New Home Warranty
Program of Manitoba Inc.

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Conciliation Guide

Purpose

This guide will assist all parties, including the conciliator, as to rights, responsibilities, and expectations during the conciliation and after conciliation. This guide is written in a manner that speaks directly to the homeowner considering it is the homeowner that will make a request for conciliation in almost all circumstances. However, the information contained herein is applicable for all parties and builders will find it useful in how to respond to a request for conciliation, how to prepare for conciliation, etc.

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I What is Conciliation and Why is it Used?

Conciliation is a final and binding dispute resolution process undertaken by a 3rd party professional that is used to resolve a dispute concerning one or more items of a warranty claim, when general mediation of the warranty claim by the Program does not resolve the dispute. The conciliator conducts a thorough investigation and issues a report that outlines the rights and obligations of the builder and the homeowner and sets out the remedial work, if any, required to settle the dispute in accordance with the terms of the warranty. A dispute occurs when either party disagrees as to coverage or the scope of the repairs.

An item is disputed if the builder and homeowner disagree in the fulfillment of warranty obligations by the builder. Conciliation may be used for the following:

- Dispute over coverage eligibility ("My floor has dents but the Builder says it is not covered and will not fix it")
- Dispute concerning the scope of suggested repairs (e.g. repair versus replacement; glue versus nail)
- Lack of communication from the Builder as to their position where the homeowner does not have a clear understanding of the commitment of the builder.

Conciliation DOES NOT take the place of the initial warranty claim review and mediation process that occurs when a warranty claim is received by the Program. Conciliation is an 'advanced' more formalized process that EXCLUDES the opinion of the Program (thereby removing any possible or perceived bias) and places the responsibility of decision making on a 3rd party that has no connection to the Program.

It is important to consider that the possession certificate is a contract between the purchaser (homeowner) and the builder which outlines the parameters of the warranty and the rights, responsibilities, and obligations of both parties. The builder is responsible for issuing this certificate to the purchaser. The Program acts an arms-length mediator and administrator of this warranty, providing advice concerning the warrantability of alleged defects. This mediation resolves nearly all disputes, but occasionally either party may continue to disagree. Conciliation provides the homeowner or the builder the right to challenge the position of the opposing party – regardless of any evaluation provided by the Program.

In our experience, the conciliator agrees with our evaluation nearly 95% of the time since the conciliator must make decisions based on the same terms and conditions as the Program. Let's use the following 3 alleged defects as an example.

1. Nail/screw pops throughout the house

WARRANTY

3. In no circumstances does this Warranty require the Builder to undertake or effect repairs to or in relation to:
   c) nail pops, seam lines and variations in drywall surfaces;

2. Small hairline crack in basement concrete floor

WARRANTY

3. In no circumstances does this Warranty require the Builder to undertake or effect repairs to or in relation to:
   d) cracks in plaster, drywall, masonry, stucco and concrete (including basement and garage floors) provided the cracks are within the normal tolerances established by the Program from time to time;

CONSTRUCTION PERFORMANCE STANDARD 1.5 Concrete Basement Floor Is Cracked

Acceptable Performance/Condition
Cracks exceeding 9 mm (3/8 inch) in width or vertical displacement are considered excessive.

Warranty
One-Year Work and Materials (Cracks resulting from normal shrinkage of materials caused by drying after construction are excluded from the warranty).

Action
Cracks in excess of the acceptable condition shall be repaired.

3. Bedroom window is leaking when it rains

MANITOBA BUILDING CODE 9.7.3.1

1) Except as provided in Sentences (2) to (4), windows, doors and skylights and their components separating conditioned space from unconditioned space or the exterior shall be designed, constructed and installed so that, when in the closed position, they a) resist the ingress of precipitation into interior space

CONSTRUCTION PERFORMANCE STANDARD 3.7 WINDOW UNIT LEAKS DURING RAIN

Acceptable Performance/Condition

Windows shall not allow water penetration under normal weather conditions when properly closed. Windows are rated for air infiltration, water leakage and wind loads and should meet the Building Code standards for the weather location.

Warranty

One-Year Work and Materials (Damage caused by improper maintenance or an act of nature is excluded from the warranty.)

Action

Defective windows that leak shall be repaired or replaced.

In most cases, the builder is not going to fix a nail pop or small crack in the basement floor, as they are aware that they are not required to under warranty. However, in some cases they may choose to do the repair 'as a courtesy', which is outside the terms of warranty. In the case of a window leak, however, the building code and construction standards are clear that this issue is covered.

