

Registrar Bulletin - No. 11F

Security Requirement for Freehold Homes

Effective Date: February 1, 2021

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What this Bulletin is About

This bulletin describes how Tarion determines the amount of security vendors must provide for freehold home construction, how they must provide it, and how Tarion releases it. It replaces *Builder Bulletin 28F – Security Requirements for Freehold Homes*. Changes also recognize that Tarion’s role in taking security after February 1, 2021 is in connection with assessing and approving confirmations of qualification for enrolment (**QFE Confirmation**) and confirmations of enrolment (**Enrolment Confirmation**). For more information about the enrolment process, see *Registrar Bulletin 10 - Warranty and Protection Plan Enrolment Process* (version 10-FH for freehold homes and 10-CH for contract homes).

The approach outlined in this bulletin is a guideline that Tarion expects will apply in most cases. There are situations in which Tarion’s security assessment will be different.

As security is generally required from the vendor of a home, but in some cases can be required of both the vendor and builder, the word “vendor” when used in this bulletin can mean either or both of a *vendor* and *builder*. Terms used but not defined in this bulletin have the meaning given to them in the *Ontario New Home Warranties Plan Act* and regulations.

How Tarion Assesses Security

When assessing security requirements for vendors of freehold homes, Tarion focuses on two criteria:

1. **Your “tenure”** This means the aggregate or how long you have been a registered (or licensed) vendor and after February 1, 2021 Tarion will also factor in the years in which you have been actively selling and or building under a QFE Confirmation and Enrolment Confirmation); and
2. **Your “risk assessment rating”**. This is based on a review of the vendor’s circumstances

including the number of homes you sell/build, your equity, your credit rating, and your history of claims paid.

In general, the longer you have been registered with Tarion (and/or licensed with the Home Construction Regulatory Authority (HCRA) (and after February 1, 2021 actively engaged in selling and or building under a QFE Confirmation and Enrolment Confirmation) the better your risk assessment rating, the more favourable your security terms will be.

Tenure

Your tenure is based on the number of whole years you have been registered with Tarion together with the number of years you have been licensed with HCRA (and after February 1, 2021 actively engaged in selling and or building under a QFE Confirmation and Enrolment Confirmation). For example, a vendor who became registered with Tarion on March 1, 2018 will have a tenure of 0 years until March 1, 2019. On March 1, 2019, that vendor’s tenure will become 1 year.

A vendor’s tenure may include the tenure of associated persons.

Tarion has grouped vendors into two categories:

| Category | Description |
|------------------|--|
| Active Vendors | A vendor that has been registered/licensed for 3 or fewer years or has been registered/licensed for 4 or more years and had at least one possession in the past 4 years. |
| Inactive Vendors | A vendor that has been registered/licensed at least 4 years, but had no possessions in the past 4 years |

Tenure Adjustments

Tarion may adjust a vendor’s tenure where appropriate. For examples, please refer to Appendix: Tenure Adjustments.

Risk Assessment Rating

Tarion examines four criteria to determine your base security position and assigns points for each. The more points you receive, the lower the risk to Tarion. Your overall Risk Assessment Rating is the sum of all points assigned to you. The criteria and scoring are described below:

| Criteria | Points Value | Explanation |
|-------------|--------------|---|
| Size | 0-35 | <p>Volume of homes (possessions) in general is correlated with risk of loss to Tarion.</p> <p>Vendors are broken out into five size categories for this criterion.</p> <p>See Appendix A, <i>“Determining your Size points”</i> for more details.</p> |
| Credit | 0-15 | <p>Points are awarded for overall creditworthiness based on credit scores of the vendor and indemnitors.</p> <p>See Appendix A, <i>“Determining your Credit Points”</i> for more details.</p> |
| Equity | 0-30 | <p>Points are awarded based on available equity at the time of assessment.</p> <p>The ratio of equity per planned home (per application for QFE Confirmation or Enrolment Confirmation) relative to the maximum warranty liability, is reviewed and rated. (In most cases maximum warranty liability is \$300,000 per home).</p> <p>See appendix A, <i>“Determining your Equity Points”</i>, and Appendix B, <i>“Assessing Reported Equity”</i> for more details.</p> |
| Claims Paid | 0-20 | <p>Points are awarded based on a history of any claims paid relative to a vendor’s peers.</p> <p>See Appendix A, <i>“Determining your Claims Paid Points”</i> for more details.</p> |

