

# Builder Bulletin 28L

---

Security Requirements for Types A and B Condominiums

## What this Bulletin is About

This bulletin describes how Tarion determines the amount of security builders must provide for low-rise condominiums. How they must provide it and how Tarion releases it

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.

This guideline applies to both Type A and Type B condominium construction, which are defined as follows:

| Type A Condominium   | Type B Condominium  |
|--|---|
| <ul style="list-style-type: none"><li>• Has only Part 9 OBC requirements and is a lot-line condominium.</li><li>• Construction is three storeys or less and is often similar to freehold homes.</li><li>• Common elements begin at the end of the lot-line and are usually minimal. For example, common roadway, curbs, sidewalks, street lighting, etc.</li></ul> | <ul style="list-style-type: none"><li>• Has only Part 9 OBC requirements and is <b>not</b> a lot-line condominium.</li><li>• Construction is three storeys or less.</li><li>• Common elements boundaries start from the back-side surface of the drywall of the unit and include the full exterior of the unit including all exterior window and doors.</li></ul> |

# Providing Security

## Initial Security Requirements

In general, Tarion requires an initial security of **\$20,000 per unit** for low rise part 9 condominiums. Tarion may adjust the initial security amount based on certain factors, which are discussed in the “Security Adjustments” section.

## 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 the release terms based on new information.

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

|   |
|---|
| <b>Your customer service track record, including:</b>   |
| <ul style="list-style-type: none"><li>• high levels of requests for inspections, conciliations and/or chargeable conciliations;</li><li>• claims paid; and</li><li>• delays</li></ul>   |
| <b>Your financial situation, including:</b>   |
| <ul style="list-style-type: none"><li>• changes to your lender or lending terms;</li><li>• deterioration in your financials or credit rating; and</li><li>• unusual lien activity</li></ul>   |
| <b>Your management/business structure, including:</b>   |
| <ul style="list-style-type: none"><li>• changes to your principals or key management team;</li><li>• changes in business product type; and</li><li>• rapid expansion of your business.</li></ul>  |
| <b>The nature/status of the project, including:</b>   |
| <ul style="list-style-type: none"><li>• whether the project is a conversion;</li><li>• the use of new technology;</li><li>• the use of common elements with complex or unusual design;</li><li>• the use of common elements of high value relative to the number of units; and</li><li>• the number of unclosed units remaining that are not part of the rental pool.</li></ul> |

## Acceptable Forms of Security

Tarion will accept the following forms of security:

1. Bond or Letter of Credit in a form that is acceptable to Tarion; and,
2. Deposit Trust Agreement (DTA) with an escrow agent acceptable to Tarion. The characteristics of, rules for, and restrictions on the use of DTAs will be applied on a case by case basis, at Tarion's discretion.

## Other Forms of Security

### Cash Security

In certain cases, Tarion may accept cash as a form of security. If you choose to provide cash, Tarion may require additional security instruments to be registered against it at your cost to secure Tarion's interest.

### Collateral Security

In certain cases, Tarion may accept or require collateral security, such as a mortgage of real property. If Tarion accepts collateral security, you will be responsible for any related administrative costs.

## Timing

You must provide acceptable security **at least five business days** before whichever of the following occurs first:

- Taking deposits and/or signing agreements of purchase and sale, or
- Start of construction.

### Deposit Trust Agreements

If you are providing security in the form of a Deposit Trust Agreement, you must provide the agreement **at least five business days before** whichever of the following occurs first:

- Taking deposits and/or signing agreements of purchase and sale, or
- Start of construction.

### Failure to Meet Timing Requirements

If you do not meet these requirements, Tarion may:

- Impose additional terms and conditions on your registration;
- Charge higher fees for using Deposit Trust Agreements; and/or
- Restrict your ability to use Deposit Trust Agreements or other types of security in the future.

## Change of Initial Security to Construction Warranty Security

Upon registration of the condominium corporation, the amount of continuing security required will be based on your tenure and your RISK ASSESSMENT RATING:

### Tenure

Your tenure is based on the number of whole years you have been registered with Tarion. For example, a builder who becomes registered on March 1, 2018 will have a tenure of 0 years until March 1, 2019. On March 1, 2019, that builders' tenure will become 1 year.

Tarion has grouped builders into Two categories:

| Category          | Description   |
|-------------------|---|
| Active Builders   | A builder that has been registered for 3 or fewer years, or has had at least one possession in the past 4 years |
| Inactive Builders | A builder that has been registered at least 4 years, but had no possessions in the past 4 years                 |

### Tenure Adjustments

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

## Security Requirements:

| Risk Assessment Rating | Security Required Per Home |                     |                     |                     |                       |                              | Inactive (No Possessions in Past 4 Years) |
|------------------------|----------------------------|---------------------|---------------------|---------------------|-----------------------|------------------------------|---|
|                        | 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 |   |
| <b>0-20</b>            | See Note*                  | See Note*           | See Note*           | See Note*           | See Note*             | See Note*                    | See Note*                                 |
| <b>21-40</b>           | \$30,000                   | \$25,000            | \$20,000            | \$15,000            | \$10,000              | \$5,000                      | \$20,000                                  |
| <b>41-55</b>           | \$25,000                   | \$20,000            | \$15,000            | \$10,000            | \$5,000               | \$0                          | \$15,000                                  |
| <b>56-70</b>           | \$20,000                   | \$15,000            | \$10,000            | \$5,000             | \$0                   | \$0                          | \$10,000                                  |
| <b>71+</b>             | \$15,000                   | \$10,000            | \$5,000             | \$0                 | \$0                   | \$0                          | \$0 to \$5,000**                          |

