes to the guidelines, including ninety three revisions to current items, the addition of sixteen new items, and the deletion of four items. Here is the highlighted [Final List of Changes](#) that have been made from the Second Edition of the Construction Performance Guidelines. More details on revisions made to the Second Edition are provided in the [Summary](#).

Condominium Common Element Construction Performance Guidelines

The "*Construction Performance Guidelines for Common Elements of Residential Condominiums*" (the "*CE CPG*") will be used when determining whether or not a condition is covered by the statutory warranty. The *CE CPG* is intended to supplement the existing *Construction Performance Guidelines for the Homebuilding Industry*.

The purpose of the *CE CPG* is to provide guidance as to how Tarion will decide disputes between builders and condominium corporations about defects in work or materials and complement the Ontario Building Code, which addresses structural integrity and health and safety matters.



Common Element Construction Performance Guidelines



TARION

PROTECTING ONTARIO'S NEW HOME BUYERS

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User Tip: To facilitate the use of the *Guidelines*, hyperlinks have been included throughout this document. The following Table of Contents is linked to specific items/pages.

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Review Committee:

Al Stevenson	Tarion
Carrie Saunders, P.Eng.	Buchan, Lawton, Parent Ltd.
Don Buchan, P.Eng.	Buchan, Lawton, Parent Ltd.
Hitesh Doshi, M. A. Sc., P. Eng.	Faculty of Engineering and Architectural Science, Ryerson University
James Lischkoff, P.Eng.	EXP. Engineering
John Masih, P.Eng.	Tridel Builder Inc.
Michael Steele, B. Tech. (C.M.)	RESCON - Construction Control Inc.
Murray Johnson, R.C.M.	Brookfield Residential Services Ltd.
Sally Thompson, M.Sc., P.Eng.	Halsall Associates Limited

Writing Group:

Al Stevenson	Tarion
James Lischkoff, P.Eng.	EXP. Engineering
Michael Steele, B. Tech. (C.M.)	RESCON/Construction Control Inc.
Sally Thompson, M.Sc., P.Eng.	Halsall Associates Limited

Industry Agencies:

Buchan, Lawton, Parent Ltd.
EXP. Engineering
Halsall Associates Limited
Randal Brown and Associates
RESCON - Construction Control Inc.
S&S Wilson Acoustical Engineers
Solucore Elevator Consulting Firm

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PURPOSE OF THIS DOCUMENT

The “*Construction Performance Guidelines for Common Elements of Residential Condominiums*” (the “*CE CPG*”) will be used by Tarion Warranty Corporation (“Tarion”) when determining whether or not a condition is covered by the statutory warranty. The *CE CPG* is intended to supplement the existing *Construction Performance Guidelines for the Homebuilding Industry* (the “*CPG*”).

The purpose of the *CE CPG* is not to set new standards but to provide advance information and transparency as to how Tarion will decide disputes between builders and condominium corporations about defects in work or materials. These guidelines reflect current common understanding of how situations described within would be assessed by Tarion. The *CE CPG* has been prepared in consultation with various industry groups and Tarion is grateful for their input. For a list of participants and contributors, please see “[Acknowledgements](#)” on page 7.

The *CE CPG* provides objective and uniform criteria that set out the minimum performance required in the construction of the common elements of new residential condominium homes in Ontario. They relate to work and material deficiencies and complement the Ontario Building Code, which addresses structural integrity and health and safety matters. In any case where a guideline is not consistent with a provision of the Ontario Building Code, the Ontario Building Code will prevail. The *CE CPG* is designed to be supplemented by any applicable guidelines or standards produced by industry associations. They do not replace manufacturer warranties.

The *CE CPG* is designed for the common elements of residential condominium construction. If wood-frame construction forms part of the common elements, the existing *CPG* should be applied. However, the *CE CPG* should be used where concrete construction is used for the common elements. The existing *CPG* should be used to assess conditions for other aspects of the common elements e.g. finishes, and for conditions within residential condominium units, as applicable.

Tarion will make its decisions based on the edition of the *CE CPG* that is in effect at the time of conciliation, warranty review or claim inspection is conducted. The effective date is indicated on both the cover of the *CE CPG* and on the bottom of each page.

SCOPE OF GUIDELINES

The *CE CPG* should be interpreted with common sense. It deals only with frequent and typical items of concern to a condominium corporation (the owner of condominium common elements). The *CE CPG* describes the minimum acceptable performance or condition that a condominium corporation should expect and builders must meet to satisfy the requirements of the warranties described in the [Ontario New Home Warranties Plan Act](#) (the “*Act*”).

Construction is not an exact science and generally, the materials used have natural properties and faults that must be considered when applying the *CE CPG*.

For example:

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- Colours of all materials will be as close to samples as possible, but may not be identical to samples due to variances among manufacturers or differences in the manufacturing process;
- Wood grains and colours may not necessarily match in all cases;
- Shrinkage of natural materials may result in squeaks and creaks.

Some *CE CPG* articles refer to specific dimensions to determine what is acceptable. These dimensions are used to evaluate the identified conditions. If the variation is minor, Tarion may consider whether the variation significantly affects the performance of the item in determining whether the particular guideline has been met.

SCOPE OF WARRANTY RESPONSIBILITIES

Typically a number of parties are involved in a residential common element warranty issue in Ontario. The general responsibilities of the main parties are outlined below:

The Owner¹: A condominium corporation is deemed to be owner² of the common elements of the condominium corporation (as distinct from condo unit owners who are owners for the purpose of their condominium unit). The *Condominium Act* requires a condominium corporation to retain an engineer or architect to conduct a performance audit of the common elements and prepare a written report. The condominium corporation must ensure Tarion receives a copy of the performance audit report within the prescribed timelines in [Builder Bulletin 49, "Claims Process - Condominium Common Elements"](#).

A condominium corporation is responsible for the proper maintenance schedule and procedures for the common elements to ensure its warranty rights are preserved. A condominium corporation will often engage a property management company to deal with these maintenance obligations.

Builder/Vendor³: The builder is responsible for honouring the statutory warranties set out in the *Act* and *Regulations*. The builder may at times have to go back to the manufacturer to obtain a solution for a possible defect, which may delay the repair.

Tarion Warranty Corporation: Tarion is responsible for administering the [Ontario New Home Warranties Plan Act and Regulations](#). As part of this responsibility, Tarion makes decisions when a builder and a condominium corporation disagree about an item covered under the statutory warranties. Tarion also guarantees the builder's statutory warranties, and provides extended major structural defect coverage for years three through seven after the registration of the common elements.

¹ The term 'owner' is defined in the Ontario New Home Warranties Plan Act Throughout this document the term 'condominium corporation' will be used to refer to the owner of residential condominium common elements.

² See section 15. (a) of the Ontario New Home Warranties Plan Act.

³ The terms 'builder' and 'vendor' are defined in the *Ontario New Home Warranties Plan Act* – see the definition in the 'Terminology' section on page 12. Throughout this document the term 'builder' will be used to refer to both builders and vendors.

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STATUTORY WARRANTY COVERAGE

Residential condominium common elements are considered part of a 'home' under the *Act*. Warranty coverage is set out in the *Act* and takes effect from the date of registration of the declaration and description of the condominium common elements (the "date of possession").

Generally, there are three types of statutory warranty protection or coverages, including:

THE ONE-YEAR WARRANTY

A builder warrants that, for one year from the date of possession, the common elements:

- are free from defects in work and materials
- are fit to live in
- meet Ontario Building Code requirements

Under [Builder Bulletin 19R](#), a builder must provide a condominium corporation with all warranties provided by manufacturers, suppliers and subcontractors that may extend beyond the first year. Condominium corporations must make claims on these extended warranties directly to the manufacturer or distributor. Such extended warranties are not part of the statutory warranties.