YES – a homeowner may choose to go to conciliation regarding a nail pop or tiny concrete floor crack. However, given the information above (where there is no room for interpretation), the conciliator will agree with our assessment. This will result in the loss of the deposit paid by the homeowner.

Conciliation is best used for more complicated disputed issues. For example:

- The Manitoba Building Code conflicts with requirements of the Authority Having Jurisdiction
- Parties disagree as to how to measure something to determine compliance
- Disagreement in the interpretation or applicability of the Manitoba Building Code or Construction Performance Standards; information is vague
- The issue is unique or complicated and requires professional scrutiny
- Disagreement as to whether the issue conforms with the definition of "Defect in Workmanship and Materials" under the Warranty.
- Parties agree that the defect is covered but disagree to the scope of the repair (e.g. flooring is defective in certain areas; builder suggests fixing affected areas, but homeowner wants all flooring replaced)
- Builder refuses to do repairs despite there being clear indication that the issue is covered under warranty (e.g. window is clearly leaking when it rains).

The above are guidelines based on the Program's experience and knowledge of the warranty and does not take the place of the party's decision to request conciliation. Any legitimate request for conciliation within the terms of warranty must be honoured by the Program regardless of our evaluation or perspective on the matter.

II Conciliation Limitations and Deadlines

Conciliation may only be used where the claim has been duly received pursuant to section 18 of the Warranty and may only include items claimed within the applicable coverage periods that fall within the terms of warranty.

Conciliation may not be used for:

- disputes concerning 'major structural defects'.
- delays in the scheduling or the completion of repairs where the actions of the builder to remedy the defect are clearly not disputed. (e.g. "my builder is working on fixing my flooring but it's taking longer than expected")
- contractual disputes (e.g. "my living room has carpet but my contract stipulates vinyl plank flooring") Section 5 of the front side of the Warranty indicates, *Settlement of contractual disputes between Builder and Purchaser are not part of the Warranty.*
- uncomplete/missing items (e.g. window screens are missing; the builder has not yet completed the stucco) Section 4 of the front side of the Warranty indicates, *uncompleted items will not be completed by the New Home Warranty Program of Manitoba Inc. and unless completed by the Builder are not covered by the conditions of the Warranty.*
- issues not related to the construction of the home (the builder has not credited my GST rebate)
- exclusions to the warranty per section 1.

  any pool, parking facility, common recreational area, site grading and surface drainage, landscaping, shrubbery, flowers, trees, patios, driveways, garage slabs or carport slabs, sidewalks, retaining walls, wells and attached water systems, septic tanks or fields, detached garages or detached carports, or outbuildings.

Conciliation Deadline

Refer to your type of warranty (5-Year versus 7-Year) for coverage limitations and deadlines. A request for conciliation must be made in writing directly to the Program:

1 and 5 Warranty (this is the standard warranty)

- No later than 1 year and 60 days of the Date of Possession under section 2.a of the Warranty

1, 2 and 7 Warranty

- No later than 1 year and 60 days of the Date of Possession under section 2.a of the Warranty
- No later than 2 years and 60 days of the Date of Possession under section 2.b of the Warranty.

Once the Program receives the homeowner's request, the Program may require that a formal Request for Conciliation form be signed and returned with the applicable application fee deposit **within a specified deadline**. Please read more under Request for Conciliation Paperwork.



Once the deadline for conciliation has expired, a request for conciliation will not be accepted by the Program. The conciliation deadline cannot be extended by the Program.

What to do when the deadline for conciliation is approaching and repairs are outstanding

1) Review your communication with the builder on all items that you have submitted under your claim and be sure you and/or the Program have clear written indication that the builder agrees to repair the items you feel are covered, paying close attention to any evaluation provided by the Program.
2) Review evaluation comments from your claim representative concerning disputed items. If the representative advises that an item is not covered and you do not understand why, ask for clarification.
3) If you still feel strongly there are items that should be covered (disputed by the builder) or where you do not have a formal commitment from the builder to affect repairs, provide a notice to the Program in writing advising, "I wish to proceed with conciliation regarding "Disputed Item(s)".
4) We will contact the builder to advise. Should the builder be willing to revisit the matter, we will pause your request while you and the builder resume discussions, with the Program providing additional guidance as to the legitimacy of the item(s) as it relates to coverage under warranty.
5) If the builder maintains their position and you wish to proceed, we will require a Request for Conciliation document and deposit to formally initiate the conciliation.

