

## **Bulletin #28 Risk Assessments Revisited**

As legal counsel for many Ontario builders I offer the following comments regarding ONHWP's security requirements as set out in Bulletin #28.

ONHWP is committed to the concept of requiring security as a condition of builder registration.

ONHWP calculates whether security is required from builders through a "risk assessment" determined by applying the provisions of Bulletin #28.

Although Bulletin #28 is complicated it is critical to understand how ONHWP determines your risk to them and therefore decides your security requirements. The "risk assessment" is not provided to the builder and rarely do builders question ONHWP's analysis.

Points are assigned by ONHWP in four categories; size, tenure, business/technical skills and financial ability. The financial score is the most important as well as the most difficult to understand. The maximum points attainable in this category are 51. The considerations ONHWP looks at includes the equity per unit (EPU), suggested minimum equity (SME) and ratio of the EPU to the SME.

Depending on how such risk assessments are calculated, the outcome determines whether a builder is able to build, how many homes he can build, and what, if any, security is required. In other words it determines the scope of the builders' actual construction activities on an annual basis.

The higher the equity per unit when compared to the suggested minimum equity, the less security per home is required. Should the equity per unit be less than one-half of the suggested minimum equity, the builder cannot build.

It is my view that these ratios bear no relationship to ONHWP's risk, and therefore, no relevance to the security builders are asked to provide.

Every builder is entitled to see his risk assessment and question its accuracy or applicability to his case. ONHWP should be required not only to demonstrate how they calculate the security, but why it should apply in the instance of each builder, as every builder's situation is unique. After all, the Bulletin is only a guideline in determining conditions of registration. Security is therefore an option, not a condition precedent to registration.

ONHWP says that builders who earn sufficient points under Bulletin #28 to avoid paying security may be required to pay security anyway, while some builders who do not earn sufficient points may not be required to provide security. Why is so much discretion exercised by ONHWP?

The sticking point may be the use of the above ratios. No explanation has been provided for why security depends on these ratios. In my view, the ratios have no useful meaning and therefore security requirements dependent upon them are open to question.

ONHWP has advised that builders can challenge security requirements. That being the case, builders who disagree with ONHWP's security requirements should obtain a copy of their risk assessment, do their own calculations, and challenge ONHWP on the necessity of providing any at all, or at least the amount ONHWP determines.

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