Please note that the risk assessment rating does not necessarily decide the volume of homes a vendor may be allowed to sell and /or build in connection with an application for QFE Confirmation or Enrolment Confirmation)

Providing Security

Minimum Security Requirements:

| Security Required Per Home*** | | | | | | | |
|-------------------------------|----------------------|---------------------|---------------------|---------------------|-----------------------|------------------------------|------------------|
| Risk Assessment Rating | First year of Tenure | Tenure of 1-3 Years | Tenure of 4-6 Years | Tenure of 7-9 Years | Tenure of 10-12 Years | Tenure greater than 12 Years | Inactive |
| 0-20 | See Note * | See Note * | See Note * | See Note * | See Note* | See Note* | See Note* |
| 21-40 | \$30,000 | \$25,000 | \$20,000 | \$15,000 | \$10,000 | \$5,000 | \$20,000 |
| 41-55 | \$25,000 | \$20,000 | \$15,000 | \$10,000 | \$5,000 | \$0 | \$15,000 |
| 56-70 | \$20,000 | \$15,000 | \$10,000 | \$5,000 | \$0 | \$0 | \$10,000 |
| 71+ | \$15,000 | \$10,000 | \$5,000 | \$0 | \$0 | \$0 | \$0 to \$5,000** |

*Vendors with a risk rating that is 20 or less will be assessed on a case by case basis and may be refused a QFE Confirmation or Enrolment Confirmation

**Inactive vendors in this category may be assessed on a case by case basis regarding their overall performance history and experience

***These security requirements will be proactive, and not apply retroactively to any home assessed prior to this bulletin becoming effective.

Security Adjustments

Tarion understands that there may sometimes be unique factors that will change its security assessment. In these situations, Tarion will adjust the security terms to more accurately reflect your risk profile. Tarion may at any time adjust the amount of security required and/or the release terms based on new information.

Examples of factors that could result in a security adjustment include:

Your customer service track record, including but not limited to:

- high levels of requests for inspections, conciliations and/or chargeable conciliations;
- claims paid;
- delays; and
- administrative statistics (CCP timelines, enrolment timelines, receipt of security, renewal timelines).
- prior defects and/or Ontario Building Code violations

Your financial situation, including but not limited to:

- changes to your lender or lending terms;
- insufficient/deterioration in your financial position, equity, cash flow, or credit rating;
- unusual lien activity; and
- amount of leverage.

Your management/business structure, including but not limited to:

- changes to your principals or key management team;
- changes in business product type; and
- rapid expansion of your business;

The nature/status of the project, including but not limited to:

- complexity of home(s) being built;
- number of homes still under first-year and/or second-year of warranty;
- Business and technical assessment and interview; and
- the use of new technology.

Acceptable Forms of Security

Tarion will accept the following forms of security:

1. Irrevocable Letter of Credit in a form, and from an issuer, that is acceptable to Tarion; and,
2. Surety bond in a form, and from an issuer, that is acceptable to Tarion.

Other Forms of Security

Cash Security

In certain cases, Tarion may accept cash as a form of security. No more than a total of \$250,000 may be provided by any applicant (or associated person for and on behalf of the applicant) in the form of cash security.

Timing

Tarion may require vendors who are proposing to sell/build homes to provide security either as a condition of QFE Confirmation or as a condition of Enrolment Confirmation. In general vendors with an acceptable risk profile will be asked to post security, if any, as a condition of Enrolment Confirmation. Tarion may require vendors with a tenure of less than 7 years, Inactive Vendors, or others presenting a higher risk profile to provide security as a condition of QFE Confirmation.

Failure to Meet Timing Requirements

If you do not meet the requirement to post security according to the condition imposed for a QFE Confirmation and/or Enrolment Confirmation the applicable confirmation will not be forthcoming.

Release of Security

In general, Tarion will return your security after the highest risk timeframes (i.e. the one and two- year warranty periods) have passed and you can demonstrate that there are no outstanding problems with your homes under warranty. Tarion will make security release assessments based on tenure, as outlined below:

| Category | First Security Release Assessment Trigger | Notes |
|---|---|--|
| Vendors with Tenure of 0-6 Years & Inactive Vendors | 24 months after the warranty start date | Tarion will review: <ol style="list-style-type: none"> any identified deficiencies; and how homes perform over at least two freeze thaw and seasonal cycles. |
| Vendors with Tenure of 7 or more years | 12 months after the warranty start date | None |

The Security Release Assessment

Tarion, as a general rule, will conduct its release assessment within 45 days after the date indicated, and may review the following when determining how much (if any) security it will release:

- claims related to all your enrolments (including claims brought by owners via litigation);
- all warranty forms;
- chargeable conciliations;
- administrative compliance (including compliance with any of the terms and conditions of your QFE Confirmation or Enrolment Confirmation, the terms of the vendor agreement and builder agreement, and the Registrar Bulletins; and
- other factors.

