



ROBINS APPLEBY
BARRISTERS + SOLICITORS

Builder Update-Tarion Unavoidable Delay Notices

Tarion has confirmed in its recent [bulletins](#) that it considers the recent outbreak of the Covid-19 coronavirus as a "pandemic" and therefore, a force majeure event allowing the vendor to extend critical dates due to an "Unavoidable Delay". It is important to note, however, that Tarion's confirmation that there is a global pandemic does not, in and of itself, allow vendors to extend critical dates under the Tarion Statement of Critical Dates. Vendors must demonstrate in their first notice how the pandemic has in fact caused a delay that would impact on the delivery of the units on the projected occupancy date. This determination must be made on a case-by-case basis and will depend on the stage of construction of each project.

For builders that are currently in the construction stage, their government approvals may be delayed extending their construction start date, or construction timelines may be delayed when certain trades may stop working, or if there is a shortage in the supply of materials. In circumstances, however, where a project is early in the construction stage and workers are continuing to work, there is no reason or basis for seeking an extension.

For projects that are near completion, the pandemic may prevent vendors from obtaining occupancy permits from municipalities that would allow them to turn over units lawfully to purchasers, or inspectors may be unavailable to inspect a certain stage of work before permits can be obtained, which would both be legitimate reasons for invoking the force majeure clause.

In respect of those units that are ready for turnover to purchasers, Tarion has specifically advised that it is not a requirement that PDI inspections occur in the presence of both the builder and the homeowner prior to an Occupancy closing and in the event a homeowner and builder cannot agree on a manner of safely conducting the PDI Inspection, Tarion has made some recommendations on how a builder can conduct the PDI on behalf of the homeowner.

Accordingly, each vendor must look at the circumstances surrounding a project in terms of its construction process or lawful occupancy and then make a decision whether or not they can extend because they have a legitimate delay.

Once a determination can be made by a vendor that the pandemic will in fact impact the construction and/or the projected Occupancy date of a project, the vendor has 20 days to send out the first notice advising purchasers of the nature of the delay.

This bulletin is intended for general information only. Builders should seek advice from their own lawyers regarding each specific project situation. Robins Appleby would be pleased to assist any builder in reviewing the impact of the Corona - 19 Virus on any specific project, and putting together the appropriate First Notice.

Please contact Tara Welat or Leor Margulies at the addresses/phone numbers below for further assistance.

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