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# Bill 166

**An Act to amend or repeal various Acts and to enact three new Acts  
with respect to the construction of new homes and ticket sales for events**

**The Hon. T. MacCharles**  
Minister of Government and Consumer Services

## Government Bill

1st Reading      October 5, 2017

2nd Reading

3rd Reading

Royal Assent





## EXPLANATORY NOTE

The Bill amends or repeals various Acts and enacts three new Acts with respect to the construction of new homes and ticket sales for events.

### **SCHEDULE 1 NEW HOME CONSTRUCTION LICENSING ACT, 2017**

The Schedule enacts the *New Home Construction Licensing Act, 2017*.

Part I sets out definitions.

Part II allows the Lieutenant Governor in Council, by regulation, to designate a not-for-profit corporation without share capital as the regulatory authority of new home builders and vendors. If the regulatory authority is designated, the administration of specified provisions of the Act and the regulations made under the Act is delegated to the authority and the authority is required to carry out the administration of the delegated provisions.

The Part includes mechanisms for government oversight, including requirements for an administrative agreement between the regulatory authority and the Minister, annual and other reports by the authority, competency criteria for board members and oversight by the Auditor General.

The regulatory authority is not an agent of the Crown. Employees of the authority are not Crown employees. There is no Crown liability for actions of the authority and the authority is required to indemnify the Crown for damages or costs.

The regulatory authority is able to set forms and fees in accordance with processes and criteria approved by the Minister.

If the regulatory authority is designated, it is required to appoint a registrar and Director. Otherwise the Minister responsible for administering the Act appoints the registrar and the Director.

Part III describes the licensing regime to be administered by the regulatory authority. A person is required to be licensed as a vendor in order to sell or transfer a new home or to offer to sell or transfer a new home. A person is required to be licensed as a builder in order to arrange for, manage or undertake the construction of a new home. A licence may be subject to conditions, including conditions that the registrar applies, subject to the right to a hearing by the Licence Appeal Tribunal. Those conditions include conditions that the registrar under the *Protection for Owners and Purchasers of New Homes Act, 2017* directs the registrar under the current Act to apply.

Part IV sets out rules that apply to licensees, including the disclosure of information that a vendor of a new home is required to make to the purchaser and that a builder of a new home is required to make to the owner.

Part V allows the registrar to deal with complaints made about licensees. In addition, a discipline committee and an appeals committee are established. If a committee finds that a licensee has breached the code of ethics established by a Minister's regulation, the licensee is subject to a fine of up to \$25,000 or a lesser prescribed amount.

The Part allows inspectors appointed by the registrar to conduct regulatory inspections without a warrant and investigators appointed by the Director to conduct both an investigation with a warrant and searches in exigent circumstances.

In certain circumstances that are set out and that involve the protection of clients, the Director may also freeze the assets of licensees and former licensees, as well as the assets of non-licensees who are alleged to have engaged in activities for which licensing is required under the Act. The Director may apply to court for a restraining order. The Part also creates offences.

An assessor appointed by the registrar may, by order, impose an administrative penalty against a person if the assessor is satisfied that the person has contravened or is contravening a prescribed provision of the Act or the *Protection for Owners and Purchasers of New Homes Act, 2017* or the regulations made under either Act. The prescribed provisions are those prescribed by a regulation of the Lieutenant Governor in Council.

Part VI consists of general provisions dealing with such matters as the preservation of secrecy and the service of documents. It also provides regulation-making powers for the Lieutenant Governor in Council, the Minister and the regulatory authority. Either the Lieutenant Governor in Council or the Minister may delegate regulation-making authority to the regulatory authority. The Part also deals with transitional issues arising when Schedule 2 repeals the *Ontario New Home Warranties Plan Act*.

Part VII consists of a few future amendments to the Act.

Part VIII makes consequential amendments to other Acts arising out of the repeal of the *Ontario New Home Warranties Plan Act*.

### **SCHEDULE 2 PROTECTION FOR OWNERS AND PURCHASERS OF NEW HOMES ACT, 2017**

The Schedule enacts the *Protection for Owners and Purchasers of New Homes Act, 2017*.

Part I deals with the purposes of the Act, definitions and interpretation.

Part II allows the Lieutenant Governor in Council, by regulation, to designate a not-for-profit corporation without share capital as the warranty authority. If the warranty authority is designated, the administration of specified provisions of the Act and the regulations made under the Act is delegated to the authority and the authority is required to carry out the administration of the delegated provisions.

The Part includes mechanisms for government oversight, including requirements for an administrative agreement between the warranty authority and the Minister, annual and other reports by the authority, competency criteria for board members and oversight by the Auditor General.