Based on its assessment, Tarion may release all, part, or none of your security. In some cases, Tarion may increase your security requirements if it considers the existing claims risk to be high. If Tarion decides against releasing the full amount of security, it will notify you in writing and include an explanation. Where security is pending receipt or there are monies owed to Tarion, Tarion may delay any security releases until all outstanding amounts are received.

For vendors required to provide security as a condition of QFE Confirmation or Enrolment Confirmation, the release of security will be reviewed annually but is generally held for at least 24 months from the warranty start date of the homes. In addition to the above factors affecting release, Tarion will also look at:

- your proposed construction plans for the current period; and
- the timeframe for remaining warranties on all homes covered.

Based on its assessment, Tarion may release all, part, or none of your security. Tarion may also rollover or any security currently held in respect of the vendor which will stand as security for any homes the subject of application for QFE Confirmation or Enrolment Confirmation. Tarion may also increase the security requirements if it considers the risk profile of the vendor to be high.

How Security is Used

Unless the security instrument or other written statement from Tarion states otherwise, then any security provided to Tarion by or on behalf of the vendor shall secure all vendor obligations of the vendor in respect of the: (i) homes which are the subject of the application to Tarion; and (ii) any other homes thereafter sold or constructed by the vendor unless specifically released by Tarion in writing.

Example: A vendor is required to provide \$5,000 in security per home for six homes they build. The total security they provide to Tarion is \$30,000. Tarion may use up to \$30,000 to settle a claim on one of the homes, if needed. If not needed unless the security instrument or other written statement from Tarion states otherwise then the \$30,000 may be used to settle claims on any other homes sold or built by the vendor.

Review of Security Requirements

Tarion will review and update its security assessment in connection with each application for QFE Confirmation or Enrolment Confirmation, and from time to time. Tarion as a result of such review may re-assess security requirements between the time of QFE Confirmation and Enrolment Confirmation. You may request an interim review if you feel there is a change in your circumstances that may affect the assessment.

Tarion may also review your security requirements at any time.

Blanket Risk Assessment Group Security

In general, the security provided is specific to the homes which are the subject of the QFE Confirmation or Enrolment Confirmation. If, however, the security instrument or other written statement from Tarion states otherwise then any security provided to Tarion by or on behalf of the vendor shall secure all vendor obligations of the vendor in respect of the: (i) homes which are the subject of the application to Tarion; and (ii) any other homes thereafter sold or constructed by the vendor unless specifically released by Tarion in writing.

For developers who have ongoing and multiple licences under a brand or marketing name, Tarion may allow for the security to be posted in respect of a number of related vendor entities referred to as a Risk Assessment Group. “**Risk Assessment Group**” means a group of associated persons who Tarion has grouped for the purposes of: assessing

financial wherewithal; relating the actions of one person to the others (including chargeable conciliations); and the actions of one person bind the others including sharing of information. Security posted by one person in a Risk Assessment Group and described as **blanket security** - is available to satisfy vendor obligations relating to any homes sold or constructed by any of the identified associated persons. In this type of arrangement, a key entity (parent, principal) of Risk Assessment Group will arrange for global bond or other blanket security or indemnity from which Tarion may draw if there are any warranty defaults in connection with any of the identified associated persons. Such arrangements may only be released by express written release from Tarion.

This kind of consolidated blanket security arrangement may result in savings at both the administrative and security levels.

Effective February 1st, 2021, blanket security must be provided in the format of a bond or letter of credit.

Challenge Security Assessment

If you do not agree with your security assessment, you may request a management review. If you remain unsatisfied after the review, Tarion will provide you with the security terms in a form that will allow you to appeal to the Licence Appeal Tribunal.

Registrar

“Peter Balasubramanian”

Appendix A: Determining Your Risk Assessment Score Determining Your Size Points

Tarion determines your Size Points based on your average annual possessions over the past 5 years. Please refer to the table below:

| Group | Average Annual Possessions | Points |
|---------|----------------------------|--------|
| Class 0 | 0 | 0 |
| Class 1 | 1-5 | 5 |
| Class 2 | 6-10 | 15 |
| Class 3 | 11-49 | 25 |
| Class 4 | 50+ | 35 |

Determining Your Credit Points

Tarion uses your credit score obtained through a third-party credit rating agency to determine your Credit Points. If you do not have a credit score, or for some reason Tarion is unable to obtain it, Tarion will use the average credit score for all your indemnitor/guarantors.