What if some items are still being evaluated by the builder and we have not yet reached a point of dispute, or the builder is being vague in their commitment?

Sometimes a builder will provide a generic answer to your claim such as, "I will address all warranty items", or "I will investigate these items", or "this item is minor, but can be addressed". Or possibly there is a difficult matter that legitimately does require more investigation such as review by the manufacture. While the Program will do our best to discuss these claimed items with both parties and provide guidance on warrantability, this DOES NOT take the place of the builder's position in the matter. If you are at all unsure that your builder fully intends on completing a repair on a defect that YOU feel is covered (taking into consideration guidance from the Program), make a request for conciliation within the timeline. This will secure your right to have this matter adjudicated and repaired (if found to be covered) should the builder continue to be non-communicative, vague in their position, or decide not to complete the repairs after the ongoing investigation (e.g. report from a manufacturer). Your request can be as simple as, ***"The following items remain unaddressed (or under investigation by the builder), and I would like to use conciliation in the event the Builder refuses to complete the repairs."*** It is easy for us to pause a request and cancel the request if not needed. However, the Program may not change the conciliation deadline.

Please read more about putting a hold on conciliation under page 10, **Placing Conciliation on HOLD.**

IV Making a Request for Conciliation

Making a request for conciliation is a 3-step process.

1. You advise us of the dispute(s) you wish to proceed to conciliation on. We review this list and advise of any items that are ineligible.

2. We will prepare and forward to you the applicable Request for Conciliation form that contains the eligible disputed item(s).
3. You review and sign the Request for Conciliation form and send to the Program office with the applicable application fee deposit.

A REQUEST FOR CONCILIATION MUST BE MADE IN WRITING

If you indicate your request for conciliation in writing (via email; regular mail) in advance of the conciliation deadline (e.g. "I would like to proceed with conciliation regarding item no. 3 of my claim regarding the flooring"), you have secured your right to proceed to conciliation. We will review the item(s) you wish to have conciliated and prepare the applicable forms for your signature.

If you advise us in a telephone conversation or in person that you would like to proceed with conciliation, you will be required to confirm this request in writing (before the conciliation deadline) specifying the item(s) in dispute.

Reviewing the Request for Conciliation

Upon receiving your request for conciliation, we will first review the items for eligibility. If we identify any ineligible items such as exclusions to the warranty (e.g. driveway is cracked) or items that do not appear to be disputed, we will advise.

If we identify issues where we are unclear on as to whether or not the matter is disputed by the builder or in a state where the builder has not formed an opinion as to required action, we will attempt to discuss the issues with the builder. If the builder identifies an item as 'not disputed' and specifies in writing that they agree to repair the item under warranty, we will advise. Such non-disputed items will not be eligible for conciliation.

Clarity of the dispute – preparing the Request for Conciliation form

The Request for Conciliation form will list each item in the manner which the item was identified in your original warranty claim. This is to ensure that the conciliator is responding only to issues identified under the original claim. In some cases, the homeowner's original description of the alleged defect might be vague and will not have enough information for the conciliator to understand the true nature of issue. While the homeowner will have an opportunity to provide additional information when speaking with the conciliator, it is important that all parties are 100% clear on what the dispute is in advance so there are no misunderstandings leading up to the conciliation or confusion during the site visit. Such clarity will also help the conciliator prepare appropriately for the site visit.

The claim representative and homeowner will have a brief conversation about:

- reason for the dispute (coverage, scope of repairs, etc.)
- the specific location/scope (flooring in bedroom only; 3 drywall cracks in kitchen on east and west wall)
- whether or not a portion of the issue has been resolved (builder has fixed flooring in the bedroom but the same issue remains in the kitchen)

- what kind of repairs have been attempted (by builder or homeowner) if any
- type of material/product in question if original claim is vague (homeowner advises 'dents in flooring'; the affected flooring is tile)
- photos that reference the item (will appear as thumbnail images on the form)

We will summarize this information and add it below each claim item, if applicable. This additional information will not carry any bias or opinion of coverage and is meant only to FULLY describe the defect and scope of the dispute.

Request for Conciliation form is reviewed by homeowner

Upon completion, we will send the form to the homeowner for review and signature. Do not make marks on the form (corrections/additions), as this will result in the decline of the paperwork. In the event you disagree with any of the information (item is missing, information on the claim is wrong, etc.), simply let your claim representative know. We will make corrections to any errors and send the forms back to you.

