

# Registrar Bulletin No. 11H

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High Rise Condo Security Requirements

Effective Date: February 1, 2021

## What this Bulletin is About

This bulletin describes how Tarion determines the amount of security builders must provide for Types C and D condominium construction, how builders must provide it, and how Tarion releases it. It replaces Builder Bulletin 28H – Security Requirements for Type C and D Condominiums. 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 confirmation of enrolments (**Enrolment Confirmation**). See Registrar Bulletins 10 APS, 10CH and 10 HRC - Warranty and Protection Plan Enrolment Process.

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 can be required of both vendors and builders the word “builder 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

This guideline applies to both Type A and Type B condominium construction, which are defined as follows: This bulletin does not apply to Common Elements and Vacant Land condominium projects.

Type C Condominium	Type D Condominium
<ul style="list-style-type: none"> <li>• Part 3 Ontario Building Code (OBC) requirements</li> <li>• Part 9 OBC requirements</li> <li>• Usually includes underground parking</li> <li>• Subject to Registrar Bulletin 19 reporting</li> </ul>	<ul style="list-style-type: none"> <li>• Part 3 Ontario Building Code (OBC) requirements</li> <li>• Usually high-rise of 4 or more stories with underground parking and amenities</li> <li>• Subject to Registrar Bulletin 19 reporting</li> </ul>

## Providing Security

### Initial Security Requirements

In general, the amount of initial security required is **\$20,000 per unit** although the range can be anywhere between **\$20,000** and **\$40,000**. In rare circumstances, the security amount may exceed **\$40,000** per unit. Tarion may adjust the initial security amount based on certain factors. For examples of factors that may affect the initial security requirement, please refer to the “Security Adjustments” section.

### Acceptable Forms of Security

Tarion will accept the following forms of security:

1. Irrevocable Letter of Credit in form and issuer that is acceptable to Tarion;
2. Surety Bond in a form and issuer that is acceptable to Tarion; and,
3. In the right circumstances a Deposit Trust Agreement (DTA) in a form and 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. No more than a total of \$100,000 may be provided by an applicant (or associated person for and on behalf of the applicant) in the form of cash security.

### Timing

You must provide acceptable security according to the condition imposed on the QFE Confirmation and Enrolment Confirmation and **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.

The reason for this requirement is to allow sufficient time to address any issues that may arise with respect to the security and to ensure that it can be processed in a reasonable way. Your application will not be approved, and you will not be able to commence sales until security has been received and accepted by Tarion. If you provide your security at the last moment and there is an issue, it may be that your sales and marketing cannot go ahead until that is resolved. By providing your security 5 business days in advance we can ensure that those kinds of situations do not happen. In the event that you have no choice but to file your security with less than 5 business days' notice, we will work to accommodate your situation, but an expedited service fee may apply. In addition, should the practice continue we may apply restrictions on your future use of the Deposit Trust Agreement instrument, and/or adjust the fees for DTAs

### 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, the release of security is affected by:

1. **Your Experience:** This is measured by the number of Type C and D projects you have completed for which 1 year has elapsed from the condominium's registration. If projects were joint ventures with one or more partners, Tarion will assess those on a case-by-case basis.
2. **Construction Defects:** The nature and extent of defects identified in the RB19 Final Report and the subsequent Performance Audit.

3. **Other Factors:** These include your customer service track record, the nature and complexity of the project, and your financial position (which includes the equity and financial position of both you and your indemnitor/guarantors).

The first review of security levels occurs upon registration of the condominium corporation and there is at least 51% title transfer of the units. In general, this would involve a reduction to the risk assessment amount to less than the initial security request. 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 a QFE Confirmation and/or Enrolment Confirmation, 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 Tarion decides not to release the full amount of security, we will notify you in writing and include an explanation.

### **Categories for Security Release**

Tarion will use the following categories when determining the release of security:

<b>Category</b>	<b>Type C/D Projects Completed*</b>
<b>1 – Very Experienced</b>	7+
<b>2 - Experienced</b>	4-6

<b>3 – Moderate Experience</b>	2-3
<b>4 - Inexperienced</b>	1
<b>5 - New</b>	0

\*Notes:

- The number of projects is based on the number of Common Element Enrolment Numbers registered with Tarion.
- In a phased condominium, each phase has its own Common Element Enrolment Number, and is considered a separate project.
- A project is considered completed 1 year after the condominium's registration.
- **Umbrella Groups** (see below) with a common ownership structure will be assessed based on the total number of projects completed within the Umbrella Group.
- Tarion has the discretion to adjust the security category for new applicants whose principals have past-experience with a tenured builder that has completed projects.
- Tarion has the discretion to adjust the security category for applicants whose past experience with other types of construction is relevant to the proposed project.
- Tarion has the discretion to adjust the security category for applicants whose past experience may be concentrated in either Type C or D projects.

### Category 1 Security Release Process

Release of security for very experienced builders will happen in up to 3 stages. Each of these stages is initiated by a specific trigger, as described below.