The table below shows how Tarion converts your credit score into Credit Points:

| Credit Score | Credit Points |
|--------------|---------------|
| 0-660 | 0 |
| 661-759 | 10 |
| 760+ | 15 |

Determining Your Equity Points¹

Here's how Tarion determines your Equity Points:

1. Tarion establishes your Suggested Minimum Equity per unit based on your number of proposed units plus unclosed units, as shown in the following table:

| Equity Unit Count | Suggested Minimum Equity Per Unit |
|-------------------|-----------------------------------|
| 1-10 | \$45,000 |
| 11-20 | \$30,000 |
| 21-50 | \$22,500 |
| 51-100 | \$20,000 |
| 101+ | \$12,000* |

*Tarion may reassess the Suggested Minimum Equity per unit where unit count significantly exceeds 100.

¹ Tarion does the same calculation for each Indemnitor/Guarantor, calculating their ratio based on the total number of homes they guarantee across all of their indemnity/guarantees.

2. Tarion calculates your Reported Equity based on the financial information you provided. For more details, please refer to Appendix B: Assessing Reported Equity.
3. Tarion calculates your Equity Ratio by dividing your Reported Equity (Step 2) by your Suggested Minimum Equity (Step 1).
4. Tarion determines your Equity Points based on the following table:

| Ratio to Suggested Minimum Equity | Equity Points |
|-----------------------------------|---------------|
| Less than 0.39 | 0 |
| 0.4 to 0.6 | 6 |
| 0.61 to 0.8 | 9 |
| 0.81 to 1 | 12 |
| 1.01 to 1.2 | 15 |
| 1.21 to 1.4 | 18 |
| 1.41 to 1.6 | 21 |
| 1.61 to 2.6 | 24 |
| 2.61 to 3.6 | 27 |
| 3.61+ | 30 |

The equity of the indemnitor/guarantors and applicants are used in the calculation of an applicant’s equity ratio.

A vendor who is unable to produce suggested minimum equity of 0.39 or more may be refused QFE Confirmation and/or Enrolment Confirmation or have it revoked.

Unenrolled Homes

Unenrolled homes are defined as those homes on which the construction has begun before the home has received Enrolment Confirmation. This is in direct violation of the requirements of the Ontario New Home Warranties Plan Act (as amended from time to time). Unenrolled homes are subject to security of \$5,000 per unit in addition to any other security requirement. This additional security will not be released prior to the second anniversary of the date of possession. This security is levied because such activity is illegal and as such has prevented Tarion from evaluating the vendor and the home/project before construction.

Determining Your Claims Paid Points

A claim paid is any claim paid amount within the past 10 years regardless of Breach or Tarion Acting on Behalf (TAB), or any amount showing as outstanding. The Claim Paid amount will not include amounts disputed to the Builder Arbitration Forum by the vendor during such proceeding. To determine your Claims Paid Points, Tarion reviews your claims history over the past 10 years and assigns points based on the following:

- a) Your tenure and possessions. If your tenure is less than three years you are not eligible for any Claims Paid points. If your tenure is more than three years, you are eligible for up to 20 points.
- b) Your claims paid history and any outstanding claims. If you have claims, Tarion compares your level of claims to the average for your peer group (i.e. class 1). Points are assigned depending on whether you are above or below the average.
- c) Only homes that have passed first-year warranty are eligible to be counted towards “no claims paid”.

The following table shows how Tarion assigns Claims Paid Points:

| Claims Record | Tenure 0-3 Years | Tenure > 3 Years |
|---------------------------|-------------------------|----------------------------|
| Outstanding Claims | 0 | 0 |
| Claims Above Peer Average | 0 | 5 |
| Claims Below Peer Average | 0 | 10 |
| No Claims | 0 | 20 |

Appendix B: Assessing Reported Equity

Your reported equity is based on the information you provide about your financial position. The information may relate to individuals or companies. **Individuals** include vendors who are sole proprietors or part of a partnership, and any person that provides an indemnity or guarantee in support of an application for QFE Confirmation or Enrolment Confirmation to Tarion. **Companies** include vendors who are corporations, joint ventures or limited partnerships, and any company that provides an indemnity or guarantee in support of an application for QFE Confirmation or Enrolment Confirmation to Tarion.