The warranty authority is not an agent of the Crown. Employees of the authority are not Crown employees. There is no Crown liability for actions of the authority and the authority is required to indemnify the Crown for damages or costs.

The warranty authority is able to set forms and fees in accordance with processes and criteria approved by the Minister.

The warranty authority is required to appoint a registrar and Director.

Part III continues the Ontario New Home Warranties Plan under the name Ontario New Home Warranties and Protection Plan. A vendor is not allowed to sell or offer to sell a new home unless the vendor has met certain conditions. They include the following: the vendor must be licensed under the *New Home Construction Licensing Act, 2017* and must have received confirmation from the registrar that the new home qualifies for enrolment in the Plan, if construction of the home has not commenced, or that the home has been enrolled in the Plan, if construction of the home has commenced. A builder is not allowed to commence constructing a new home unless the builder has met certain conditions. They include the following: the builder must be licensed under the *New Home Construction Licensing Act, 2017* and must have received confirmation from the registrar that the new home has been enrolled in the Plan.

The registrar may exercise the following powers subject to the right of a person to a hearing by the Licence Appeal Tribunal. The registrar may suspend or revoke a determination that a new home qualifies for enrolment in the Plan at any time before the registrar enrolls the home in the Plan. The registrar may cancel the enrolment of a new home in the Plan only if the registrar determines that the home ceases to meet the definition of a new home.

The Part sets out warranties that apply to a new home and certain measures of protection for money paid to a vendor or a builder.

Part IV deals with claims for compensation out of the guarantee fund and the process for making those claims.

Part V allows the registrar to deal with complaints made about licensees. In addition, the warranty authority is required to make available an ombudsperson to inquire into and respond to the administration of the Act by the warranty authority and to make recommendations in that regard.

The Part allows inspectors appointed by the registrar to conduct regulatory inspections without a warrant and investigators appointed by the Director to conduct both an investigation with a warrant and searches in exigent circumstances.

The Part also creates offences.

Part VI consists of general provisions dealing with such matters as the preservation of secrecy, the service of documents and information that the registrar is required to provide to the registrar under the *New Home Construction Licensing Act, 2017*.

The Part also provides regulation-making powers for the Lieutenant Governor in Council, the Minister and the warranty authority. Either the Lieutenant Governor in Council or the Minister may delegate regulation-making authority to the warranty authority. The Part also deals with transitional issues arising when the *Ontario New Home Warranties Plan Act* is repealed.

Part VII consists of a few future amendments to the Act.

Part VIII repeals the *Ontario New Home Warranties Plan Act* and makes consequential amendments to other Acts.

### **SCHEDULE 3 TICKET SALES ACT, 2017**

The Schedule enacts the *Ticket Sales Act, 2017* and repeals the *Ticket Speculation Act*.

Part I (Definitions) sets out the definitions relevant to the Act. It defines a “ticket business” as a primary seller, secondary seller or operator of a secondary ticketing platform.

Part II (Ticket Sales and Software) sets out prohibitions that apply to ticket sales and the use of certain software. Sales above face value on the secondary market are permitted providing that certain conditions are met and sales of tickets that are not in a person’s possession or control are prohibited. In addition, the use or sale of software intended to circumvent certain controls and measures on a website, online service or electronic application of a ticket business is prohibited.

Part III (Ticket Business Transparency) sets out disclosure and transparency obligations for ticket businesses. These include requirements to disclose the number of tickets available to an event and the face value and total price of the ticket. It also requires ticket businesses to ensure that any dollar amounts listed in a ticket offer are in Canadian currency, unless otherwise clearly indicated, and requires them to disclose the location of the seat or standing area that the ticket entitles the ticket holder

to occupy. Secondary sellers are required to disclose their name, location and contact information when making a ticket available for sale. The prohibition against the sale of tickets by related primary and secondary sellers in the *Ticket Speculation Act* is maintained. Ticket businesses that make tickets available for sale or that facilitate the sale of a ticket are required to be incorporated under the laws of Canada or Ontario or to maintain an address in Ontario.

Part IV (Right of Action) establishes a right of action for ticket businesses or ticket purchasers who have suffered a loss as a result of a person's contravention of the Act.

Part V (Complaints, Inspections and Investigations) establishes a complaints, inspection and investigation regime. The Ministry has the power to receive complaints, make inquiries and mediate and resolve complaints concerning matters that may be in contravention of the Act. The Director may appoint or designate inspectors and investigators to ensure compliance with certain provisions of the Act. The Director has the power to make orders respecting false, misleading or deceptive misrepresentations and has the power to freeze assets in certain situations. The Director may also issue compliance orders and apply to the Superior Court of Justice for restraining orders to ensure compliance with the Act. The Director may delegate some of his or her powers in the Act to inspectors, including the power to make various orders.