THE TWO-YEAR WARRANTY

A builder warrants that, for two years from the date of possession, the common elements are free from:

- Water penetration through the basement or foundation walls
- Defects in materials or work (including windows, doors and caulking) that result in water penetration into the building envelope
- Defects in materials and work in the electrical, plumbing and heating delivery and distribution systems
- Defects in materials and work which result in detachment, displacement or deterioration of exterior cladding (such as brickwork, aluminum or vinyl siding)
- Violations of Ontario Building Code regulations under which the Building Permit was issued, affecting health and safety, including, but not limited to, fire safety, insulation, air and vapour barriers, ventilation, heating and structural adequacy

SEVEN-YEAR MAJOR STRUCTURAL DEFECT COVERAGE⁴

In addition to the builder's two-year warranty against major structural defects, the statutory warranties provide coverage for major structural defects in years three through seven.

⁴ The term "major structural defect" is defined in Regulation 892, Section 1, made under the *Ontario New Home Warranties Plan Act*. See the definitions included in the "Terminology" section on page 12.

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CONDITIONS NOT COVERED UNDER WARRANTY

It is important for condominium corporations to note what is **not** covered by the statutory warranty. The *Act* sets out the following exclusions from warranty coverage:

- Defects in materials, design and work supplied by the owner
- Secondary damage caused by defects under warranty, such as property damage and personal injury
- Normal wear and tear
- Normal shrinkage of materials caused by drying after construction
- Damage caused by dampness or condensation due to failure by the owner to maintain adequate ventilation or proper operation of moisture-producing devices such as humidifiers
- Damage caused by the owner or visitors
- Alterations, deletions or additions made by the owner
- Settling of land around the building or along utility lines, other than beneath the footings of the building
- Damage resulting from acts of God
- Contractual warranties which lie outside the *Ontario New Home Warranties Plan Act*,
- Damage caused by insects or rodents, except where construction does not meet specifications of the Ontario Building Code
- Damage caused by municipal services or other utilities
- Surface defects in work and materials specified and accepted in writing by the owner at the date of possession

The statutory warranties are not applicable to:

- Temporary or seasonal homes not built on permanent foundations and not insulated sufficiently to enable year-round living (e.g. cottages) (see year-round requirements under Part 9 of OBC)
- Homes built on pre-existing footings and/or foundations
- Homes that have been lived in or rented prior to sale
- Homes built in converted buildings
- Homes purchased from a receiver or trustee may not have warranty coverage in certain circumstances

If there is any conflict between this publication and the *Act* or *Regulations*, the latter prevail. Tarion assumes no liability for any error or omission in this publication.

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HOW TO USE THIS DOCUMENT

The *CE CPG* is divided into articles based on construction sequence. The information is organized according to types of conditions, and in each case, the following is described:

Condition: A brief description of the identified situation.

What is acceptable: The acceptable performance standard of the condition.

Which warranty applies: The statutory warranty that applies and any exclusions.

Required action: A description of the action that the builder or homeowner must take to rectify the identified condition.

Remarks: Information to help users understand and solve the problem.

See also: Other items in this document that may be similar to the condition and/or provide further information related to the condition.

Conflict or inconsistency: If there is any conflict or inconsistency between the terms of this *CE CPG* and the provisions of the ONHWP Act and Regulations, or provisions of the Ontario Building Code, then the provisions of the ONHWP Act and Ontario Building Code shall prevail with the ONHWP Act and Regulations being paramount.

TERMINOLOGY

Builder

The person or entity that undertakes the performance of all work and supply of all the materials necessary to construct a completed home whether for the purpose of sale by the person or entity or under a contract with a vendor or homeowner. In the *CE CPG*, the term “builder” is used to refer to both vendors and builders.

Building Envelope

The wall and roof assemblies that contain the building space, and include all those elements of the assembly that contribute to the separation of the outdoor and indoor environments so that the indoor environment can be controlled within acceptable limits.

Contract

The Agreement of Purchase and Sale between the builder and homeowner, or the construction contract between the builder and homeowner who owns the land.

Common Elements

All the property in a residential condominium except the units. It includes areas that are shared by residents e.g. lobbies, recreational facilities such as pools and gyms, “exclusive use areas”

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like balconies, parking garages and shared systems such as heating and electrical systems. These spaces/components are owned by the condominium corporation. Common elements are identified in the declaration and description.

Condominium Corporation

Refers to the corporation created or continued under the *Condominium Act*, 1998.

Date of Registration

The date of the registration of the declaration and description and the creation of the condominium corporation. The warranties on the common elements of the corporation take effect on this date which is considered the date of possession.

Delivery and Distribution Systems

Includes all wires, conduits, pipes, junctions, switches, receptacles and seals, but does not include appliances (except units within), fittings and fixtures.

Design

Refers to the design as documented in the as-built drawings and specifications.

Exterior Cladding

All exterior wall coverings, including siding and above-grade masonry (for example, concrete, bricks, or stone) as required and detailed in the relevant sections of the Building Code under which the Building Permit was issued.

Major Structural Defect

Any defect in work or materials:

- a) that results in failure of a load-bearing element of a building;
- b) that materially and adversely affects the ability of a structural load-bearing element of the building to carry, bear and resist applicable structural loads for the usual and ordinary service life of the element; or
- c) that materially and adversely affects the use of a significant portion of the building for usual and ordinary purposes of a residential dwelling and having regard to any specific use provisions set out in the Purchase Agreement for the home.

But excluding any defect attributable in whole or in part to:

- any elevating device as opposed to the surrounding structure of the building housing the device,
- any appliances that form part of the heating or cooling apparatus, equipment or system, whether the water, air or other substances, including furnaces, air conditioners, chillers and heat recover ventilators,
- dampness not arising from failure of a structural load-bearing element of the building,
- acts or omissions of an owner, a tenant, a licensee or invitee,
- acts of civil or military authorities or acts of war, riot, insurrection or civil commotion,
- a flood not caused by the builder, and
- other exclusions set out in subsection 13(2) of the ONHWP Act.

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Normal

Typical, usual, ordinary or reasonably expected.

Properly painted surface

Uniform in appearance, colour and sheen, free of foreign material, lumps, skins, runs, sags, insufficient coverage, drips, spatter, spills and over spray.

Repair

Activity to be undertaken by the builder as referred to under *Action* for conditions included in the *CE CPG*. The method of repair may involve restoration, alteration, or partial or full replacement of materials or equipment. The builder must choose a repair method that will satisfy the acceptable performance/condition specified in the applicable guideline. Generally, where *repairs* are necessary, colour and/or texture may not exactly match the surrounding original material.

Smooth

An even surface that is free from bumps, projections, foreign material, etc.

Specified plane

A flat, invisible line between two points on the surface of a wall, ceiling or floor which defines the intended flat surface. The points shall be located as far apart as possible, e.g. opposite sides of a room or opposite ends of a wall. Such a plane of reference is used to measure the variation between the *specified plane* and the actual surface. See Appendix A4 “Measuring Variation from the *Specified Plane* Using a Plane of Reference”.

Vendor

The person or entity who sells on its own behalf a home not previously occupied to a homeowner.

Visible

Easily seen when viewed from a position that is *normal* to the use of the room or area - e.g., hallway - standing position; living room - standing or sitting.

COMMENTS WELCOME

Tarion encourages readers to submit comments regarding their experiences with the *Guidelines*. For submission details, please see Appendix A1 “Common Elements Construction Performance Guidelines” [Comments/Suggestion Form](#). All information will be used to improve future versions of this document.



Construction Performance Guidelines

for the Ontario Home Building Industry

THIRD EDITION

 **TARION**
PROTECTING ONTARIO'S NEW HOME BUYERS

TABLE OF CONTENTS

User Tip: To facilitate the use of the *Guidelines*, hyperlinks have been included throughout this document. The following Table of Contents is linked to specific items/pages.

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BILD “Condos Start to Finish” Seminar 2014

Performance Audit / Tarion Resolution Strategies for Developers

Prepared by Peter Leong, P.Eng.

