

# Registrar Bulletin - No. 11H

## High Rise Condo Security Requirements

Effective Date: February 1, 2021

Updated: January 10, 2022

### What this Bulletin is About

This bulletin describes how Tarion determines the amount of security vendors must provide for Types C and D condominium construction, how vendors must provide it, and how Tarion releases it. It *replaces Builder Bulletin 28H - Security Requirements for Type C and D Condominiums (High Rise)*. 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 C and Type D 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 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 an applicant (or associated person for and on behalf of the applicant) in the form of cash security.

## Timing

If you intend to begin taking deposits, signing agreements of purchase and sale, or commencing construction on a particular date, it is important that you provide acceptable security to Tarion (as outlined in your conditions of QFE and/or Enrolment) well in advance of that date. You must provide acceptable security **at least five business days** before you expect Tarion to issue the QFE and/or Enrolment Confirmation(s) that will authorize you to begin sales or 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 before Tarion issues QFE and/or Enrolment Confirmation. You will not receive QFE or Enrolment Confirmation until the security required from you as conditions of QFE and/or Enrolment has been received, processed, 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 construction cannot go ahead until that is resolved. By providing your security five 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 five 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 Deficiencies:** The nature and extent of deficiencies 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 security release assessment occurs as a general rule within 45 days of the applicable "1<sup>st</sup> trigger" detailed below in the Categories for Security Release section. The second release assessment will occur within 45 days of the applicable "2<sup>nd</sup> trigger" detailed below in the Categories for Security Release section. It is important to remember that our assessment may include a review of the claims status (including claims asserted

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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 Principals, Directors and/or Officers. 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, 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.

## Categories for Security Release

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

Category	Type C/D Projects Completed*
<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.
- **Risk Assessment Groups** (see below) with a common ownership structure will be assessed based on the total number of projects completed within the Risk Assessment Group.

- Tarion has the discretion to adjust the security category for new applicants whose principals have past experience with a tenured vendor 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.

### 1<sup>st</sup> Trigger:

Within 45 days of you providing evidence of all the following: (1) registration of the condominium corporation; (2) receipt and acceptance of the Final RB19 Report; and (3) at least 51% of the units have transferred title to the purchasers, Tarion will reduce security to whichever of the following is greater:

- Tarion's estimate based on the deficiencies reported in the accepted RB19 Final Report and any additional deficiencies identified during any site visits conducted by Tarion in relation to the RB19 reporting process (or otherwise identified to Tarion), 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 potential costs to repair deficiencies 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 some and up to 100% of the remaining security. The amount of security released will be based on:

- Tarion's assessment of the costs of the deficiencies contained in the Performance Audit or otherwise identified to Tarion;
- Any outstanding RB19 deficiencies 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 *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.

### **1st Trigger:**

Within 45 days of you providing evidence of all the following: (1) registration of the condominium corporation; (2) receipt and acceptance of the Final RB19 Report; and (3) at least 51% of the units have transferred title to the purchasers, Tarion will typically reduce security to whichever of the following is greater:

- Tarion's estimate based on the deficiencies reported in the accepted RB19 Final Report and any additional deficiencies 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 potential costs to repair deficiencies identified in the RB19 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 typically 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 deficiencies contained in the Performance Audit or otherwise identified to Tarion;
- Any outstanding RB19 deficiencies 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 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.

### **1st Trigger: Acceptance of the Final RB19 Report**

Within 45 days of you providing evidence of all the following: (1) registration of the condominium corporation; (2) receipt and acceptance of the Final RB19 Report; and (3) at least 51% of the units have transferred title to the purchasers, Tarion will reduce security to whichever of the following is greater:

- Tarion's estimate based on the deficiencies reported in the accepted RB19 Final Report and any additional deficiencies 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 potential costs to repair deficiencies identified in the RB19 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 deficiencies contained in the Performance Audit;
- Any outstanding B19 deficiencies 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 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.

### **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 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 deficiencies contained in the Performance Audit;
- Tarion estimate based on the deficiencies reported in the RB19 Final Report and any additional deficiencies 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 deficiencies noted in the Performance Audit and/or the RB19 Final Report is greater than the security being held.

### **2nd 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 consider the appropriate release based on a review of factors including:

- Final RB19 Report
- Performance Audit Report(s)
- Unit claims
- Status of the project (including any unclosed units)
- The declaration being registered
- At least 51% of units have transferred title to the purchasers

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 financial position, equity, cash flow, or credit rating, unusual lien activity, and
3. your overall equity position relative to the cost of the project.
4. **Your management/business structure**, including changes to your principals or key management team, changes in business product type, and rapid expansion of your

business.

5. **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 Risk Assessment Group 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 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 licenses 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 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"*

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February 1, 2021

## Appendix A: Securities Category Adjustments

Tarion may be open to adjusting the vendor's 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 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 condominium vendor 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 vendor 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 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 condominiums (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.