Part VI (General) sets out service, evidence and confidentiality rules.

Part VII (Administrative Penalties) allows the Director to impose administrative penalties against ticket businesses that are contravening a prescribed provision of the Act or of the regulations. The Director may delegate his or her power to make these orders to inspectors. The orders may be appealed to the Licence Appeal Tribunal.

Part VIII (Offences) provides that it is an offence to fail to comply with an order, direction or other requirement under the Act or to contravene or fail to comply with certain provisions in the Act. The maximum penalty for an individual is \$50,000 or imprisonment for a term of not more than two years less a day, or both, and the maximum penalty for a corporation is \$250,000.

Part IX (Regulations) sets out the regulation-making powers of the Lieutenant Governor in Council and of the Minister.

Part X (Complementary Amendment, Repeal and Revocation) makes a complementary amendment to the *Licence Appeal Tribunal Act, 1999*, repeals the *Ticket Speculation Act* and revokes the regulation made under the *Ticket Speculation Act*.

#### **SCHEDULE 4 AMENDMENTS TO THE ONTARIO NEW HOME WARRANTIES PLAN ACT**

The Schedule amends the *Ontario New Home Warranties Plan Act*. Most of the Schedule comes into force on the day the Bill receives Royal Assent, unlike Schedules 1 and 2 which come into force mainly on proclamation. The main amendments are the following.

The Corporation designated to administer the Act is authorized to use the guarantee fund to make payments or loans to any corporation that is designated to administer any successor Act or that, according to the Minister, may be so designated.

The Minister can appoint an individual as an administrator of the Corporation for the purposes of assuming control of it and responsibility for its activities.

The Corporation is required to pay oversight fees to the Minister.

The Schedule clarifies that the amount of payment that a person is entitled to receive out of the guarantee fund is not limited to deposits. It also describes the evidence that a claimant for payment out of the guarantee fund must present in a claim.

The powers of the Lieutenant Governor in Council to make regulations under the Act are expanded to cover such things as governing the expenses incurred and expenditures made by the Corporation in carrying out its duties under the Act and governing transitional matters when the designation of the Corporation is revoked.

A number of the regulation-making powers of the Corporation are made subject to approval by the Minister. They include imposing conditions of registration for vendors and builders under the Act, governing deposits or other payments made to vendors or builders and governing the entitlement of an owner to payment out of the guarantee fund.

#### **SCHEDULE 5 OTHER AMENDMENTS**

The Schedule clarifies the provisions of the *Condominium Management Services Act, 2015*, the *Funeral, Burial and Cremation Services Act, 2002*, the *Motor Vehicle Dealers Act, 2002*, the *Real Estate and Business Brokers Act, 2002* and the *Travel Industry Act, 2002* that allow regulations made by the Lieutenant Governor in Council to delegate to the Minister under those Acts the power to make certain regulations.

##### ***Real Estate and Business Brokers Act, 2002***

The Schedule increases the maximum amount of the fine that the discipline committee can impose on a registrant if the committee finds that the registrant has failed to comply with the code of ethics. The Schedule also confers new regulation-making powers on the Lieutenant Governor in Council: for example, the power to specify circumstances in which registrants are prohibited from representing more than one party in a trade.

***Travel Industry Act, 2002***

The Schedule amends the Act to combine the registration categories of travel agent and travel wholesaler into a new category of travel seller. It also creates a new registration category of travel salesperson.

The registrar or a person designated in writing by the registrar is allowed to conduct an inspection of the business premises of any person or entity if the registrar has reasonable grounds to believe that an activity for which registration under the Act is required is occurring.

The registrar may require a travel salesperson to take further educational courses if the registrar receives a complaint about the salesperson. The discipline committee may require a travel salesperson to take further educational courses if the committee finds that the salesperson has failed to comply with the code of ethics.

An assessor appointed by the registrar is allowed to impose an administrative penalty on a person if the assessor is satisfied that the person has contravened or is contravening a prescribed provision of the Act or the regulations, where the provision is prescribed by a regulation of the Lieutenant Governor in Council. The person against whom an order imposing an administrative penalty is made can appeal the order to the person prescribed by a regulation made by the Minister or to the Licence Appeal Tribunal if the Minister has not prescribed a person for that purpose.