1. Marketing and Sales

- Avoid descriptions of specific materials

2. Pre-Design

- Make sure the design consultant's services include fees for
 - Preparing “as-built” documents and
 - Resolving PA deficiencies post-construction

3. Construction

- Provide enough funding (\$\$) in overall construction budget to allow for resolution of PA and 2YrWA Deficiencies
- Track deficiencies during construction and their resolution (Tarion Bulletin 19)
- Track Change Orders and Substitutions

4. Pre-Condo Registration and Occupancy

- Have Design Consultants prepare “As-Built” Drawings and Specifications
 - Architectural
 - Structural
 - Mechanical
 - Electrical
 - Landscape
- Incorporate all changes and substitutions during construction into the as-built documents
- Consider a Third Party Review of “As-Built” Drawings and Specifications
- Consider undertaking a Pre-Performance Audit

5. Response to Performance Audit (PA) and Second Year Warranty Audit (2YrWA)

- Be Proactive
- Establish a dedicated team to address PA and 2YrWA deficiencies
- Identify the priority deficiencies to correct or address first and do so ASAP
- Update PA and 2YrWA Tracking Summary on a regular basis
 - Coordinate with design consultants re: performance audit response
- Hold regular meetings (include Tarion) to review and update status of the PA and 2YrWA resolution process
- Establish Sign-Off Protocol before undertaking any deficiency correction work
- Establish a plan to address deficiencies identified from the survey of unit owners

- Resolve deficiencies within the timelines of Tarion's Builder Bulletin 49 – Claims Process
- Document, Document, Document
 - When Repairs are completed
 - Who did the Repair
 - Get Sign-off
- Negotiate an amicable resolution
- Avoid Tarion Conciliation

6. PA and 2YrWA Settlement

- Resolution of ALL PA and 2YrWA deficiencies is likely not possible
- Some PA and 2YrWa deficiencies may be set aside as a cash (\$\$) settlement
- Have your lawyer prepare a settlement agreement for PA and 2YrWA deficiencies
- Some PA and 2YrWA deficiency corrections may include an extended warranty
- Settlement agreement should establish how latent defects will be treated
- Settlement sometimes includes first year budget deficiencies
- Negotiations that take too long may result in a legal claim from the condominium corporation (The Limitations Act, 2002)

Providing **Good Customer Service** will result in referrals, repeat clients and enhance your reputation.

Builder Bulletin 49

Issue Date: June 2010

Effective Date: Condominium Projects registered on or after July 1, 2010

CLAIMS PROCESS - CONDOMINIUM COMMON ELEMENTS

Note: Vacant land condominiums and common element condominiums do not have Common Elements warranty coverage. See section 15 (c) of the *Ontario New Home Warranties Plan Act*.

WHAT THIS BULLETIN IS ABOUT

This Bulletin sets out what can be described as a customer service standard for warranty claims made in relation to Common Elements for residential condominiums. It addresses the following matters:

- Sets out a process for how condominium corporations must submit statutory warranty claims for Common Elements; and
- Establishes timelines within which builders must respond to and resolve claims; and the role of Tarion in the process.

The Common Elements (CE) Claims Process sets out minimum standards required by Tarion. Builders are encouraged to exceed these standards.

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

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DEFINITIONS

In this Bulletin, the following terms have the meanings defined below:

Act

The Act is the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. O.31 and Regulations, as amended.

CE Claims Process

Is the process set out in Part II.I of Regulation 892 and further described in this Bulletin.

Conciliation

Is a process whereby Tarion determines whether an item listed on a Tarion Common Elements Request for Conciliation Form is covered by a statutory warranty and whether the builder is required to perform work or pay compensation. If work was done by the builder, Tarion will determine if it was adequate to remedy the warranted item. A conciliation may include an inspection of the Common Elements or a desk assessment (if items can be assessed based on paper record, and may also include a review of the Declaration and Description, and other relevant documentation).

PLEASE NOTE

Only items identified in a properly submitted Common Elements Request for Conciliation form will be reviewed during the related conciliation. Items raised for the first time by a condominium corporation during a conciliation will not be addressed at that conciliation. Condominium corporations will be directed to add these new items to their next Common Elements Claim form as applicable.

Chargeable Conciliation

Is a conciliation in which:

1. there are items identified as warranted by Tarion in a Warranty Assessment Report;
2. the builder was not denied reasonable access by the condominium corporation to rectify the problem (see "Reasonable Access For Repair" on p. 6 of this Bulletin); and
3. the builder could have avoided the conciliation by attending to the items raised in the Common Elements Form submitted to Tarion.

Even if only one item is confirmed through the conciliation process by Tarion to be warranted, whether major or minor in nature, the conciliation will be considered chargeable to the builder.

A conciliation may be deemed "not chargeable", if one or more of the following exceptions apply to every item determined to be warranted in the Warranty Assessment Report:

1. the builder can demonstrate that the condominium corporation denied reasonable access to repair or resolve the warranted item before the conciliation; or
2. a conciliation is conducted by Tarion because the builder and the condominium corporation disagree about the method or timing of the repair of an item that the builder has previously agreed is warranted, and Tarion supports the builder's recommendation; or
3. the builder can show:
 - (a) that it has a history of satisfactory after-sales service to the condominium corporation; and
 - (b) by way of a written acknowledgement from the condominium corporation, that the condominium corporation had previously confirmed they were satisfied with the state of the item based on the builder's repair or that the dispute relating to the item was otherwise resolved by the builder. As a result, the builder was completely satisfied that the item had been resolved and took no further action in respect of the item prior to the conciliation.

In addition to the above exceptions, Tarion maintains sole discretion to consider changing a finding of chargeability where the finding relates to an “Extraordinary Situation” as described in Appendix A to this Bulletin or where Tarion determines that the finding relates to an exceptional circumstance.

Common Elements

Are the Common Elements of a condominium corporation which are eligible for statutory warranties and for greater certainty excludes the Common Elements of a Common Elements condominium corporation or of a Vacant Land condominium corporation as described in s.15(c) of Act.

Condominium Project

Means the lands and interests appurtenant thereto that are described or proposed be described in any description required by the *Condominium Act* and which include or are proposed to include units to be used as “homes” as defined in the Act.

Declaration & Description

Both are disclosure documents under the *Condominium Act*. Among other things, they provide a description of the Common Element boundaries and list the ownership proportion allocated by unit.

Performance Audit

Means the performance audit of the Common Elements of the condominium project referred to in s.44 of the *Condominium Act*.

Performance Audit Tracking Summary

Means the Tarion document used to track the status of Common Elements warranty claims made to Tarion.

Registration Date of the Condominium Project

Is the date of registration of the Declaration and Description of the Condominium Project and is the warranty start date for the common elements.

Submit

Means to deliver Statutory Warranty Forms and other documents in accordance with the Regulations. Acceptable methods of delivery are by hand, courier, facsimile transmission or except during a general interruption of postal service, regular mail or registered mail. In the case of regular mail, delivery is effective on the postmark date as long as Tarion receives it within 10 days of the expiry of the applicable period. Registered mail is effective on the postmark date. Facsimile transmission is effective on the date sent whether or not it is a business day. Delivery by hand or courier is effective on the date Tarion receives it if it is a business day and otherwise on the next business day.

PROOF OF SUBMISSION AND DELIVERY

If there is a dispute concerning delivery, the onus is on the builder to establish when delivery occurred. To avoid confusion, builders are encouraged to use methods of delivery (such as registered mail or courier) which will ensure that the builder will have proof of delivery.

Warranty Assessment Report

Is a written report issued by Tarion following a conciliation setting out Tarion’s assessment on each item listed on a Common Elements Form, Tarion will set out whether the items are warranted and/or whether Tarion supports the method of repair performed by the builder, as applicable. A Warranty Assessment Report may indicate that further investigation is needed.

Warranty Claim

Means a claim made by a condominium corporation to Tarion regarding a common elements matter of a breach of a builder warranty prescribed by the Act.

Common Element Warranty Claim Form

Is the form required by Tarion to be completed and submitted to Tarion in order for a condominium corporation to make a statutory warranty claim. The Common Elements Forms include:

- First Year Common Elements Claim Form
- Second Year Common Elements Claim Form
- Major Structural Defect Common Elements Claim Form
- Performance Audit prepared in accordance with s.44 of the *Condominium Act*
- Common Elements Emergency Claim Form

THE COMMON ELEMENTS (CE) CLAIMS PROCESS

The condominium corporation is considered to be the owner of the Common Elements of a Condominium Project (Section 15 (a) of the *Ontario New Home Warranties Plan Act*) and is responsible for making statutory warranty claims to Tarion in respect of the Common Elements. Tarion will not accept CE Warranty Claims submitted by individual condominium unit owners.