\*Builders with a risk rating that is 20 or less will be assessed on a case by case basis and may be refused registration

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

## Explanation of Risk Assessment Rating

In addition to tenure, we also examine the following four criteria to determine base security position. Points are allocated based on the builder's position in respect of each criteria, with more points implying a lower risk to Tarion. Together, the points values awarded to the criteria below, comprises a builder's overall risk assessment rating.

| Criteria      | Points Value | Explanation  |
|---------------|--------------|--|
| <b>Size</b>   | 0-35         | <p>Volume of homes in general is correlated with risk of loss to Tarion.</p> <p>Builders are broken out into five size categories for this criterion.</p> <p>See Appendix A, "Determining your Size points" for more details.</p>                        |
| <b>Credit</b> | 0-15         | <p>Points are awarded for overall creditworthiness based on credit scores of the registrant and indemnitors.</p> <p>See Appendix A, "Determining your Credit Points" for more details.</p>   |
| <b>Equity</b> | 0-30         | <p>Points are awarded based on available equity at the time of assessment.</p> <p>The ratio of equity per planned home relative to the maximum warranty liability, is reviewed and rated. (In most cases maximum warranty liability is \$300,000 per</p> |

|                    |      |   |
|--------------------|------|---|
|                    |      | home).<br><br>See appendix A, “ <i>Determining your Equity Points</i> ”, and Appendix B, “ <i>Assessing Reported Equity</i> ” for more details.                                 |
| <b>Claims Paid</b> | 0-20 | Points are awarded based on a history of any claims paid relative to a builder’s peers.<br><br>See Appendix A, “ <i>Determining your Claims Paid Points</i> ” for more details. |

## Release of Security

The first review of security levels occurs upon registration of the condominium corporation. In general, Tarion will review the remaining security once the highest risk claim timeframes have passed and builders can show there are no outstanding problems with the units and common elements under warranty.

In practice this means return of remaining security will be tied to the first and second year warranty periods and considered in conjunction with a builder’s tenure as described below:

| <b>Tenure</b>                          | <b>Factors Tied to Release of Security</b>  |
|--|---|
| <b>New &amp; inactive builders</b>     | The second release assessment will occur 30 months after the Common Element warranty start date, which provides opportunity for Tarion to assess important warranty milestones such as: <ul style="list-style-type: none"> <li>• If transfer of title has taken place;</li> <li>• Whether there are any first or second year deficiencies; and</li> <li>• How the homes perform over the course of at least two freeze thaw and seasonal cycles.</li> </ul> |
| <b>One to three years’ experience</b>  | The second release assessment will occur 24 months after the Common Element warranty start date.  |
| <b>Four to six years’ experience</b>   | The second release assessment will occur 18 months after the Common Element warranty start date, which provides opportunity for Tarion to assess first year claims experience.  |
| <b>Seven or more years’ experience</b> | The second release assessment will occur 12 months after the Common Element warranty start date.  |

The second release assessment will occur within 45 days of the relevant return window. It is important to remember that our assessment may include a review of the claims status of all enrolments associated with a builder. We may consider all warranty forms, chargeable conciliations, administrative compliance including complying with the terms and conditions of registration, and other factors in determining whether and how much security to release.

Based on the assessment, security will either be entirely or partially released, or retained. In some cases, it is possible that security requirements may be increased if the existing claims risk is considered high. If we decide not to release the full amount of security at the appropriate window we will notify you of our decision in writing with an explanation.

## **Blanket Umbrella Level Security**

In general, the security provided is specific to the registration and can apply to all projects or units belonging to that registration.

Tarion may allow for the security to be posted at the umbrella level as opposed to a specific registration for vendors who have multiple registrations under a single umbrella. In this type of arrangement, the umbrella will post a global bond from which Tarion will draw if there are any warranty defaults within the umbrella.

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

## **Security Appeals**

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.



# Appendix A: Determining Risk Assessment Score

## Determining Size Points

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

| Group   | Average Annual Possessions + Proposed 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 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 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 Equity Points

Here's how Tarion determines 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 300.*

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            |

## Determining 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 Builder. 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.

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 builders who are sole proprietors or part of a partnership, and any person that provides an indemnity or guarantee in support of the registration to Tarion. **Companies** include builders who are corporations, joint ventures or limited partnerships, and any company that provides an indemnity or guarantee in support of the registration 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 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 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.

Builders who are registered as corporations must provide externally prepared financial statements at each renewal for the most recent fiscal year-end. Tarion may require builders to provide reviewed financial statements. 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 mortgages on a personal residence or real estate properties, lines of credit, personal loans, credit card debt, and any other monies owed.

At each annual renewal, current supporting documentation must be provided for all assets and liabilities listed. All supporting documents must clearly show the 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: Tenure Adjustments

Tarion may be open to adjusting the “tenure” score based on the previous new home building experience of the applicant. 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 registrants 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 principals’ involvement in the original registrant, they should be given more “tenure” to reflect their actual experience. In these kinds situations Tarion will have regard to:
  - a. The tenure and customer service record of the original registrant;
  - b. The role that the new applicants played in the original registrant;
  - c. The similarities and differences between the new business and the business of the original applicant; and,
  - d. Other factors which may be relevant.
2. **Previous experience as a licensed new home builder 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 situations Tarion will have regard to:
  - a. The tenure and customer service record of the original registrant 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 registered builder:** 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 builder 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 required to provide records and references to support their submission.