**An Act to amend or repeal various Acts and to enact three new Acts  
with respect to the construction of new homes and ticket sales for events**

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Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Contents of this Act**

**1 This Act consists of this section, sections 2 and 3 and the Schedules to this Act.**

**Commencement**

**2 (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.**

**(2) The Schedules to this Act come into force as provided in each Schedule.**

**(3) If a Schedule to this Act provides that any of its provisions are to come into force on a day to be named by proclamation of the Lieutenant Governor, a proclamation may apply to one or more of those provisions, and proclamations may be issued at different times with respect to any of those provisions.**

**Short title**

**3 The short title of this Act is the *Strengthening Protection for Ontario Consumers Act, 2017*.**

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**PART I  
INTERPRETATION**

**Definitions**

**1** (1) In this Act,

“administrative agreement” means the agreement described in subsection 3 (1); (“accord d’application”)

“administrative penalty” means an administrative penalty imposed under section 73; (“pénalité administrative”)

- “assessor” means an assessor appointed under subsection 72 (2) who is authorized to impose an administrative penalty or the registrar acting as an assessor; (“évaluateur”)
- “builder” means, subject to the prescribed requirements or restrictions, if any, a person who arranges for, manages or undertakes the construction of a new home or who agrees to do any of those things, whether the person is acting,
- (a) for the purposes of selling or transferring the home, as prescribed,
  - (b) under a contract with a vendor,
  - (c) under a contract with an owner, or
  - (d) in the prescribed circumstances; (“constructeur”)
- “common elements” means all the condominium property except the condominium units; (“parties communes”)
- “common elements condominium corporation”, “common expenses” and “common interest” have the same meaning as in the *Condominium Act, 1998*; (“association condominiale de parties communes”, “dépenses communes”, “intérêt commun”)
- “condominium corporation” means a corporation as defined in subsection 1 (1) of the *Condominium Act, 1998*; (“association condominiale”)
- “condominium declaration” means a declaration as defined in subsection 1 (1) of the *Condominium Act, 1998*; (“déclaration de condominium”)
- “condominium property” means property as defined in subsection 1 (1) of the *Condominium Act, 1998*; (“propriété condominiale”)
- “condominium unit” means a unit as defined in subsection 1 (1) of the *Condominium Act, 1998*; (“partie privative de condominium”)
- “delegated provisions” means the provisions of this Act and the regulations that the Lieutenant Governor in Council has designated as such under subsection 2 (2); (“dispositions déléguées”)
- “Director” means the Director appointed under subsection 36 (1); (“directeur”)
- “employ” means to employ, appoint, authorize or otherwise arrange to have another person act on one’s behalf, including as an independent contractor; (“employer”)
- “equity share” means, in respect of a corporation, a share of a class or series of shares of a corporation that carries a voting right either under all circumstances or under circumstances that have occurred and are continuing; (“action participante”)
- “information sharing agreement” means any of the agreements described in subsection 4 (3); (“accord d’échange de renseignements”)
- “inspector” means an inspector appointed under subsection 58 (2) or the registrar acting as an inspector; (“inspecteur”)
- “investigator” means an investigator appointed under subsection 60 (1); (“enquêteur”)
- “licensee” means the holder of a licence issued under this Act; (“titulaire de permis”, see also “agrée”)
- “Minister” means the Minister of Government and Consumer Services or any other member of the Executive Council to whom the responsibility for the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)
- “new home” means, subject to the prescribed requirements or restrictions, if any, any of the following property and any structure or appurtenance used in conjunction with it:
1. A building that is a residential dwelling, whether detached or attached to one or more other buildings by a common wall.
  2. A residential dwelling in a building with more than one and less than the prescribed number of residential dwellings, all of which are under the same ownership.
  3. In the case of a condominium corporation that is not a common elements condominium corporation,
    - i. a condominium unit that is a residential dwelling, including the common elements in respect of which the unit has an appurtenant common interest as described in the condominium declaration of the corporation, and
    - ii. the property owned by the corporation.
  4. In the case of a common elements condominium corporation,
    - i. a parcel of land mentioned in subsection 139 (1) of the *Condominium Act, 1998* to which a common interest is attached and that is described in the condominium declaration of the corporation, including the common elements in respect of that common interest, unless the parcel of land is not a residential dwelling, and
    - ii. the property owned by the corporation.