The 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. The condominium corporation may contact its builder at any time and are encouraged to work with its builder to resolve warranty items. Tarion becomes involved in claims only at specific times as described below. However, Tarion may, at any time, conduct a conciliation if it determines that the parties are not acting reasonably to resolve warranty claims submitted to Tarion. Tarion is also available on an informal basis to provide information to the builder and to the condominium corporation at any time.

The time periods in the CE Claims Process are fixed in the Regulations but they may be adjusted in the following two sets of circumstances. In recognition of difficulties which builders may face in scheduling appointments with condominium corporations and/or performing work in the holiday period between December 24th and January 1st (inclusive) every year, any time period fixed in the CE Claims Process will be extended if any portion of the time period occurs during this holiday period. Time periods which would span, or would start or end during this holiday period will be extended by nine days and all related subsequent time periods will be adjusted so that they remain consecutive.

In addition, where a time period ends on a weekend or holiday, the time period is extended to end on the next business day which is not a holiday (i.e., where the time period to submit a Claim Form ends on a Sunday, the time period will be extended to end on the next Monday where Monday is not a holiday).

EXCEPTIONS TO THE CE CLAIMS PROCESS

Exceptions are certain situations where the CE Claims Process is modified to take into account special circumstances (i.e., Emergencies, Seasonal Items, and Industry/Regional Extraordinary Situations). See Appendix A for a detailed explanation of the Exceptions to the CE Claims Process.

Note that Tarion may in its sole discretion, extend or shorten any times set out in the CE Claims Process (including those described in Appendix A) if it determines that a builder is unable or unwilling to repair or resolve the claim items covered by a warranty or where Tarion determines that the builder is not acting reasonably to resolve the items listed on a warranty claim made to Tarion.

STEP 1: Making a Common Elements Warranty Claim

The condominium corporation is entitled to make a warranty claim to Tarion at the times specified in the Regulations and described below.

First Year CE Process

To make a CE warranty claim during the first year warranty period, a condominium corporation must submit a First Year Common Elements Form or a Performance Audit to Tarion with a Performance Audit Tracking Summary. The Performance Audit Tracking Summary must reference all items included on the First Year Common Elements Form or Performance Audit submitted to Tarion.

The Performance Audit Tracking Summary is a tool designed to track the progress of the items that the condominium corporation has submitted to Tarion as part of its warranty claim. Tarion will require periodic updates (usually every 90 days) from both the condominium corporation and the builder as to the status of each of the items listed in the Performance Audit Tracking Summary. In the event that the parties are not working to repair the items or otherwise resolve them in a reasonable and diligent manner, Tarion will hold a mandatory meeting with the condominium corporation and the builder which may result in Tarion scheduling a conciliation inspection.

If the condominium corporation does not submit a First Year Common Elements Claim Form or Performance Audit as described above by midnight on the first anniversary of the registration date of the Condominium Project, then Tarion will consider no further claims for first year warranty items. A condominium corporation may submit as many First Year Common Elements Claim Forms as required within the first year warranty period.

Second Year CE Process

To make a CE warranty claim during the second year warranty period, a condominium corporation must submit a Second Year Common Elements Form to Tarion with a Performance Audit Tracking Summary. The Performance Audit Tracking Summary must reference all items included on the Second Year Common Elements Form.

The Performance Audit Tracking Summary is a tool designed to track the progress of the items that the condominium corporation has submitted to Tarion as part of its warranty claim. Tarion will require periodic updates (usually every 90 days) from both the condominium corporation and the builder as to the status of each of the items listed in the Performance Audit Tracking Summary. In the event that the parties are not working to repair the items or otherwise resolve them in a reasonable and diligent manner, Tarion will hold a mandatory meeting with the condominium corporation and the builder which may result in Tarion scheduling a conciliation inspection.

If the Condominium corporation does not submit a Second Year Common Elements Claim Form or Performance Audit to Tarion by the second anniversary of the Registration Date of the Condominium Project, then Tarion will consider no further claims for second year warranty items (unless the second year warranty item has been previously identified in a First Year Common Elements Claim Form or a Performance Audit and the claim has not been withdrawn).

A condominium corporation may submit as many Second Year Common Elements Forms as required during the second year warranty period.

Years Three to Seven Process: Major Structural Defect (MSD)

At any time after the end of the second year, but no later than the expiry of the seven year anniversary of the Registration Date of the Condominium Project, a condominium corporation can make a Major Structural Defect Common Elements Warranty Claim. To do so, the condominium corporation must submit a Major Structural Defect Common Elements Claim Form to Tarion.

If the condominium corporation does not submit a Major Structural Defect Common Elements Claim Form to Tarion by the end of the seventh year from the Registration Date of the Condominium Project, then Tarion will consider no further claims regarding MSD warranty items.

STEP 2: Initial Builder Repair Period

For items listed on a First Year Common Elements Form, the builder has an initial repair period of up to 18 months from the first anniversary of the Registration Date of the Condominium Project to repair or otherwise resolve all warranted items.

For items listed on a Second Year Common Elements Form, the builder has an initial builder repair period of 6 months from the second anniversary of the Registration Date of the Condominium Project to repair or otherwise resolve all warranted items.

Note: The initial builder repair period ends on the same date for First Year Common Elements claims and Second Year Common Elements claim.

REASONABLE ACCESS FOR REPAIRS

The condominium corporation is required to provide the builder with reasonable access during regular business hours to complete repairs. Appointments should be scheduled at times that are mutually convenient to the builder and the condominium corporation at least 24 hours in advance.

Builders who seek to rely on a refusal of access as a basis for failing to repair warranted items must be able to show that they worked in good faith to arrange mutually convenient dates and times to conduct repairs with the condominium corporation. Builders must make reasonable efforts to accommodate condominium corporations in scheduling repairs. This will include making at least three attempts to schedule repair work during the repair period with sufficient notice to the condominium corporation. Notice should be in writing and builders should document their efforts to schedule repairs.

STEP 3: Condominium Corporation Request for Conciliation

If the builder does not repair or resolve all warranted items listed on either a First Year or Second Year Common Elements Claim Form during the initial builder repair period, the condominium corporation may contact Tarion and request a conciliation by completing the Common Element Request for Conciliation Claim Form at any time within 60 days following the end of the initial builder repair period.

When the condominium corporation requests a conciliation, Tarion will schedule a conciliation inspection appointment with the condominium corporation and notify the builder. The conciliation inspection will be scheduled between the 91st and 150th day from the date that the condominium corporation requests a conciliation.

The condominium corporation and the builder must pay the conciliation fees set out in Appendix B to this Bulletin.

If the condominium corporation does not request a conciliation during the applicable conciliation request period, the condominium corporation will be deemed to have withdrawn all claim items listed on the applicable Common Elements Forms. The condominium corporation may resubmit a Common Elements Claim Form at the applicable times for any items deemed to have been withdrawn if those items are still eligible for warranty at the date of re-submission.

STEP 4: Pre-Conciliation Repair Period

The builder has 90 days after the date the condominium corporation requests the conciliation to repair or resolve all of the claim items that are covered by a warranty.

STEP 5: Conciliation Process

Unless the condominium corporation requests that the conciliation be cancelled, Tarion will conduct a conciliation inspection at the scheduled date and time. The purpose of a conciliation inspection is to provide Tarion with the opportunity to inspect the items listed on the relevant Common Elements Request for Conciliation Claim Form and make a determination as to whether the items are warranted. In some cases, Tarion will request documentation and information from the condominium corporation and builder to assist in making that determination. Builders are invited to attend conciliation inspections and encouraged to provide assistance as may be required by Tarion.

