

Registrar Bulletin No. 11L

Security Requirement for Type A and B
Condominiums

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What this Bulletin is About

This bulletin describes how Tarion determines the amount of security vendors must provide for low-rise condominium construction, how vendors must provide it, and how Tarion releases it. It replaces Builder *Bulletin 28L – Security Requirements for Type A and B 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 confirmations of enrolment (**Enrolment Confirmation**). See *Registrar Bulletin 10C Warranty and Protection Plan Enrolment Processes – Condominium* for more information about enrolling condominiums

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.

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 A Condominium	Type B Condominium
<ul style="list-style-type: none"> Has only Part 9 OBC requirements and is a lot-line condominium. Construction is three storeys or less and is often similar to freehold homes. Common elements begin at the end of the lot-line and are usually minimal. For example, common roadway, curbs, sidewalks, street lighting, etc. 	<ul style="list-style-type: none"> Has only Part 9 OBC requirements and is not a lot-line condominium. Construction is three storeys or less. Common elements boundaries usually 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.

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.

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:
<ul style="list-style-type: none">• high levels of requests for inspections, conciliations and/or chargeable conciliations;• claims paid; and• delays.
Your financial situation, including but not limited to:
<ul style="list-style-type: none">• changes to your lender or lending terms;• deterioration in your financial position, equity, cash flow, or credit rating; and• unusual lien activity.
Your management/business structure, including but not limited to:
<ul style="list-style-type: none">• changes to your principals or key management team;• changes in business product type;• rapid expansion of your business; and• prior experience with condominium projects.
The nature/status of the project, including but not limited to:
<ul style="list-style-type: none">• 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;• the number of unclosed units remaining that are not part of the rental pool; and• taking deposit of less than \$20,000 per unit.

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;
2. Surety Bond in a form, and from an 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 \$250,000 may be provided by 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

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".

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.

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.

Tarion has grouped vendors into two categories:

Category	Description
Active Vendors	A vendor that has been registered/licensed either 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.

Providing Security

Minimum 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	
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

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 vendor'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 vendor's overall risk assessment rating.

Criteria	Points Value	Explanation
Size	0-35	Volume of homes in general is correlated with risk of loss to Tarion. Vendors are broken out into five size categories for this criterion.

Criteria	Points Value	Explanation
		See Appendix A, “ <i>Determining your Size points</i> ” for more details.
Credit	0-15	Points are awarded for overall creditworthiness based on credit scores of the registrant and indemnitors. See Appendix A, “ <i>Determining your Credit Points</i> ” for more details.
Equity	0-30	Points are awarded based on available equity at the time of assessment. 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). See Appendix A, “ <i>Determining your Equity Points</i> ”, and Appendix B, “ <i>Assessing Reported Equity</i> ” for more details.
Claims Paid	0-20	Points are awarded based on a history of any claims paid relative to a vendor’s peers. See Appendix A, “ <i>Determining your Claims Paid Points</i> ” for more details.

Release of Security

The first review of security levels occurs within 45 days after 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 vendors 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 vendor’s tenure as described below:

Tenure	Factors Tied to Release of Security
New & inactive vendors	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"> • If transfer of title has taken place; • Whether there are any first- or second-year deficiencies; and • How the homes perform over the course of at least two freeze-thaw and seasonal cycles.
One to three years’ experience	The second release assessment will occur 24 months after the Common Element warranty start date.
Four to six years’ experience	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.
Seven or more years’ experience	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 applicable return window in the above chart. It is important to remember that our assessment may include a review of the claims status of all enrolments associated with a vendor. We may consider all warranty forms, chargeable conciliations, administrative compliance including complying with the terms and conditions of any QFE Confirmation or Enrolment Confirmation, the Vendor Agreement and Builder Agreement, the Registrar Bulletins, 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.

It is important to remember that our assessments may include a review of the claims status (including claims asserted against the vendor and/or Tarion via litigation) of all enrolments associated with a vendor which can include projects under another vendor but is part of the same Risk Assessment Group, or otherwise associated to one or more of the Directors/Officers.

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. 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 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 indemnitors/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 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 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 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.
- 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 required to provide records and references to support their submission.