Individuals are required to complete a personal net worth statement annually, summarizing all their assets and liabilities. We may request updated statements at any time.

Assets include the interest of the person (individual, company) in a personal residence, real estate, cash, investment accounts (i.e. Stocks, Bonds, RRSPs, TFSA, GIC, etc.) and the percentage ownership of equity and/or loans in businesses owned. Tarion does not count assets held outside of Canada, or personal property such as automobiles, boats, recreational vehicles, jewelry, artwork, antiques, etc. as part of your net worth.

Assets owned by someone else, in trust for someone else or through a company, will not be accepted towards an individual's equity. If an asset or liability is held jointly, only the individual's percentage share of the asset or liability will be used in calculating equity. All supporting documentation provided to Tarion must show proof of ownership. Tarion reserves the right to adjust assessed equity based on various factors deemed relevant in professional practice (i.e. liquidity factors, market factors, etc.).

Vendors who are registered as corporations must provide externally prepared financial statements at the time of application for QFE Confirmation or Enrolment Confirmation and from time to time upon request for the most recent fiscal year-end. Tarion may require vendors to provide reviewed financial statements or in certain circumstances most recent quarterly statements if prepared. For **companies** that are indemnitors or guarantors, externally prepared financial statements with review engagement may be required. New corporate indemnitors or guarantors must meet certain requirements and be approved by Tarion (please contact us for details) prior to acceptance. In certain circumstances Tarion may also require audited financial statements.

Tarion will include the total shareholder's equity of the company in its equity calculation. The analysis of financial statements may also include various financial tests to determine debt load, profitability, sales growth and other changes in financial position or status.

Liabilities include any debt (secured or otherwise) on a personal residence or real estate properties, lines of credit, personal loans, credit card debt, and any other monies owed.

At the time of application for QFE Confirmation or Enrolment Confirmation and from time to time upon request, current supporting documentation must be provided for all assets and liabilities listed. All supporting documents must clearly show the beneficial owner's name, date, and current value. If backup documents are not provided or if they are unacceptable, Tarion will not include the value of the asset listed. Third-party appraisals from an

accredited appraiser may be considered by Tarion to support current market values. Tarion will calculate the equity of the individual based on the personal net worth statement and backup documents provided,

Tarion may modify these requirements where appropriate, for example waiving requirements or requiring additional information. Tarion also reserves the right to give less weight to equity that is provided by way of indemnity. This recognizes our historical experience of less than full recovery where our claim is based solely on an indemnity.

Appendix C: Recognition of Past Experience (Tenure Adjustments)

Tarion may be open to adjusting the “tenure” score based on the previous new home building experience of the applicant, particularly taking into consideration possessions. In these situations, adjustments will be made on a case-by-case basis depending on the specific facts. Examples of situations in which Tarion may adjust for experience include, the following:

1. **Corporate Transitions:** Many current vendors are family-owned corporations which may be contemplating generational or other corporate transitions. In such cases the new applicants may show that, due to their directors’ and/or officers’ involvement in the original registrant, they should be given more “tenure” to reflect their actual experience. In these kinds of situations Tarion will have regard to:
 - a. The tenure and customer service record of the original vendor entity;
 - b. The role that the new applicants played in the original vendor entity;
 - c. The similarities and differences between the new business and the business of the original vendor entity; and,
 - d. Other factors which may be relevant.

2. **Previous experience as a licensed new home vendor in another part of Canada:** The applicant must be able to demonstrate to Tarion’s satisfaction that they were licensed to build in the province or territory where the experience occurred. Tarion will verify details about an applicant’s previous experience by contacting its counterpart in that area. In these kinds of situations Tarion will have regard to:
 - a. The tenure and customer service record of the original vendor entity in the other jurisdiction;
 - b. The similarities and differences between the jurisdictions (including climate, geographic conditions, legal and regulatory); and
 - c. Other factors which may be relevant.

3. **Previous new home construction experience with a tenured vendor:** In general cases where an applicant has prior related experience, the applicant must be able to demonstrate to Tarion’s satisfaction that they were directly involved in the construction of new homes (e.g. as a site supervisor or project manager). The experience must have occurred in the last 7 years and with a vendor that is currently registered with Tarion.

As noted above, these kinds of adjustments will be made on a case-by-case basis. Applicants may be ds and references to support their submission.