Following the conciliation, Tarion will issue a Warranty Assessment Report to the condominium corporation and to the builder. The Warranty Assessment Report will set out Tarion's position on all items listed on the Common Elements Form that were not resolved at the time of the conciliation. If there are any items Tarion determines to be covered by warranty under the *Act*, it will be the builder's responsibility to correct them. In some cases, the Warranty Assessment Report may indicate that further investigation is needed.

If Tarion determines that at least one item in the Warranty Assessment Report is warranted, the conciliation will be a chargeable conciliation unless one of the exceptions set out on pg.2 of this Bulletin apply.

CONDUCT AT CONCILIATION OR CLAIM INSPECTION

All parties at a conciliation or a claim inspection are expected to act in a respectful, courteous and co-operative manner. Builders are expected to follow the direction of Tarion staff and be responsive to requests made by representatives of the condominium corporation. Tarion staff have full discretion to end a conciliation or a claim inspection in the event of disruptive activity by a participant (condominium corporation representative or builder).

To participate in the conciliation or claim inspection process, builders and condominium corporation representatives must abide by all policies issued by Tarion from time to time that relate to the conduct of these inspections, including policies relating to the taking of photographs and video or audio recordings.

STEP 6: Post-Conciliation Repair Period

If the Warranty Assessment Report finds any item to be warranted, the builder will be given one final opportunity to repair or resolve the warranted items. The builder will have a maximum of 90 days from the date when Tarion issues the Warranty Assessment Report to resolve all warranted items. For all items Tarion has found to be not warranted in the Warranty Assessment Report, Tarion will issue a Decision Letter to the condominium corporation setting out rights of appeal to the Licence Appeal Tribunal.

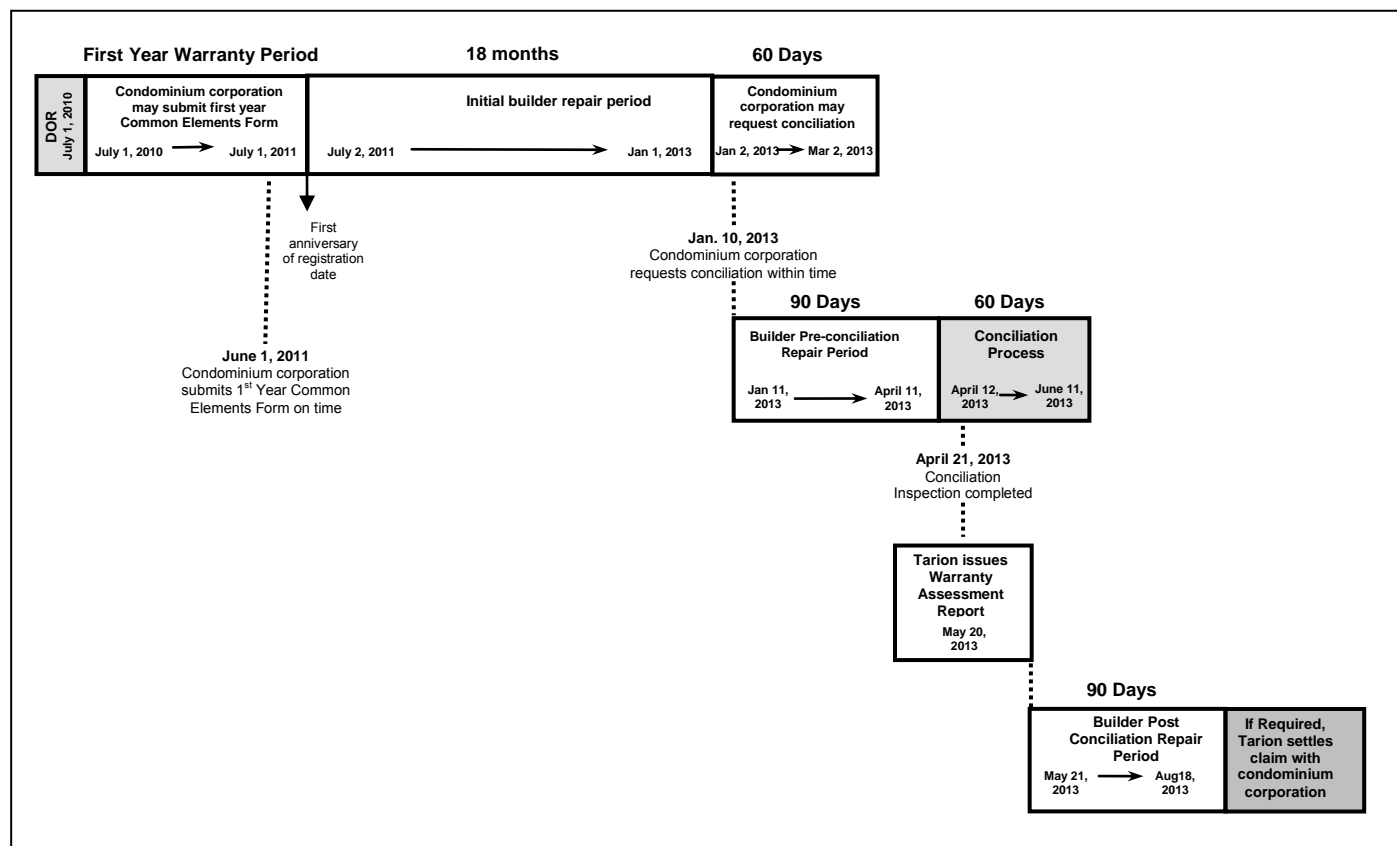
If the builder is unable to effect a repair due to a denial of access or due to a disagreement with the condominium corporation as to the method of repair, the builder must notify Tarion in writing of the issue prior to the expiry of the 90-day post-conciliation repair period.

STEP 7: Tarion Settles the Claim

If the builder has not completed repairs or otherwise resolved all items covered by warranty within 90 days of the date when Tarion issues the Warranty Assessment Report, Tarion will settle the remaining warranted items directly with the condominium corporation. This may involve a claim inspection at the Condominium Project, and if so, the builder will be notified in writing of the date and time of the claim inspection. Tarion will make payment out of the guarantee fund directly to the condominium corporation or perform or arrange for the performance or any work and invoice the builder for the amount of the compensation or cost of work plus an administration fee of 15 per cent and applicable taxes.