5. Any other prescribed residential dwelling; (“logement neuf”)

“officer” includes,

- (a) the chair and any vice-chair of the board of directors, the president and any vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager and assistant general manager of a corporation or the regulatory authority,
- (b) a partner or general manager and assistant general manager of a partnership,
- (c) any other individual designated as an officer by by-law or resolution of an organization,
- (d) any other individual who performs functions normally performed by an individual occupying an office described in clause (a), (b) or (c), and
- (e) any other prescribed individual; (“dirigeant”)

“owner” means, subject to the prescribed requirements or restrictions, if any, a person who,

- (a) first acquires an interest or right in a new home from a vendor,
- (b) for the purposes of a new home built under a contract with a person other than a vendor, is the owner of the land who has entered into the contract with the builder, or
- (c) is a prescribed successor to the person described in clause (a) or (b); (“propriétaire”)

“owner-builder” means, subject to the prescribed requirements or restrictions, if any, an individual who constructs or manages the construction of a residential dwelling for the individual’s personal use and occupation and who meets the prescribed requirements, if any; (“constructeur-propriétaire”)

“person” means a natural person, corporation, partnership, sole proprietorship, association or other prescribed person or entity; (“personne”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means regulations made under this Act; (“règlements”)

“regulatory authority” means the corporation that the Lieutenant Governor in Council has designated as such under subsection 2 (1); (“organisme de réglementation”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or whatever other tribunal is prescribed; (“Tribunal”)

“vendor” means, subject to the prescribed requirements or restrictions, if any, the person who sells or transfers, as prescribed, the prescribed property interest or right of the person in a new home to an owner, whether or not the person is a builder who builds the home under a contract with the owner; (“vendeur”)

“warranty authority” has the same meaning as in the *Protection for Owners and Purchasers of New Homes Act, 2017*. (“organisme de garantie”)

### **Interested person**

(2) For the purposes of this Act, a person shall be deemed to be an interested person in respect of another person if the person is associated with the other person or if, in the opinion of the registrar,

- (a) the person has or may have a beneficial interest in the other person’s activities;
- (b) the person exercises or may exercise control either directly or indirectly over the other person; or
- (c) the person has provided or may have provided financing either directly or indirectly for the other person’s activities.

### **Associated persons**

(3) For the purposes of this Act, one person is associated with another person in any of the following circumstances:

1. One person is a corporation of which the other person is an officer or director.
2. One person is a partnership of which the other person is a partner.
3. Both persons are partners of the same partnership.
4. One person is a corporation that is controlled directly or indirectly by the other person.
5. Both persons are corporations and one corporation is controlled directly or indirectly by the same person who controls directly or indirectly the other corporation.
6. Both persons are members of the same voting trust relating to shares of a corporation.

7. Both persons are associated within the meaning of paragraphs 1 to 6 with the same person.

## **PART II ADMINISTRATION**

### **DELEGATION**

#### **Designation of regulatory authority**

**2** (1) The Lieutenant Governor in Council may, by regulation, designate a not-for-profit corporation without share capital incorporated under the laws of Ontario as the regulatory authority for the purposes of this Act.

#### **Delegated provisions**

(2) The Lieutenant Governor in Council may, by regulation, designate provisions of this Act and the regulations, except for this Part and sections 80, 81 and 82, as the delegated provisions.

#### **Delegation of administration**

(3) If the Lieutenant Governor in Council designates a corporation as the regulatory authority, the administration of the delegated provisions is delegated to the authority and the authority shall carry out the administration of the delegated provisions.

#### **Administrative agreement**

**3** (1) The Lieutenant Governor in Council shall not designate a corporation under subsection 2 (1) until the Minister and the corporation have entered into an agreement to be known as the administrative agreement.

#### **Contents**

(2) The administrative agreement shall include, at a minimum, terms related to the following matters:

1. The governance of the regulatory authority.
2. All matters that the Minister considers necessary for the regulatory authority to carry out the administration of the delegated provisions.
3. The maintenance by the regulatory authority of adequate insurance against liability arising out of the carrying out of its powers and duties under this Act or the regulations.
4. The financial terms of the delegation of the administration of the delegated provisions, including payments to the Crown, licence fees, royalties and reimbursements for transfer of assets.

#### **Compliance with operating principle**

(3) The administrative agreement shall require the regulatory authority to comply with the principle of promoting the protection of the public interest.

#### **Information sharing**

**4** (1) The regulatory authority shall share the prescribed information with the Minister, the warranty authority and prescribed persons in accordance with the regulations and in the manner and within the time prescribed.

#### **Personal information**

(2) For greater certainty, the prescribed information may include personal information as defined in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*.

#### **Agreements**

(3) For the purpose of complying with subsection (1), the regulatory authority shall, in accordance with the regulations, enter into agreements with the Minister, the warranty authority and prescribed persons in the manner and within the time prescribed.