Deadline to submit the Request for Conciliation form

The homeowner shall have at maximum 10 business days to review the Request for Conciliation form and either advise in writing to the Program any errors or omissions that require correction or sign, date and submit the form with payment. A lack of applicable response within this timeframe shall cause the request for conciliation to be forfeited. This form shall be deemed as 'received' by the homeowner on the same date it was sent via electronic means (e-mail) or via courier, date delivered per registered mail, or 3 business days from the date sent via regular postal service. The signed form and payment shall be submitted to the Program office:

a. no later than the conciliation deadline, if there are more than 10 days remaining until the expiry of the conciliation deadline, or
b. no later than 10 days following the expiry of the deadline, where there are less than 10 days until the expiry of the conciliation deadline at the time the forms are sent, or
c. no later than 10 days, where the conciliation deadline has expired, or
d. other such deadline as indicated in writing by the Program.

In the event payment does not accompany the request for conciliation due to extenuating circumstances agreed by the Program as reasonable, the Program may grant an extension. Otherwise, the request for conciliation may be forfeited if payment is not received within 5 business days of receipt of the form by the Program or 5 business days of any amended form or written communication where a revised list of Conciliation Items is provided thereby requiring additional funds.

Builder is notified of the Request for Conciliation

Upon receipt of the Request for Conciliation from the homeowner, we will forward a copy to the builder. We will give the builder a reasonable amount of time to confirm that all items on the list are indeed disputed. If the builder responds in writing with their agreement to repair an item that is

on the list, we will advise. Non-disputed items will be removed from the list. In such a case, the Program will resubmit a revised Request for Conciliation to the homeowner for signature.

What if the builder confirms in writing that they will repair the issue under warranty, but then changes their mind after the conciliation deadline?

If, in the future, the builder changes their mind (flip flops in their position), the Program will make a decision under section 23 of the Warranty. Since the item was initially requested for conciliation before the conciliation deadline but never went to conciliation because the builder argued they agreed to fix it, the Program may allow conciliation to proceed on this item.

VI Costs of Conciliation

The application fee deposit is $500 for one disputed issue and an additional $150 per item to be conciliated. For example:

- one disputed issue: $500
- two disputed issues: $650
- three disputed issues: $800

This fee may be reduced at the Program's discretion.

Note that 1 claim made to the Program may carry more than one distinct issue, each requiring a separate evaluation. For example: *My roof has shingles lifting and there is a problem with water drainage because of missing flashing.* If the homeowner requests conciliation on both of these issues, then this is considered 2 items.

The final costs of the conciliation will be divided between the homeowner and the builder. Costs include any invoice for services rendered by the conciliator and any invoice for services rendered by a third party commissioned by the conciliator. Unless both parties have undertaken an agreement in writing outlining the sharing of costs, the costs shall be decided on a pro-rata basis at the conclusion of the conciliation whereby each party shall pay its share based on the number of ***items evaluated requiring a distinct decision** that are NOT in their favour. An item is determined 'in your favour' if the conciliator deems the item to be covered under warranty (requiring action by the builder) and the decision exceeds any warranty repairs/actions that have been previously offered/applied by the builder (if any). If the homeowner's share of the costs is less than the application fee deposit, the homeowner will be rebated the difference. The homeowner will not be required to pay costs in excess of the application deposit fee.

Items evaluated requiring a distinct decision

The initial request for conciliation might contain 5 numbered items. If one of the items contains more than one issue that requires separate evaluation and separate decision, in the opinion of the conciliator, then this will be counted as 2 or more depending on the number of evaluations it contained. For example: *All my interior bedroom entry doors do not close properly.*

Upon inspection the conciliator may notice each door has a different problem - some are not latching (closing all the way) and some have fallen away from the hinge. The conciliator may see this as 2 distinct issues requiring evaluation. The decision might indicate that the doors that have fallen away from the hinge are due to improper screw length/hinge type and shall be repaired. And the doors that are not latching fully is due to minor shifting in the home (seasonal issue) where the telepost may need to be adjusted (a homeowner maintenance matter not covered under warranty).

Below is an example of final sharing of costs based on 5 items requested for conciliation.