EXAMPLE #1 – CE CLAIMS PROCESS FOR A FIRST YEAR CLAIM

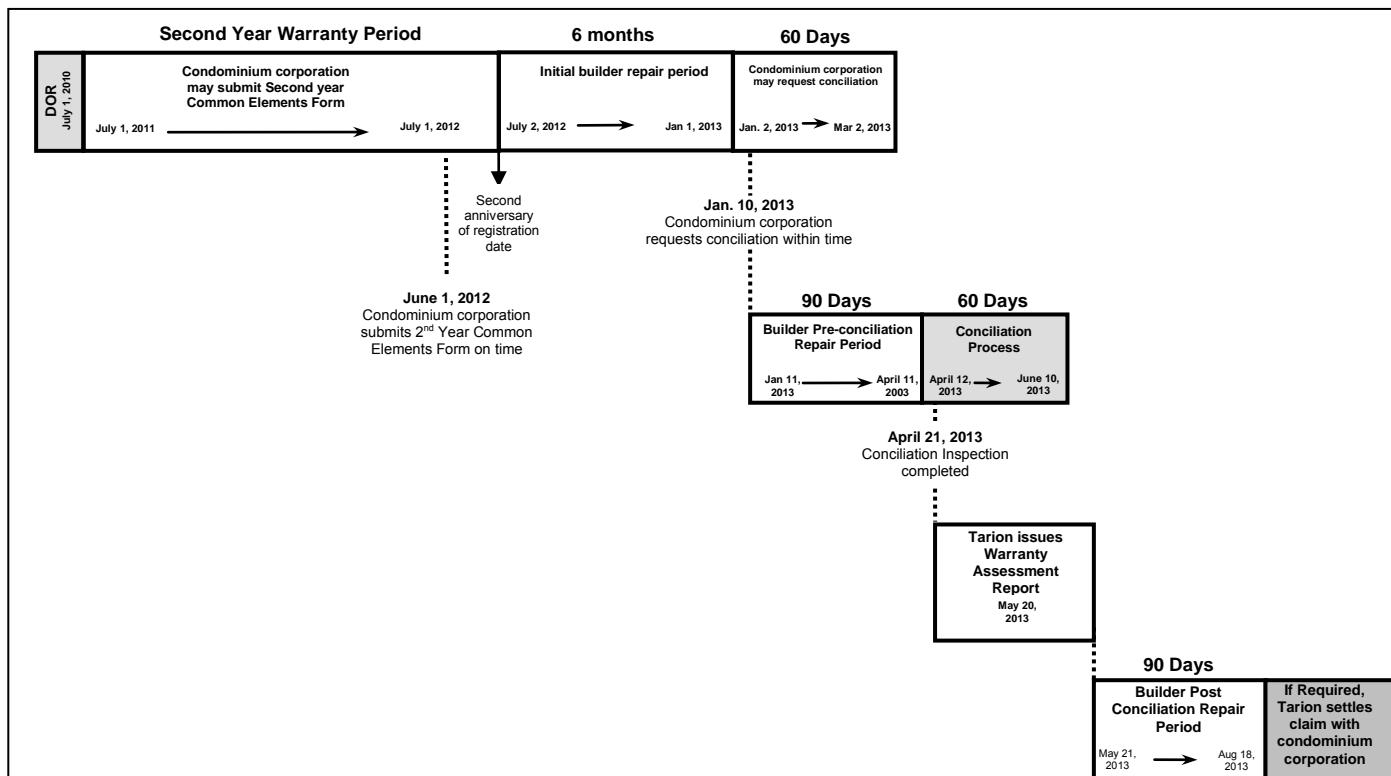
This example illustrates the Common Elements claims process that would apply where a condominium corporation submits a First Year Common Elements Form and the Condominium Project registration date is July 1, 2010.



1. The condominium corporation submits a First Year Common Elements Form within the first year warranty period following the Registration Date of the Condominium Project which is the period between July 1, 2010 and July 1, 2011 inclusive. The condominium corporation in this example submits a First Year Common Elements Form on June 1, 2011.
2. The initial builder repair period starts on the first anniversary of the Registration Date of the Condominium Project and lasts for 18 months. In this example, the initial builder repair period ends on January 1, 2013.
3. The condominium corporation may request conciliation at any time during the 60 day period which begins on January 2, 2013. In this example, the condominium corporation requests a Conciliation on January 10, 2013 and Tarion schedules the conciliation inspection on April 21, 2013.
4. The builder has 90 days after the condominium corporation requests a conciliation to resolve any outstanding warranty items submitted on the First Year Common Elements Form before the conciliation inspection takes place. In this example, the builder pre-conciliation repair period is between January 11, 2013 and April 11, 2013.
5. Tarion conducts the conciliation inspection on April 21, 2013 and issues a Warranty Assessment Report on May 20, 2013.
6. The builder has a final post conciliation repair period of 90 days from the date of the Warranty Assessment Report to resolve all warranted items. If the builder fails to resolve all warranted items by the end of the 90 day post conciliation repair period, Tarion will settle those items directly with the condominium corporation.

EXAMPLE #2 – CE CLAIMS PROCESS FOR A SECOND YEAR CLAIM

This example illustrates the Common Elements claims process that would apply where a condominium corporation submits a Second Year Common Elements Form and the Condominium Project registration date is July 1, 2010.



1. The condominium corporation submits a Second Year Common Elements Form within the second year warranty period following the Registration Date of the Condominium Project which is anytime between July 1, 2011 and July 1, 2012 inclusive. The condominium corporation in this example submits a Second Year Common Elements Form on June 1, 2012.
2. The initial builder repair period starts on the second anniversary of the Registration Date of the Condominium Project and lasts for 6 months. In this example, the initial builder repair period ends on January 1, 2013.
3. The condominium corporation may request conciliation at any time during the 60 day period which begins on January 2, 2013. In this example, the condominium corporation requests a conciliation on January 10, 2013 and Tarion schedules the conciliation inspection on April 21, 2013.
4. The builder has 90 days after the condominium corporation requests a conciliation to resolve any outstanding warranty items submitted on the Second Year Common Elements Form before the conciliation inspection takes place. In this example, the builder pre-conciliation repair period is between January 11, 2013 and April 11, 2013.
5. Tarion conducts the conciliation inspection on April 21, 2013 and issues a Warranty Assessment Report on May 20, 2013.
6. The builder has a final post conciliation repair period of 90 days from the date of the Warranty Assessment Report to resolve all warranted items. If the builder fails to resolve all warranted items by the end of the 90 day post conciliation repair period, Tarion will settle those items directly with the condominium corporation.

BUILDER ARBITRATION FORUM

A builder who disagrees with Tarion's determination of warrantability or chargeability in a Warranty Assessment Report may be eligible to request an arbitration under the Builder Arbitration Forum. An arbitration request may only be made by registered builders who attended the conciliation inspection and must be made within 28 days of receiving the Warranty Assessment Report. For full eligibility requirements and other information, please refer to Builder Bulletin 41: Builder Arbitration Forum.

APPENDIX A: EXCEPTIONS TO THE CE CLAIMS PROCESS

The CE Claims Process and timelines apply to all Common Elements warranty claims except those set out in this section. Under the Exceptions, the CE Claims Process will be adjusted for the following situations.

1. Emergencies

An emergency warranty situation is any situation that occurs within the warranty period and involves a warranted item that if not attended to immediately, in the opinion of Tarion, would likely: result in substantial damage to the Common Elements; represent a substantial risk to the health and safety of any occupants of the Condominium Project; or result in one or more homes in the Condominium Project being uninhabitable.

An emergency include(s) the following situations as they relate to one or more homes:

- Complete loss of heat between September 15 and May 15;
- Complete loss of air conditioning between May 15 and September 15;
- Gas leak;
- Complete loss of electricity;
- Complete loss of water;
- Complete stoppage of sewage disposal;

An emergency also include(s) the following situations:

- Plumbing leak that requires the entire water supply to be shut off;
- Major collapse of any part of the Condominium Project exterior or interior structure;
- Major water penetration on the walls or ceilings of Common Elements;
- A large pool of standing water upon or within the Common Elements, or any portion thereof; and could impact critical use or be considered a health & safety issue;
- Loss of use of all elevators.

Damage that is excluded from warranty (for example, municipal or utility service failures or 'acts of God'), would therefore not be an "emergency" warranty situation.

Emergency Procedure

1. A condominium corporation that believes there is an emergency situation should contact the builder first. The condominium corporation should follow the builder's instructions in attempting to handle the emergency situation.
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. Full repair of the defect in accordance with the builder's warranty obligations may take longer to complete once the initial emergency has been dealt with. Builders are required to complete the full repair (including repairing any damage to builder installed materials) in accordance with their warranty obligations as soon as possible and no later than 30 days from the date that the condominium corporation reported the emergency.

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 may contact Tarion for further direction. Tarion will determine (usually by phone) whether there is an emergency situation or if the item should be added to the condominium corporations next Statutory Common Elements Form. If Tarion concludes that there is a warranted emergency situation, Tarion will first try to contact the builder. If Tarion is unable to contact the builder or the builder is unwilling or unable to resolve the warranted emergency item, Tarion will instruct the condominium corporation 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. If the condominium corporation is unable to contact the builder and Tarion and the condominium corporation believes there is a warranted emergency, the condominium corporation may, without jeopardizing its warranty rights, perform or arrange for the performance of repairs necessary to correct the warranted emergency only. Tarion will only reimburse the condominium corporation for the cost of repairing warranted items.
5. If the condominium corporation has arranged to have the emergency repairs done and wishes to be reimbursed, the condominium corporation is required to obtain a Common Elements Emergency Form (available from Tarion by calling 1-877-982-7466 or from the Tarion website), and to submit to Tarion and the builder the completed Emergency Form along with all required supporting documents (i.e., receipts, photographs of the damage and repair if available).
6. Within 10 days of receipt of the completed Emergency Form, Tarion will contact the builder to determine whether the builder has reimbursed the condominium corporation. If the builder has not reimbursed the condominium corporation for all expenses incurred to correct the emergency, Tarion will conduct a conciliation and issue a Warranty Assessment Report to the condominium corporation and the builder. If Tarion identifies any emergency item as warranted in the Warranty Assessment Report, the conciliation will be considered chargeable.
7. Tarion will notify the builder that the builder has 30 days to reimburse the condominium corporation for their reasonable costs associated with the warranted repairs undertaken and to complete repairs to damaged builder installed materials, as documented in the Emergency Form and confirmed by Tarion in the Warranty Assessment Report.
8. If the builder fails to reimburse the condominium corporation, Tarion will settle directly with the condominium corporation and make payment to the condominium corporation out of the guarantee fund. The builder will be invoiced for the amount of the compensation paid plus an administration fee of 15 per cent and any applicable taxes.