#### **Content of agreements**

(4) The information sharing agreements mentioned in subsection (3) shall include the prescribed information, which may include information about,

- (a) licence and licence renewal applications;
- (b) licence conditions;
- (c) licence suspensions;
- (d) licence revocations;
- (e) complaints made under section 56;

- (f) breaches of the code of ethics established under clause 81 (1) (f);
- (g) orders made under section 64;
- (h) freeze orders made under section 65 or 66;
- (i) restraining orders made under section 67;
- (j) administrative penalties;
- (k) offences; and
- (l) other enforcement actions taken by the regulatory authority.

#### **Sharing of enforcement information**

(5) An information sharing agreement may also require the sharing of enforcement information regarding actions that the registrar is taking or is proposing to take in relation to matters set out in subsection (4).

#### **Compliance by regulatory authority**

**5** In carrying out its powers and duties under this Act or the regulations, the regulatory authority shall comply with this Act, the regulations, the administrative agreement, the information sharing agreements and other applicable law.

#### **Review**

**6** (1) The Minister may,

- (a) require that policy, legislative or regulatory reviews related to the powers and duties of the regulatory authority under this Act, the regulations, the administrative agreement or the information sharing agreements be carried out,
  - (i) by or on behalf of the authority, or
  - (ii) by a person or entity specified by the Minister; or
- (b) require that reviews of the regulatory authority, of its operations, or of both, including, without limitation, performance, governance, accountability and financial reviews, be carried out,
  - (i) by or on behalf of the authority, or
  - (ii) by a person or entity specified by the Minister.

#### **Access to records**

(2) If a review is carried out by a person or entity specified by the Minister, the regulatory authority shall give the person or entity specified by the Minister and the employees of the person or entity access to all records and other information required to conduct the review.

#### **Conflict**

**7** In the event of conflict, this Act and the regulations prevail over,

- (a) the administrative agreement and the information sharing agreements;
- (b) the *Corporations Act*, the *Corporations Information Act* or a regulation made under either of those Acts; and
- (c) the constating documents, by-laws and resolutions of the regulatory authority.

#### **Revocation of designation**

**8** (1) The Lieutenant Governor in Council may, by regulation, revoke the designation of the regulatory authority if the Lieutenant Governor in Council considers it advisable to do so in the public interest.

#### **Revocation for non-compliance**

(2) The Lieutenant Governor in Council may, by regulation, revoke the designation of the regulatory authority if,

- (a) the authority has failed to comply with this Act, the regulations, the administrative agreement, any of the information sharing agreements or other applicable law;
- (b) the Minister has allowed the authority the opportunity of remedying its default within a specified time period that the Minister considers reasonable in the circumstances; and
- (c) the authority has not remedied its default to the Minister's satisfaction within the specified time period mentioned in clause (b) and the Minister has so advised the Lieutenant Governor in Council.

#### **Same, no restriction on subs. (1)**

(3) Nothing in subsection (2) restricts the ability of the Lieutenant Governor in Council to act under subsection (1).

**Revocation on request**

(4) The Lieutenant Governor in Council may, by regulation, revoke the designation of the regulatory authority on the terms that the Lieutenant Governor in Council considers advisable in the public interest if the authority requests the revocation.

**Non-application of other Act**

(5) The *Statutory Powers Procedure Act* does not apply to the exercise by the Lieutenant Governor in Council of a right under this section to revoke the designation of the regulatory authority.

**Transition**

(6) If the Lieutenant Governor in Council revokes the designation of the regulatory authority under this section, the Lieutenant Governor in Council may, by regulation, provide for any transitional matter necessary for the effective implementation of the revocation, including,

- (a) the transfer, without compensation, of any property, including assets, liabilities, rights, obligations, records, databases, bank accounts and money, that the authority holds in respect of carrying out its activities; and
- (b) the assignment, without compensation, of any contracts that the authority has entered into before the revocation.

**No Crown liability**

(7) No cause of action arises against the Crown, a minister of the Crown, a Crown employee or a Crown agent as a direct or indirect result of the revocation of the designation of the regulatory authority or any regulation made under subsection (6).

**No proceeding**

(8) No proceeding, including but not limited to any proceeding in contract, restitution, tort or trust, shall be instituted against the Crown, a minister of the Crown, a Crown employee or a Crown agent by a person who has suffered any damages, injury or other loss based on or related to any cause of action described in subsection (7).

**Condition precedent for exercise of certain powers**

9 The Minister may exercise a power under subsection 24 (1) or any other prescribed provision only if the Minister is of the opinion that it is advisable to exercise the power in the public interest because at least one of the following conditions is satisfied:

1. The exercise of the power is necessary to prevent serious harm to the interests of the public, purchasers of new homes or owners.
2. An event of force majeure has occurred.
3. The regulatory authority is facing a risk of insolvency.
4. The number of members of the board of the regulatory authority is insufficient for a quorum.

