

Builder Bulletin 28H

Security Requirements for Type C and D Condominiums

Effective Date: December 3, 2020

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 it¹.

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

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.

¹ The approach outlined in this bulletin is a guideline which Tarion expects will apply in most cases. There are situations where Tarion’s security assessment will be different.

Acceptable Forms of Security

Tarion will accept the following forms of security:

1. Bond or Letter of Credit; 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. No more than a total of \$100,000 may be provided by any registrant (or corresponding umbrella group) in the form of cash security.

Timing

You must provide your security **at least 5 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

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.

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 BB19 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).

Categories for Security Release

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

Category	Type C/D Projects Completed*
1 – Very Experienced	7+
2 - Experienced	4-6
3 – Moderate Experience	2-3
4 - Inexperienced	1
5 - New	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 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 registrant 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 vendors will happen in up to 3 stages. Each of these stages is initiated by a specific trigger, as described below.

1st Trigger: Acceptance of the Final BB19 Report

Within 45 days of receiving and accepting the BB19 Final Report, Tarion will reduce security to whichever of the following is greater:

- Tarion's estimate based on the defects reported in the accepted BB19 Final Report and any additional defects identified during any site visits conducted by Tarion in relation to the B19 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 BB19 Final Report, Tarion will hold security until reasonable estimates can be completed.

2nd Trigger: Receipt of the 1 Year Performance Audit

Within 45 days of receiving and accepting the Performance Audit, Tarion 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 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.

3rd Trigger: Ongoing Assessment of Unresolved Deficiencies

In keeping with the processes described in Builder Bulletin 49, 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.

1st Trigger: Acceptance of the Final BB19 Report

Within 45 days of receiving and accepting the BB19 Final Report, Tarion will reduce security to whichever of the following is greater:

- Tarion's estimate based on the defects reported in the accepted BB19 Final Report and any additional defects identified during any site visits conducted by Tarion in relation to the B19 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 BB19 Final Report, Tarion may hold all or some of the security until reasonable estimates can be completed.

2nd 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 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.

3rd Trigger: 2 Years from Registration

The end of the second year from registration will 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 Builder Bulletin 49, 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.

1st Trigger: Acceptance of the Final BB19 Report

Within 45 days of receiving and accepting the BB19 Final Report, Tarion will reduce security to whichever of the following is greater:

- Tarion's estimate based on the defects reported in the accepted BB19 Final Report and any additional defects identified during any site visits conducted by Tarion in relation to the B19 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 BB19 Final Report, Tarion may hold all or some of the security until reasonable estimates can be completed.

2nd 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.

3rd Trigger: 2 Years from Registration

The end of the second year from registration will 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 Builder Bulletin 49, 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.

1st 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 B19 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 B19 Final Report and any additional defects identified during any related site visits conducted by Tarion, and,
- Any outstanding unit warranty claims.



2nd Trigger: 2 Years from Registration

The end of the second year from registration 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 B19 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 in Builder Bulletin 49.

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 BB19 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 Builder Bulletin 49.

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 registration and can apply to all projects or units belonging to that registration.

For developers who have ongoing and multiple registrations under a single Umbrella, Tarion may allow for the security to be posted at the Umbrella level as opposed to a specific registration. 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 them at the Licence Appeal Tribunal.

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 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 a higher Securities Category to reflect their actual experience. In these kinds of situations Tarion will have regard to:
 - a. The condo construction experience 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 registrant 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 registrant 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 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 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.