- $500 first item + $150 x 4 additional items = $1,100
- Cost of conciliation (as billed by conciliator) = $1,750
- Cost per item = $1,725 / 5 = $345
- 3 items in favour of builder and 2 in favour of homeowner
- Builder's share of cost: 2 x $345 = $690
- Homeowner's share of cost: 3 x $345 = $1,035
- Homeowner is refunded $65

*NOTE: If the conciliator had decided there were 6 distinct items (rather than 5) requiring evaluation (per the door example above), then the cost per item would be $1725 / 6 = $287.50. The end result might be 3 in favour of the homeowner and 3 in favour of the builder, resulting in equal share of costs (3 x $287.50) of $862.50, with a refund of $237.50 to the homeowner.

What happens if I pay my deposit but then the number of items changes?

In the event of a reduction or increase of items to be conciliated after the initial deposit is received (before the conciliation has begun), the Program will either provide a refund or request additional funds accordingly. If additional funds are required, the homeowner has 5 business days to provide the outstanding amount (or other such agreed upon time limit as indicated by the Program in writing.



NOTE: if the initial request for conciliation contained only 2 items and no other items were identified and brought to the attention to the Program in writing as a candidate for conciliation, then no additional items may be added if the conciliation deadline has expired.

Why is the deposit so high? What is the typical fee charged by a conciliator?

Conciliation is undertaken by a professional. In most situations, the individual is an engineer or an individual with a background in building sciences and arbitration or other combination of applicable experience and training. A conciliator/arbitrator typically charges between $150 and $700 per hour. In our experience the cost of conciliation can range from $750 to $4000, depending on the number of items, amount of time needed to review the issues, need for supplemental professional advice/testing, length of travel, etc. Due to these costs, we urge homeowners not to include claim items that have clear evidence indicating the matter is not covered, as it could result in unnecessary loss of money.

VII Placing Conciliation on HOLD

It may not be clear in all cases whether or not you and your builder dispute an issue. This could be difficult if the conciliation deadline is approaching, and you would like to preserve your right for conciliation. If the situation is unclear, the Program may, in its sole discretion, agree to accept the item(s) as available for conciliation but then place conciliation on hold until it can be thoroughly reviewed between the parties. For example:

- The builder has not provided you or the Program with a clear answer on whether or not they agree to coverage and therefore agree to do repairs.
- The builder is clearly still evaluating the issue to determine coverage or type of repair that may be applicable.
- You and the builder are entertaining an alternate form of resolution (cash settlement).

Placing a hold on a request for conciliation does NOT grant the homeowner an extension to the conciliation deadline. All aspects of the deadline and submission of the Request for Conciliation form must be followed.

The Program will mediate the matter to obtain the parties positions. Upon receipt of the builder's position in writing, the homeowner will have the later of 30 days or expiry of the conciliation deadline to determine if the matter is disputed and whether they wish to continue with conciliation. If a Request for Conciliation form has previously been prepared and signed, and the list of items changes, a revised form will be forwarded to the homeowner for signature. In the event of a reduction or increase of items to be conciliated the Program will either provide a refund or request additional funds accordingly.

VIII Conciliation Preparation

Following receipt of the Request for Conciliation form, a conciliator is appointed. The Request for Conciliation form, along with a copy of the Possession Certificate will be forwarded to the conciliator. The Program will set a date and time mutually convenient for all parties for the conciliation meeting.

How to prepare for conciliation

The most important thing to note about this stage is that the Program will not be sending the conciliator any extra information in support of any evaluation the Program has undertaken that would specify our opinion of coverage. The Program is not a party to this conciliation. Our role is only administrative. WHY? If we were involved in providing information and the conciliation ends up not going in the party's favour, that party may argue that we forgot to send something (e.g. an 'important email', etc.) that they felt was critical for their position or that what we sent was biased.

In attendance at a meeting will be the conciliator, the homeowner, builder, and a Program representative. Should either party wish to have additional persons in attendance (supplier, trade, relatives, neighbours, etc.), then a special request should be made to the conciliator **in advance of**

this site meeting. (Direct the request to the Program representative handling your claim. The request will be forwarded to the conciliator for consideration.)

Because we do not know the questions the conciliator will ask or what information they will request from the builder or homeowner, we can provide only minimal assistance. We recommend that both the homeowner and builder review all the information that supports your respected position and have it readily available. The conciliator generally asks for photos, videos, 3rd party reports, construction plans, etc. Occasionally copies of emails between the homeowner, builder, supplier, manufacturer, municipality, etc. might be requested. Or, alternately have a list of the items that you can make available to the conciliator after the conciliation. A list is a quick and easy thing to hand to the conciliator during the meeting if you have a lot of potential data to provide. The conciliator can then ask for the data to be forwarded after the initial meeting.