2. Seasonal Items

If any warranted item listed on a Statutory Warranty Form submitted to Tarion involve the exterior of the Common Elements which cannot be repaired effectively within the normal CE Claims process due to weather constraints, Tarion in its sole discretion may extend or abridge the CE Claims process timelines.

3. Industry/Regional Extraordinary Situations

Industry/Regional Extraordinary Situations may require an extension of the applicable builder repair period for a part of the construction industry, a region, or the entire province. Examples include:

- An irregular (i.e., not ongoing or “normal”) labour or trade shortage;
- An irregular (i.e., not ongoing or “normal”) shortage of work material;
- Strikes or other serious labour disruptions; and
- Severe weather or other ‘acts of God’.

Procedure for Industry/Regional Extraordinary Situations

The Procedure for Industry/Regional Extraordinary Situations is as follows:

1. A potential Industry/Regional Extraordinary Situation may be brought to the attention of Tarion's Vice President of Claims by a written notice from a builder, from the OHBA or from a local Home Builders' Association;
2. Tarion will thoroughly review the information, and may require additional documentation to assess the situation;
3. If Tarion confirms that an Industry/Regional Extraordinary Situation exists or is about to occur, Tarion will issue a written Warranty Alert to all builders affected. The Alert will describe the nature of the event; which regions, industries, or types of warranties are affected; and in what circumstances the permitted extension will apply to the relevant builder repair periods; and
4. A builder who is affected by the Industry/Regional Extraordinary Situation and wishes to apply the extended builder repair period provided in the Warranty Alert is required to provide written notice to the affected condominium corporation as soon as possible. The notice must be delivered before the expiry of the applicable builder repair periods, and no later than 10 days from receipt of the Alert. The notice must include an explanation of why the extension is required for the particular condominium corporation and the number of days that the builder repair period has been extended due to the Alert. The standard builder repair periods in the CE Claims Process will continue to apply to builders who do not provide this notice to their condominium corporations.

APPENDIX B: CONCILIATION FEES

The fee payable by a condominium corporation as the owner of Common Elements for a conciliation	\$1,000
The fee payable by the vendor of Common Elements for a conciliation	\$3,000



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Glass Panels in Balcony Guards – Expert Panel Report, Amendment and FAQ

Ontario's Building Code has been amended to address the issue of balcony glass breaking on newly constructed buildings. The government has adopted all of the recommendations of the Expert Advisory Panel on Glass Panels in Balcony Guards.

The government has amended Ontario's Building Code to provide requirements related to the design and installation of glass balcony guards, including the type of glass that can be used and how they can be framed.

The new amendment comes into force on July 1, 2012 and makes reference to a new [Supplementary Standard SB-13, "Glass in Guards"](#)*.

These changes are intended to help minimize the likelihood that balcony glass will break on newly constructed buildings and help reduce the chance of broken pieces falling to the ground below if balcony glass does break. These measures are intended as an interim solution. As a longer-term strategy, the government will support the work of the [Canadian Standards Association](#) in the development of a technical standard for glass panels in balcony guards. Once this standard is finalized, the ministry will consider referencing it in the Building Code.

In response to requests — including one from the City of Toronto for an emergency Code amendment — the Ministry of Municipal Affairs and Housing established an Expert Advisory Panel on Glass Panels in Balcony Guards to review the Building Code requirements for balcony guards. The Panel submitted a [report](#) which included seven recommendations to the ministry on how to amend the Building Code.

The ministry has acted quickly on the Report and has [amended the Building Code](#) to implement the interim solution recommended by the Panel.

[Read our FAQs.](#)

*This resource is available in English only.

[Expert Panel Report](#)

[Supplementary Standard SB-13, "Glass in Guards" - pdf](#) *

[Page 13 of Supplementary Standard SA-1 - pdf](#) *

[FAQs](#)

[Ontario Strengthens Requirements for Balcony Glass - Ontario Newsroom](#)

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FAQ

What is the Expert Advisory Panel on Glass Panels in Balcony Guards?

In summer 2011, there were several incidents of falling balcony glass in the City of Toronto.

The City of Toronto requested that Ontario make an emergency amendment to the Building Code in order to help reduce the likelihood of more glass falling from newly constructed buildings.

In winter 2011, the Ministry of Municipal Affairs and Housing, which oversees the development of Ontario's Building Code, established the Expert Advisory Panel on Glass Panels in Balcony Guards.

The Panel was composed of 25 members from various stakeholder organizations including: engineering consultants, building code consultants, developers and contractors, professional designers, building inspectors and municipal officials, the insurance sector, and codes and standards writing bodies.

The Panel was asked to review the existing requirements for glass panels in balcony guards and to recommend whether and how to amend the Building Code. They issued a [report](#) which included seven recommendations to the ministry for consideration.

The government has accepted all of the recommendations and has amended Ontario's Building Code to incorporate a new [Supplementary Standard](#) related to the design and installation of glass balcony guards.

What were the recommendations?

The Expert Advisory Panel recommended that the Building Code be amended to require specific types of glass be used and installed in a prescribed manner dependent on where the glass balcony guard is located on a balcony.

[Read the Expert Advisory Panel's Report.](#)

What does this amendment mean?

The amendment means that there are new requirements that builders must adhere to when using glass in balcony guards.

The amendment specifies the type of glass that must be used depending on whether the glass is set in from the edge of a balcony or protrudes over the edge and how it must be installed.

The types of glass now prescribed within the Building Code for use in glass balcony guards (6 mm tempered glass, heat-strengthened laminated glass and heat-soaked tempered glass) are already being manufactured. These types of glass are less likely to break due to force or temperature variances. In the event that these types of glass do shatter they are manufactured to break into very small pieces and/or remain within the framing (like a car windshield).

Will this amendment increase building costs?

Estimates suggest that this amendment will increase the cost of an average condominium unit by less than one per cent.

How will this amendment impact buildings already under construction?

The amendment will not impact buildings already under construction.

Builders who receive building permits on July 1, 2012 or after will be required to comply with the amendment.

Why isn't this change retroactive for all buildings?

The Building Code applies only to new construction and major renovations. It does not generally apply to existing buildings. Existing buildings are not required to be retrofitted to new requirements.

The cost implications to the building industry, including condominium boards, to replace all existing glass balcony guards would be significant and the instances of tempered glass breaking are rare.

It is important to remember that Municipalities currently have the authority to inspect and issue work orders where necessary where they determine buildings are unsafe – and the City of Toronto has used this authority when dealing with the failure of glass balcony guards.

Why is this considered only an “interim solution”?

The ministry wanted to work quickly to provide a solution that would help enhance public safety while being technically sound and reasonably cost-effective. This “interim solution” will increase the safety of glass balcony guards immediately while the government participates in further technical research.

The government will support the work of the Canadian Standards Association in the development of a technical standard for glass panels in balcony guards. Once this standard is finalized, the ministry will consider referencing it in the Building Code.

CSA's goal is to release this new Standard within a 24- to 36-month timeframe at which time the ministry will consider referencing the standard. This was a recommendation of the Expert Advisory Panel.

What should I do if I think my balcony is unsafe?

Owners of existing condo units should discuss any concerns they may have with their condo board or with their [municipal](#) building officials.

