

Builder Bulletin 28F

Security Requirements for Freehold Homes

Effective Date: December 3, 2020

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 it¹.

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.

How Tarion Assesses Security

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

1. **Your tenure**, i.e. how long you have been a registered vendor/builder; and
2. **Your risk assessment rating**, which is based on a review of the number of homes you build, your credit rating, your equity and your history of claims paid.

In general, the longer you have been registered with Tarion and 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. 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.

A registrant's tenure includes any associated companies.

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.

Tarion has grouped builders into two categories:

Category	Description
Active Builders	A builder that has been registered. for 3 or fewer years or has been registered for 4 or more years and 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.

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	Volume of homes in general is correlated with risk of loss to Tarion. Builders are broken out into five size categories for this criterion. 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.

Criteria	Points Value	Explanation
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 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 builder’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 and or builder may be allowed to build and/or sell in any given renewal period.

Providing Security

Minimum Security Requirements:

Risk Assessment Rating	Security Required Per Home ^{***}						Inactive
	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 ^{**}

**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*

****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 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 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 that is acceptable to Tarion; and,
2. Surety bond in a form 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 \$100,000 may be provided by any registrant (or corresponding umbrella group) in the form of cash security.

Timing

In general, you must provide security to Tarion with every new home enrolment. Tarion may require Builders with a Tenure of less than 7 years, or Inactive Builders, who are proposing to build two or more homes to provide security at the time of registration.

Failure to Meet Timing Requirements

If you do not meet these requirements, Tarion may:

- Impose additional terms and conditions on your registration;
- Increase security requirements or security taken upfront
- Issue a Notice of Proposal to revoke your registration

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 the homes under warranty.

Tarion will make security release assessments based on tenure, as outlined below:

Category	First Security Release Assessment Trigger	Notes
Builders with Tenure of 0-3 Years & Inactive Builders	24 months after the warranty start date	Tarion will review: <ul style="list-style-type: none"> • any one or two-year defects; and • how homes perform over at least two freeze thaw and seasonal cycles.
Builders with Tenure of 4 or more years	12 months after the warranty start date	None.

The Security Release Assessment

Tarion 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;
- all warranty forms;
- chargeable conciliations;
- administrative compliance (including compliance with any of the terms and conditions of your registration); 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. Tarion will not rollover or apply existing security to new enrolments. Where security is pending receipt, Tarion may delay any security releases until all outstanding amounts are received.

For builders required to provide upfront blanket security at the time of registration/renewal, the release of security will be reviewed at each registration renewal 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 renewal period; and
- the timeframe for remaining warranties on all homes covered.

Based on its assessment, Tarion may release all, part, or none of your blanket security. Tarion may also rollover or apply existing blanket security to any proposed construction plans for the current renewal period and/or increase the blanket security amount if it considers the risk profile of the builder to be high.

How Security is Used

Tarion may use the security you provide to pay for warranty claims related to **any** of homes you have built, sold, or enrolled.

Example: A builder 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.

Review of Security Requirements

Tarion will review and update its security assessment annually at the time of your license renewal. 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 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 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 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 Points²

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.*

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

² Tarion does the same calculation for each Guarantor, calculating their ratio based on the total number of homes they guarantee across all of their guarantees.

The equity of the indemnitor(s) and applicants are used in the calculation of an applicant's equity ratio.

A builder who is unable to produce suggested minimum equity of 0.39 or more may be refused registration and/or have it revoked.

Unenrolled Homes

Unenrolled homes are defined as those homes on which the construction has begun before the unit was enrolled. This is in direct violation of the requirements of the Ontario New Home Warranties Plan Act (as amended from time to time). A builder must be registered to apply for the building permit and homes must be enrolled forthwith upon the issuance of a building permit. 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 builder and the project before construction.

Determining Your Claims Paid Points

A claim paid is any claim paid amount within the past 10 years or any amount showing as outstanding. . The Claim Paid amount will not include amounts disputed to the Builder Arbitration Forum by the Builder or amounts resulting from Tarion Acting on Behalf.. 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 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. Tarion reserves the right to adjust assessed equity based on various factors deemed relevant in professional practice (i.e. liquidity factors, market factors, etc.).

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: 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 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 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 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 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 of 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.