Below are some key tips specifically for the homeowner:

- Review access within your home to each of the items. The conciliator must have full access for a thorough investigation, so remove personal items, move furniture, unlock doors, etc.
- Do you have any medical issues that need to be relayed to the conciliator? If you have a hearing impairment, in a wheelchair, blind, etc. this might be important for all parties to know ahead of time. Another example is infectious diseases: if you require visitors to your home to wear PPE (gloves and or face masks), please advise. Or maybe you have a sensitivity to scents (cologne/perfume).
- Ensure pets are on a leash, in a kennel, or arrangements have been made to keep them safely out of harm's way. Conciliation will take your full attention and a bunch of strangers moving around your house can be stressful on your pets. We are thinking about the safety of both your pet(s) and the visitors to your home.
- If you have young children at home during this visit that require your attention, be mindful that this might distract you from participating fully. Please do not ask the Program representative to watch your child/pet while you demonstrate a defect to the conciliator.

How the conciliator prepares

Upon receipt of the Request for Conciliation form, the conciliator will undertake a preliminary review of the listed items. This will help the conciliator prepare and assist in scheduling by addressing the following:

- How/where will conciliation take place (on site, videoconference, a neutral location, etc.)?
- Does additional information need to be gathered before meeting with the parties?
- Are tools required (e.g. measuring devices, ladder, etc.)?
- How long (approximately) will the evaluation be?

During this time, the conciliator may ask that the parties to provide clarification or additional information (reports, pictures, etc.) in advance of the meeting.

VIIII Communication, Requests, and Transfer of Information

As mentioned previously, the Program acts as an administrative liaison/facilitator in the conciliation to ensure that the conciliation takes place in accordance with the terms of warranty, guiding all parties as to their rights and responsibilities. A Program representative will help in setting up any conciliation meeting(s) and will also be in attendance at these meetings.

While communication will take place directly with all parties (conciliator, homeowner, builder) when there is a face-to-face meeting, there will be instances before or after a meeting that all parties still need to communicate. Its not uncommon for the parties to have questions, need to provide information, etc. In fact, it is quite common for the conciliator to ask both parties to forward specific photos, emails, reports etc. that may have been referenced during the meeting, but not readily available at the time.

To maintain equality in discussion and ensure no bias, the homeowner and builder will NOT be invited to voluntarily contact the conciliator, at will, to ask questions, etc. before or after a meeting. However, if the conciliator requests specific information, the builder or homeowner may provide a response. To ensure that this situation does not become abused, most conciliators will not make available to the homeowner and builder their email address, phone number, or physical address. In this process, the Program representative receives the request from the conciliator and then relays it to the applicable party.

> ⚠ If the conciliator has asked for information, please send it in ONE concise email (unless unable to do so due to such limitations as file size of photos, etc.). Ensure the email subject is “Requested conciliation information”. If you encounter file size limits with email, you may choose to put the information on a flash drive or ask us to provide a Dropbox link where you can upload the information.

If the conciliator chooses, they can contact the parties directly in an agreed upon format (email, phone). If this has been agreed upon, do not abuse this open form of communication!

X Conciliation – the Inspection Process

Conciliation officially begins when the conciliator engages both parties in a dispute resolution process. This inspection process will include a combination of meetings (on site/videoconference), gathering of information post any site review, and possible additional 3rd party inspections if necessary. This typically starts with a meeting at the homeowner’s house. However, if there are extenuating circumstances, the conciliator might request to meet with the parties using videoconference. When the entire inspection process is completed, the conciliator will complete a report that will set out the responsibilities of the parties.

The Site Meeting

In nearly all circumstances, the conciliator will meet the parties on site at the homeowner’s house to evaluate the deficiencies and gather information. In attendance will be the conciliator, the

homeowner, builder, and a Program representative (as noted under *How to prepare for conciliation*, additional persons in attendance require prior approval by the conciliator).

During the meeting, each of the items on the Request for Conciliation will be reviewed by the conciliator. The conciliator may ask either party to provide information.

> ⚠ It is encouraged that both the homeowner and builder take an active approach during the review of the conciliated items to ensure both parties have the opportunity to share their position and provide critical information to the conciliator to ensure a well-informed evaluation is undertaken. Be present at every location of the home where the conciliator is inspecting an item.