Going forward, the Code amendments will help increase the safety of glass balcony guards in all new construction. These requirements are not applicable to existing buildings.

In addition, municipalities have the ability under the Building Code Act, 1992 to address unsafe conditions in existing buildings. This includes carrying out inspections and issuing work orders to remedy unsafe conditions that have been identified. The City of Toronto, for example, has used these powers to address the issue of balcony glass failures in several buildings.

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Supplementary Standard SB-13

Glass in Guards

June 12, 2012

COMMENCEMENT

Supplementary Standard SB-13 comes into force on the 1st day of July 2012.

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SB-13 Glass in Guards

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 - 1.1.1. Application of Supplementary Standard SB-13
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 - 1.3.1. Referenced Documents
- Section 2.1. Glass
 - 2.1.1. Selection of Glass in a Guard
- Section 3.1. Structural Design
 - 3.1.1. Design Requirements

Introduction

The prescriptive requirements for the design and construction of glass in guards in this Supplementary Standard are intended to reduce the probability of:

- (a) breakage of glass panels; and
- (b) injury to persons in the vicinity of a building as a result of falling broken glass.

Ontario's Building Code is written in an objective-based format to facilitate and encourage the use of alternative solutions to the prescriptive solutions contained in Division B of the Building Code and the standards referenced by the Code. Therefore, it is expected that the prescriptive-based solutions in this Supplementary Standard will form the benchmark for evaluating alternative solutions, including matrix-based risk assessment solutions. This approach will continue to allow for some flexibility and design choice for architects, engineers, developers, and the construction industry.

This Supplementary Standard is referenced by Sentence 3.1.20.1.(1) of Division B of the Building Code.

Section 1.1. General

1.1.1. Application of Supplementary Standard SB-13

1.1.1.1. Application

(1) Except as provided in Sentence (2), this Supplementary Standard applies to glass used in interior and exterior *guards* in *buildings* described in Sentence 1.1.2.2.(1) of Division A of the *Building Code*.

(2) This Supplementary Standard does not apply to glass used in *guards* at locations referred to in Sentence 3.3.4.7.(1) of Division B of the *Building Code*.

Section 1.2. Terms and Abbreviations

1.2.1. Definitions of Words and Phrases

1.2.1.1. Non-defined Terms

(1) Definitions of words and phrases used in this Supplementary Standard that are not included in the list of definitions in Articles 1.4.1.2. and 1.4.1.3. of Division A of the *Building Code* and are not defined in another provision of the Code shall have the meanings that are commonly assigned to them in the context in which they are used, taking into account the specialized use of terms by the various trades and professions to which the terminology applies.

1.2.1.2. Defined Terms

(1) Each of the words and terms in italics in this Supplementary Standard has the same meaning as in Subsection 1(1) of the *Building Code Act, 1992* or Clause 1.4.1.2.(1)(b) of Division A of the *Building Code*.

1.2.2. Symbols and Other Abbreviations

1.2.2.1. Symbols and Other Abbreviations

(1) Where used in this Supplementary Standard, a symbol or abbreviation listed in Column 1 of Table 1.4.2.1. of Division A of the *Building Code* shall have the meaning listed opposite it in Column 2.

Section 1.3. Referenced Documents and Organizations

1.3.1. Referenced Documents

1.3.1.1. Effective Date

(1) Unless otherwise specified in this Supplementary Standard, the documents referenced in this Supplementary Standard shall include all amendments, revisions and supplements effective to April 30, 2012.

1.3.1.2. Applicable Editions

(1) Where documents are referenced in this Supplementary Standard, they shall be the editions designated in Column 2 of Table 1.3.1.2.

Table 1.3.1.2.
Referenced Documents
Forming Part of Sentence 1.3.1.2.(1)

Issuing Agency	Document Number	Title of Document	Supplementary Standard Reference
DIN	DIN EN 14179-1 September 2005	Heat Soaked Thermally Toughened Soda Lime Silicate Safety Glass	2.1.1.3.(1)
Column 1	2	3	4

Notes to Table 1.3.1.2.:

(1) DIN refers to the "Deutsches Institut für Normung e. V. ". In English, DIN means the German Institute for Standardization. (See Appendix A.)

Section 2.1. Glass

2.1.1. Selection of Glass in a Guard

2.1.1.1. Safety Glass

- (1) Glass other than safety glass shall not be used in a *guard*.
- (2) Glass in a *guard* shall conform to Table 2.1.1.1.

Table 2.1.1.1.
Selection of Glass in a Guard
Forming Part of Sentence 2.1.1.1.(2)

Location of Glass in a <i>Guard</i>	Type of Glass Required
Glass located beyond the edge of a floor or within 50 mm of the edge of a floor	Heat strengthened laminated glass
Glass located more than 50 mm inward from the edge of a floor	Heat strengthened laminated glass
	Heat soaked tempered glass
Glass located more than 150 mm inward from the edge of a floor	Heat strengthened laminated glass
	Heat soaked tempered glass
	Tempered glass not more than 6 mm thick
Column 1	2

2.1.1.2. Laminated Glass

(1) Laminated glass shall be designed, fabricated, and installed so that, in the event of failure of the glass, the glass does not dislodge from the support framing.

2.1.1.3. Heat Soaked Tempered Glass

(1) Heat soaked tempered glass shall conform to DIN EN 14179-1, “Heat Soaked Thermally Toughened Soda Lime Silicate Safety Glass”. (See Appendix A.)

Section 3.1. Structural Design

3.1.1. Design Requirements

3.1.1.1. Structural Design

(1) Glass in a *guard* shall conform to the requirements of Part 4 of Division B of the *Building Code*. (See Appendix A.)

(2) Glass in a *guard* shall not be in direct contact with any metal or similar hard elements forming part of the *guard* or supporting structure.

(3) Sufficient allowances shall be incorporated for glass in a *guard* to permit,

- (a) deflection and movement under loads, and
- (b) expansion and contraction due to temperature changes.

Appendix A

Explanatory Material for SB-13

Appendix A to this Supplementary Standard is included for explanatory purposes only and does not form part of the requirements. The bold-faced reference numbers that introduce each item apply to the requirements in this Supplementary Standard.

A-Table 1.3.1.2. DIN - Deutsches Institut für Normung e. V. (German Institute for Standardization).

Name	Address	Contact
DIN	DIN Deutsches Institut für Normung e. V. Am DIN-Platz Burggrafenstraße 6 10787 Berlin Germany	Phone: +49 30 2601-0 Fax: +49 30 2601-1231 web site: http://www.din.de
Column 1	2	3

A-2.1.1.3.(1) Heat Soaked Tempered Glass.

Heat soaked tempered glass is glass within which a permanent surface compressive stress has been induced in order to give it greatly increased resistance to mechanical and thermal stress and prescribed fragmentation characteristics and which has a known level of residual risk of spontaneous breakage due to the presence of critical nickel sulphide (NiS) inclusions. DIN EN 14179-1 is a European standard that specifies the heat soak process system together with tolerances, flatness, edgework, fragmentation and physical and mechanical characteristics of monolithic flat heat soaked thermally toughened soda lime silicate safety glass for use in buildings.

A-3.1.1.1.(1) Structural Design.

Part 4 of Division B of the Building Code applies to buildings described in Sentence 1.1.2.2.(1) of Division A of the Building Code. When considering the load combinations on exterior balcony guards, Part 4 requires that the live load should be considered in combination with the wind load. Refer to Table 4.1.3.2. of Division B of the Building Code for the relevant load combinations. Case 2, with the full live load coupled with a reduced wind load (via the 0.4 factor) is a plausible scenario. It is also plausible that some fraction of the live load may be present during the design wind event as per the load combination in case 4. Therefore, the live load needs to be considered in combination with the wind load via the load combinations in cases 2 and 4. The wind load, when combined with the live load, should be the outward wind load (i.e.: acting as a suction load on the guard) that is applied in combination with the outward guard load, and, as a separate case, the inward wind load (i.e.: acting as a pressure load on the guard) that is applied in combination with the inward guard load.