#### 1<sup>st</sup> Trigger: Acceptance of the Final RB19 Report

Within 45 days of receiving and accepting the RB19 Final Report, Tarion will reduce security to whichever of the following is greater:

- Tarion's estimate based on the defects reported in the accepted RB19 Final Report and any additional defects identified during any site visits conducted by Tarion in relation to the RB19 reporting process, plus a 15% contingency, or
- 15% of the applicable common element warranty limit (i.e. \$375,000 where the limit is \$2.5 million);

Additionally, in assessing the amount of security to be retained, Tarion will consider any outstanding unit warranty issues.

If Tarion cannot reasonably assess the costs to repair defects identified in the RB19 Final Report, Tarion will hold security until reasonable estimates can be completed.

## **2<sup>nd</sup> Trigger: Receipt of the 1 Year Performance Audit**

Within 45 days of receiving and accepting the Performance Audit, Tarion typically will release up to 100% of the remaining security. The amount of security released will be based on:

- Tarion's assessment of the costs of the defects contained in the Performance Audit
- Any outstanding RB19 defects not resolved and for which a clearance letter has not been provided by the Field Review Consultant, and,
- Any outstanding unit warranty claims.

## **3<sup>rd</sup> Trigger: Ongoing Assessment of Unresolved Deficiencies**

In keeping with the processes described in Registrar Bulletin 02 - Claims Process - Condominium Common Elements, Tarion will conduct an ongoing claims assessment of unresolved deficiencies. Where Tarion considers the risk of not recovering claim amounts to be low, it may choose to release the remaining security without formal sign-off from the condominium board on the remaining deficiencies.

## **Category 2 Security Release Process**

Release of security for experienced vendors will happen in 3 stages. Each of these stages is initiated by a specific trigger, as described below.

### **1<sup>st</sup> Trigger: Acceptance of the Final RB19 Report**

Within 45 days of receiving and accepting the RB19 Final Report, Tarion will reduce security to whichever of the following is greater:

- Tarion's estimate based on the defects reported in the accepted RB19 Final Report and any additional defects identified during any site visits conducted by Tarion in relation to the RB19 reporting process, plus a 25% contingency, or
- 25% of the applicable common element warranty limit (i.e. \$625,000 where the limit is \$2.5 million);

Additionally, in assessing the amount of security to be retained, Tarion will consider any outstanding unit warranty issues.

If Tarion cannot reasonably assess the costs to repair defects identified in the RB19 Final Report, Tarion may hold all or some of the security until reasonable estimates can be completed.

### **2<sup>nd</sup> Trigger: Receipt of the 1 Year Performance Audit**

Within 45 days of receiving and accepting the Performance Audit, Tarion will release up to 75% of the remaining security. The amount of security released will be based on:

- Tarion's assessment of the costs of the defects contained in the Performance Audit
- Any outstanding RB19 defects not resolved and for which a clearance letter has not been provided by the Field Review Consultant, and,
- Any outstanding unit warranty claims.

### **3<sup>rd</sup> Trigger: 2 Years from Registration**

The end of the second year from registration of the condominium will typically trigger the release of any remaining security.

Tarion will review any additional 2 Year Performance Audits or unit claims related to the project. In keeping with the processes described in Registrar Bulletin 02 - Claims Process - Condominium Common Elements, Tarion will conduct an ongoing claims assessment of unresolved deficiencies. Where Tarion considers the risk of not recovering claim amounts to be low, it may choose to release the remaining security without formal sign-off from the condominium board on the remaining deficiencies.

### Category 3 Security Release Process

Release of security for medium experienced vendors will happen in 3 stages. Each of these stages is initiated by a specific trigger, as described below.

#### **1<sup>st</sup> Trigger: Acceptance of the Final RB19 Report**

Within 45 days of receiving and accepting the RB19 Final Report, Tarion will reduce security to whichever of the following is greater:

- Tarion's estimate based on the defects reported in the accepted RB19 Final Report and any additional defects identified during any site visits conducted by Tarion in relation to the RB19 reporting process, plus a 30% contingency, or
- 30% of the applicable common element warranty limit (i.e. \$750,000 where the limit is \$2.5 million);

Additionally, in assessing the amount of security to be retained, Tarion will consider any outstanding unit warranty issues.

If Tarion cannot reasonably assess the costs to repair defects identified in the RB19 Final Report, Tarion may hold all or some of the security until reasonable estimates can be completed.

#### **2<sup>nd</sup> Trigger: Receipt of the 1 Year Performance Audit**

Within 45 days of receiving and accepting the Performance Audit, Tarion will release up to 50% of the remaining security. The amount of security released will be based on:

- Tarion's assessment of the costs of the defects contained in the Performance Audit
- Any outstanding B19 defects not resolved and for which a clearance letter has not been provided by the Field Review Consultant, and,
- Any outstanding unit warranty claims.

#### **3<sup>rd</sup> Trigger: 2 Years from Registration**

The end of the second year from registration of the condominium will typically trigger the release of any remaining security.