- The homeowner must allow access to all areas of the home that the conciliator requests access to for the purpose of examining and evaluation the alleged defect.
- If a personal item needs to be moved to gain access, the conciliator will advise, and the homeowner shall move/remove the item to allow access.
- Be respectful of each other and any other persons present. Yelling, foul language, bullying, etc. will not be tolerated. In the event that either party becomes disruptive or uncooperative in the opinion of the conciliator to the degree that prevents the conciliator from completing the investigation thoroughly, in a timely manner, the conciliator has the authority to end the site meeting prematurely.

ADDITIONAL ITEMS CANNOT BE ADDED

The conciliator shall not undertake to discuss and evaluate a matter that is not listed on the Request for Conciliation. Even if the issue seems related or is readily noticeable when viewing the listed item, it is not eligible. For example, the issue on the list is “scratches on 2 wood steps at bottom of basement stairs”. If at the time of review, any person notes scratches on the banister or the wall, these are NOT part of the item being evaluated. If the Request for Conciliation indicates, “Front entrance door does not close properly.” Only the front door will be evaluated even if the homeowner points out that the back door also does not operate properly. The items for conciliation are the items submitted by the homeowner under the original warranty claim and any clarification on items that the homeowner is claiming should be done with the Program BEFORE conciliation begins.

If a new item is identified by the homeowner during the site visit and the homeowner wishes to add this to their warranty claim, the homeowner must follow the same claim procedure under the warranty and provide notice in writing to the Program. If notice in writing is done within the applicable coverage period and the homeowner and builder later dispute the issue, the homeowner may request a 2nd conciliation that will address this new item.

Will the conciliator discuss their evaluation/decisions on site or after the meeting?

The conciliator has a right to decline discussing their thoughts on coverage during the meeting. Why? The main reason is the conciliator will likely need to do additional review and research of the

Program's warranty, Construction Performance Standards, Building Code, 3rd party reports, etc. The on-site review is used primarily to take pictures, measurements, discuss the issue with builder and homeowner, etc. In most cases, the conciliator will not have a full and final decision of coverage while at the meeting. The second reason is to avoid a verbal non-productive argument with both parties that will eat up time, bloating the cost of the conciliation.

Following the Conciliation Meeting

Following any site review, the conciliator will start reviewing the collected data and determine if any further inspection/retrieval of information is required. Typically, the conciliator will request from the homeowner and builder any critical pictures, reports, emails, etc. that are needed for additional review. Further, the conciliator may need to contact the manufacture/review specifications, contact the authority having jurisdiction, or seek advice from a professional on a difficult matter where the conciliator's expertise is limited or when specific information can only be obtained by a professional in the field associated with the defect (e.g. a special tool is needed to investigate the defect, carpet sample sent to a lab, blower door test done). Perhaps the conciliator needs to return to the house due to an item that could not be viewed due to inclement weather. In other words, the full inspection process does not necessarily end when the site meeting ends.

XI The Conciliation Report

The report outlines the conciliator's decision on coverage and the rights and obligations of the builder and homeowner.

If covered under warranty, the conciliator may in some instances, stipulate the type of repair required. If a specific repair is not stipulated, then the builder shall make repairs in a manner that is in the builder's best judgement that aligns with industry standard, good practice, the Manitoba Building Code and the Program's Construction Performance Standards where applicable.

Occasionally some items might be pending further evaluation, which will be noted in the report. This often occurs when the evaluation of one item is taking a long time and is holding up the submission of the report. For example, an HRV may need to be inspected by a mechanical engineer or HRV specialist with a report sent to the conciliator. Or perhaps the conciliator requires a 'window leak' issue be re-reviewed following repairs made by the builder following a failed water test.

Often, the conciliator will provide any special/additional requirements or 'terms of conciliation' as an appendix at the end of the report. For example, *"Unless otherwise specified within the Report, the parties have 30 days (or other such reasonable deadline issued in writing by the Program or the conciliator) following the issuance of this Report, to provide any requested information as indicated herein. Such information shall be provided to the Program in a concise format (e.g. one email). The Program shall immediately forward this information to the conciliator."*

The report is first forwarded to the Program for review. This review is an unbiased vetting to ensure compliance with Conciliation Procedure and ensure 'readability'. The Program has no authority to change the decisions made by the conciliator. We review the report to:

- ensure the conciliator has not exceeded jurisdiction (e.g. made decisions on items not included in the Request for Conciliation)
- ensure the report is free of typographical errors
- ensure the report reads in a way that will provides clear information to all parties

The Conciliation Report is then forwarded to the builder and homeowner. Upon receipt, the parties shall undertake any requirements specified. Typically, this will be repairs required by the builder. Occasionally, however, the conciliator may have a requirement for the homeowner, such as providing specific information on an item that is held pending.