## REGULATORY AUTHORITY

**Competency criteria for board members**

10 (1) The Minister may, by regulation, establish competency criteria for members of the board of the regulatory authority.

**Restriction**

(2) A person is qualified to be appointed or elected to the board only if the person meets the competency criteria, if any, established under subsection (1).

**Conflict**

(3) In the event of a conflict, a regulation made under subsection (1) prevails over a constating document, by-law or resolution of the regulatory authority.

**Composition of the board**

11 (1) The Minister may, by regulation, provide that no more than a fixed percentage of members of the board of the authority shall be drawn from among the persons or classes of persons that are prescribed.

**Conflict**

(2) In the event of a conflict, a regulation made under subsection (1) prevails over a constating document, by-law or resolution of the regulatory authority.

**Minister's appointments to board**

12 (1) The Minister may appoint at pleasure one or more members to the board of the regulatory authority for a term specified in the appointment.

**Majority**

(2) The number of members appointed by the Minister shall not form a majority of the board.

**Representation**

(3) The members appointed by the Minister may include,

- (a) representatives of the public, consumer groups, businesses or government organizations; and
- (b) representatives of other interests as the Minister determines.

**Appointment of chair**

**13** The Minister may appoint a chair from among the members of the board of the regulatory authority.

**Public access to corporate information**

**14** (1) The regulatory authority shall make available to the public, on its website and by any other means that the authority determines, the following information within the prescribed time:

1. Prescribed information relating to the compensation of board members, officers and employees and relating to any other payments that the authority makes or is required to make to them.
2. Corporate by-laws of the authority.
3. Any other information that is prescribed.

**Compensation information**

(2) A regulation made under paragraph 1 of subsection (1) may require that the regulatory authority make available to the public under that subsection information relating to the compensation of a board member or officer who is in office on the day this section comes into force or an individual who is an employee on that day, where the information is for a period that begins before that day.

**Effect of compliance**

(3) If the regulatory authority makes available to the public information relating to compensation in accordance with subsection (1), or in the reasonable belief that action is required by that subsection, no court or person shall find that the authority,

- (a) has contravened any Act enacted or regulation made before or after this section comes into force; or
- (b) is in breach of or has contravened any agreement that purports to restrict or prohibit that action, regardless of whether the agreement is made before or after this section comes into force.

**Processes and procedures**

(4) The regulatory authority shall follow the prescribed processes and procedures with respect to providing access to the public to records of the authority and with respect to managing personal information contained in those records.

**Employees**

**15** (1) Subject to the administrative agreement, the regulatory authority may employ or retain the services of any qualified person to carry out any of its powers and duties under this Act or the regulations.

**Not Crown employees**

(2) The following persons are not employees of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained under subsection (1).
2. Members, officers and agents of the regulatory authority.
3. Members of the board of the regulatory authority, including those appointed by the Minister.

**Not Crown agency**

**16** (1) Despite the *Crown Agency Act*, the regulatory authority is not an agent of the Crown for any purpose and shall not hold itself out as such.

**Same**

(2) The following persons are not agents of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained by the regulatory authority under subsection 15 (1).
2. Members, officers and agents of the regulatory authority.
3. Members of the board of the regulatory authority, including those appointed by the Minister.

**No personal liability, Crown employee**

17 (1) No action or other proceeding shall be instituted against an employee of the Crown for an act done in good faith in the execution or intended execution of a duty under this Act or the regulations or for an alleged neglect or default in the execution in good faith of that duty.

**Tort by Crown employee**

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) of this section does not relieve the Crown of liability in respect of a tort committed by an employee of the Crown to which it would otherwise be subject.

**No Crown liability**

18 (1) No cause of action arises against the Crown, a minister of the Crown, a Crown employee or a Crown agent as a result of any act or omission of a person who is not a minister of the Crown, a Crown employee or a Crown agent, if the act or omission is related, directly or indirectly, to the activities or affairs of the regulatory authority or to the administration of this Act.

**No proceeding**

(2) No proceeding, including but not limited to any proceeding in contract, restitution, tort or trust, shall be instituted against the Crown, a minister of the Crown, a Crown employee or a Crown agent by a person who has suffered any damages, injury or other loss based on or related to any cause of action described in subsection (1).

**Indemnification of the Crown**

19 The regulatory authority shall indemnify the Crown, in accordance with the administrative agreement, in respect of damages and costs incurred by the Crown for any act or omission of the authority or its members, officers, directors, employees or agents in the execution or intended execution of their powers and duties under this Act, the regulations, the administrative agreement or the information sharing agreements.