Tarion will review any additional 2 Year Performance Audits or unit claims related to the project. In keeping with the processes described in Registrar Bulletin 02 - Claims Process - Condominium Common Elements, Tarion will release security based on an ongoing claims assessment of unresolved deficiencies.

### Category 4 Security Release Process

Release of security for Category 4 vendors will happen in 2 stages. Each of these stages is initiated by a specific trigger, as described below.

#### **1<sup>st</sup> Trigger: Receipt of the 1 Year Performance Audit and the B19 Final Report**

Within 45 days of receiving and accepting the Performance Audit and/or the RB19 Final Report (whichever is later), Tarion will release up to 50% of the remaining security. The amount of security released will be based on:

- Tarion's assessment of the costs of the defects contained in the Performance Audit
- Tarion estimate based on the defects reported in the RB19 Final Report and any additional defects identified during any related site visits conducted by Tarion, and,
- Any outstanding unit warranty claims.

Note: Tarion may increase security requirements if its assessment of the cost of defects noted in the Performance Audit and/or the RB19 Final Report is greater than the security being held.

## **2<sup>nd</sup> Trigger: 2 Years from Registration**

The end of the second year from registration of the condominium will trigger the release of any remaining security.

If there are no 2 Year claims filed, the release will be based on Tarion's review of items identified in the Performance Audit and RB19 issues for which no clearance letter has been provided. If there are 2 Year claims (either common element or unit), Tarion may hold security until it is satisfied that the issues are resolved according to the repair and conciliation timeframes described Registrar Bulletin 02 - Claims Process - Condominium Common Elements.

## **Category 5 Security Release Process**

Security may be released after two years from the condominium's registration date. Tarion will release security based on a review of the following:

- Final RB19 Report
- Performance Audit Report(s)
- Unit claims
- Status of the project (including any unclosed units)

If there are 2 Year claims (either common element or unit), Tarion may hold security until it is satisfied that the issues are resolved according to the repair and conciliation timeframes described in Registrar Bulletin 02 - Claims Process - Condominium Common Elements.

## **Security Review Timelines**

The security review timelines set out in the above sections are service commitments which Tarion will use its best efforts to uphold. There may be cases from time to time where resource issues or the complexity of a file will prevent Tarion from being able to meet them.

The approach outlined in this bulletin is a guideline which Tarion expects will apply in most cases. 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 which could result in a security adjustment include:

1. **Your customer service track record**, including chargeable conciliations, claims paid, and records of delays.
2. **Your financial situation**, including changes to your lender or lending terms, deterioration



in your financials or credit rating, unusual lien activity, and your overall equity position relative to the cost of the project.

3. **Your management/business structure**, including changes to your principals or key management team, changes in business product type, and rapid expansion of your business.
4. **The nature/status of the project**, including whether the project is a conversion, the use of new technology, the use of common elements with complex or unusual design, the use of common elements of high value relative to the number of units, and the number of unclosed units remaining not earmarked for the rental pool.

## Blanket Umbrella Level Security

In general, the security provided is specific to the project which is the subject of the QFE Confirmation or Enrolment Confirmation. Specifically, in connection with an Application for QFE Confirmation in respect of a condominium project, the Security provided in connection with the condominium project shall be limited to such condominium project (including both residential units and common elements) unless the Security instrument provides otherwise. 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 builder shall secure all builder obligations of the builder 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 builder unless specifically released by Tarion in writing.

For developers who have ongoing and multiple licences under a single umbrella, Tarion may allow for the security to be posted at the umbrella level as opposed to in relation to the obligations of a particular builder. **Umbrella** means a group of associated persons who HCRA 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 an umbrella and described as **blanket security** - is available to satisfy vendor and builder obligations relating to any homes enrolled (or which should have been enrolled) of any associated persons under that umbrella. In this type of arrangement, a key entity (parent, principal) of the umbrella will post a global bond or other blanket security or indemnity from which Tarion will draw if there are any warranty defaults in connection with any associated persons under the umbrella. 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.

## Challenge Security Assessments

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 them to the Licence Appeal Tribunal.

Registrar

*“Peter Balasubramanian”*

## Appendix A: Securities Category Adjustments

Tarion may be open to adjusting the builders proposed Securities Category based on the previous new condominium 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 builders 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 builder entity;
  - b. The role that the new applicants played in the original builder entity;
  - c. The similarities and differences between the new business and the business of the original builder entity and,
  - d. Other factors which may be relevant.
  
2. **Previous experience as a licensed new condominium builder in another part of Canada:** The applicant must be able to demonstrate to Tarion's satisfaction that they were licensed to build condominiums 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 condo construction experience and customer service record of the original builder entity in the other jurisdiction;
  - b. The similarities and differences between the jurisdictions (including climate, geographic conditions, legal, building code and regulatory); and
  - c. Other factors which may be relevant.
  
3. **Previous new condominium construction experience with a tenured 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 condominiums (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.