

## The Security Issue

The Ontario New Home Warranty Program (ONHWP) requires security from builders of new homes or condominium projects, which security supplements enrolment and registration fees. The enrolment and registration fees finance the guarantee fund. However security is not part of the fund. Home builders pay both security and enrolment fees to ONHWP, as a requirement of registration, and failure or refusal to do so leads to revocation or refusal to obtain or maintain registration. It is my belief no builder should be required to provide ONHWP with any security. My Security Issue paper addresses the following questions and deals with the complicated and expensive issue of security. The full text of the paper can be separately requested. The following is a summary.

1. Should builders be required to provide security in addition to registration and enrollment fees?  
*No. Given that the guarantee fund increases in amount as much as ten million dollars per year, calculated by taking enrollment fees minus payment of claims and overhead, in my opinion there is no financial reason for ONHWP to seek additional security from builders. Also I believe not only is it not required, all builders should consider asking for a security refund. There is a way to implement such a process.*
2. Can the guarantee fund be maintained and grow in size without any security requirements?  
*Yes. As stated in the ONHWP's 2000 Annual Report last year the fund earned \$6 million in investment income and paid out claims of \$6 million. ONHWP spent \$21 million in overhead to pay the claims but collected \$30 million in enrolment fees. With fees for registrations and renewals included, the guarantee fund grew by \$10 million without payment of any security.*
3. What is the size of the guarantee fund and the scope of the additional security portfolio of ONHWP?  
*According to the ONHWP's last Annual Report the size of the guarantee fund is, as of the year 2000, \$154 million. The scope of the actual security held by ONHWP is a further \$688 million. The \$688 million, as well as the \$154 million together totals \$840 million, or 140 times the annual claims payout. Under these circumstances builders need to rethink the security payments and instead, look to its elimination and refund.*
4. Can builders challenge security requirements without losing their registration?  
*Yes. Builders can challenge security requirements by appealing terms and conditions of registration to LAT. Alternatively, builders can go to court to challenge the amount of security proposed. ONHWP in a recent case conceded that their security decisions are not final and can be appealed to LAT or challenged in Court.*
5. Must builders consent to security conditions of registration with ONHWP?  
*Builders can disagree with security requirements by putting ONHWP on notice they oppose ONHWP's terms and conditions of registration or renewal. If builders sign a vendor/builder agreement and application ONHWP will argue they consented in advance to security. Builders can on an annual basis when registration comes up for renewal, object to the security by challenging the "risk assessment" of ONHWP which sets the security amount. This can be challenged to LAT or to Court on a summary basis and the builder must argue, the calculation of security by ONHWP pursuant to Bulletin #28 was incorrect and unreasonable.*
6. How can builders more fully understand how security is calculated by ONHWP?  
*Builders can only fully understand the security calculations by requesting production of "risk assessments" made by ONHWP based on Bulletin #28. In addition, builders are entitled to the underlying documentation and analysis that comprise the Bulletin #28 assessment. For example*

*how did the builder do on his technical exam, how does ONHWP calculate their equity per unit, why is equity required, how is a builder's marketing figure obtained. I have requested and obtained such information on behalf of many builders.*

7. Do ONHWP's risk assessments under Bulletin #28 relate to security requirements set out in the Regulations?

*No. There is no relationship between risk assessment calculations under Bulletin #28, and the actual security requirements under the Regulations. Under the regulations security is only required if a claim is paid or payable. However under Bulletin #28 security is required before any risk or liability to ONHWP ever arises. Builders are entitled to question all aspects of Bulletin # 28.*

8. If Bulletin #28 on security requirements doesn't relate to the security Regulation why are builders obliged to pay any security to ONHWP?

*I do not believe builders ought to pay any security. The guarantee fund is large and self-supporting. Security provides a method for ONHWP to collect on payments made out of the fund, without having to first prove these payments were justified. This means the issue is resolved in favour of ONHWP and payment transferred from security, without a hearing. Builders deserve such a hearing if they so choose prior to ONHWP paying out money.*

9. Are Builders required to pay deposit risk security on condominiums?

*No. Builders of condominiums, as of July 21, 2001, no longer have the right to use deposits from homeowners. Therefore the provision of security should no longer be required by builders of condominiums for deposits, as there is no such deposit refund risk remaining for ONHWP.*

10. What can builders do now to challenge the security requirements?

*Builders can ask ONHWP for their risk assessment and question their security requirements. If they disagree with the assessment the builders can challenge any security requirements by appealing such conditions to LAT or bringing court proceedings to stay or overturn the security requirements as being inapplicable to their situation.*

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