XII Conciliation Repairs

The Program will provide direction and support to both parties in fulfilling any actions set forth in the Conciliation Report. If clarification is needed on an action, the Program can reach back to the conciliator for direction if necessary.

Repairs will be undertaken by the builder and the homeowner shall allow the builder full access to the home to complete these repairs. The builder shall make repairs in accordance with Manitoba Building Code and in reference to the Program's Construction Performance Standards where and when applicable.

- The builder shall immediately begin scheduling repairs with the homeowner.
- The homeowner shall remain communicative to allow for timely scheduling of repairs.
- Where the conciliator has stipulated that a repair "shall" or "must" be done a certain way (replace versus repair), the builder shall follow this direction. Where limited direction is provided to complete a repair, the builder shall undertake repairs in a fashion that results in the prescribed outcome. If a builder determines that certain recommended actions are not possible or reasonable, the builder shall notify the Program immediately. If deemed appropriate by the Program, the builder may proceed with the alternate action so long as it results in the same prescribed outcome. If necessary, the Program may consult with the conciliator to obtain clarity or discuss an alternate route of repair where such required or recommended actions or alternate actions are failing to resolve the matter within the parameters of the report.
- If repairs are not being completed within the guidelines of the conciliation report, or in a good workmanship manner, the homeowner shall immediately notify the Program.
- If the builder is not able to complete repairs in a timely manner or within any prescribed deadline, the builder shall notify the Program immediately.
- At the completion of a repair, the builder shall immediately inform the Program.
- The Program will evaluate the completeness of the repair in accordance with the report.

Will the report contain timelines for the repairs?

The conciliator is not required under the terms of warranty to provide timelines for repairs. On occasion, a repair or further investigation might have a timeline, particularly if it is seasonally related. In most instances, no timelines are given, and the builder is expected to address all items requiring action in a reasonable amount of time. If a delay is encountered (e.g. scheduling difficulties, inclement weather, ordering of product, etc.) the Program shall be notified promptly.

Deadlines for repairs may be given by the Program, where the Program deems it necessary. However, providing deadlines is difficult as each repair might require a different amount of time to complete. Completion of repairs is heavily guided by weather, availability of trades, ordering of product, etc. As such, a deadline might be given when the Program determines a builder has exceeded a reasonable time without a valid reason, in the sole opinion of the Program. Per section 7 of the Warranty, the Program has an obligation to complete the repairs if the builder fails to undertake the required remedies. The Program will determine in its sole discretion if and when a builder has failed.

Will the conciliator review the repairs?

No. The responsibilities of the conciliator end at the submission of the report. The Program will review the repairs on an as needed basis. An on-site review is not always necessary. For some repairs, it might be very evident to the homeowner that the issue has been rectified appropriately. If this is the case the Program may be satisfied with just the homeowner's confirmation in writing as to the completion of the repair. Occasionally, the Program will request photos to verify the completion of repairs.

On the rare occasion that an issue has become complicated where the prescribed repairs do not resolve the defect in the opinion of the Program and the builder or Program is unable to determine a reasonable alternative solution that fulfills the requirements prescribed within the conciliation report, the Program may reach back to the conciliator for assistance. This might require a subsequent visit to the home by the conciliator.

XIII Conciliation is Final and Binding

Per the Warranty, **"The decision of the conciliator shall be final and binding on the Builder, the Program and the homeowner."**

No additional meetings, site visits, repair evaluations, etc. will be undertaken by the conciliator unless indicated within the report or expressly requested in writing by the Program, where the Program has deemed, in its sole discretion, necessary to accurately fulfill the requirements of the conciliation.

> The conciliator takes no responsibility for errors or omissions of information provided by the builder or homeowner.
>
> The opinions and direction set forth by the conciliator in the report do not negate the responsibility of the builder to undertake all repairs, actions, resolutions in a professional manner congruent with the Manitoba Building Code and/or the Authority Having Jurisdiction and any other law that may govern the actions of the builder during the course of remediation.

If you have ANY questions whatsoever about conciliation, please contact us to discuss. Our goal is to ensure equality in dispute resolution between the builder and the homeowner.