**No personal liability, board members and others**

20 (1) No action or other proceeding shall be instituted against a person mentioned in subsection (2) for an act done in good faith in the execution or intended execution of any of the person's powers or duties under this Act or the regulations or for an alleged neglect or default in the execution in good faith of that power or duty.

**Same**

(2) Subsection (1) applies to,

- (a) members of the board of the regulatory authority;
- (b) persons who perform functions under this Act or the regulations as employees, agents or officers of the regulatory authority or as persons whose services it retains;
- (c) members of committees of the regulatory authority who perform functions under this Act or the regulations; and
- (d) individuals who perform functions under this Act or the regulations.

**Liability of regulatory authority**

(3) Subsection (1) does not relieve the regulatory authority of liability to which it would otherwise be subject.

**Not public money**

21 (1) The money that the regulatory authority collects in carrying out its powers and duties under this Act or the regulations is not public money within the meaning of the *Financial Administration Act*.

**Use of money**

(2) Subject to section 26 and the administrative agreement, the regulatory authority may use the money described in subsection (1) to carry out activities in accordance with its objects.

**Audit**

22 (1) The Auditor General appointed under the *Auditor General Act* may conduct an audit of the regulatory authority, other than an audit required under the *Corporations Act*.

**Access to records and information**

(2) If the Auditor General conducts an audit under subsection (1), the regulatory authority shall give the Auditor General and employees of the Auditor General access to all records and other information required to conduct the audit.

**Reports**

23 (1) The board of the regulatory authority shall report to the Minister on its activities and financial affairs as they relate to this Act, the administrative agreement and the information sharing agreements.



**Form and contents**

(2) The report shall be in a form acceptable to the Minister and shall provide the information that the Minister requires.

**Time for reports**

(3) The board of the regulatory authority shall prepare the report for each year and at the other times that the Minister specifies.

**Disclosure by board**

(4) The board of the regulatory authority shall publish the report on the authority's website and by any other method within the period and in the manner that the Minister requires.

**Administrator**

**24** (1) Subject to section 9, the Minister may, by order, appoint an individual as an administrator of the regulatory authority for the purposes of assuming control of it and responsibility for its activities.

**Notice of appointment**

(2) The Minister shall give the board of the regulatory authority the notice that the Minister considers reasonable in the circumstances before appointing the administrator.

**Immediate appointment**

(3) Subsection (2) does not apply if there are not enough members on the board to form a quorum.

**Term of appointment**

(4) The appointment of the administrator is valid until the Minister makes an order terminating it.

**Powers and duties of administrator**

(5) Unless the order appointing the administrator provides otherwise, the administrator has the exclusive right to exercise all the powers and perform all the duties of the directors, officers and members of the regulatory authority.

**Same, limitations**

(6) In the order appointing the administrator, the Minister may specify the administrator's powers and duties and the conditions governing them.

**Right of access**

(7) The administrator has the same rights as the board in respect of the documents, records and information of the regulatory authority.

**Report to Minister**

(8) The administrator shall report to the Minister as the Minister requires.

**Minister's directions**

(9) The Minister may issue directions to the administrator about any matter within the administrator's jurisdiction, and the administrator shall carry them out.

**No personal liability**

(10) No action or other proceeding shall be instituted against the administrator for an act done in good faith in the execution or intended execution of a duty or power under this Act, the regulations, the delegated provisions, a Minister's order or the appointment under subsection (1), or for an alleged neglect or default in the execution in good faith of that duty or power.

**Crown liability**

(11) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (10) of this section does not relieve the Crown of liability to which it would otherwise be subject.

**Liability of regulatory authority**

(12) Subsection (10) does not relieve the regulatory authority of liability to which it would otherwise be subject.

**Status of board during administrator's tenure**

**25** (1) On the appointment of an administrator under section 24, the members of the board of the regulatory authority cease to hold office, unless the order provides otherwise.

**Same**

(2) During the term of the administrator's appointment, the powers of any member of the board who continues to hold office are suspended, unless the order provides otherwise.

**No personal liability**

(3) No action or other proceeding shall be instituted against a member or former member of the board for anything done by the administrator or the regulatory authority after the member's removal under subsection (1) or while the member's powers are suspended under subsection (2).

**Crown liability**

(4) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (3) of this section does not relieve the Crown of liability to which it would otherwise be subject.

**Liability of regulatory authority**

(5) Subsection (3) does not relieve the regulatory authority of liability to which it would otherwise be subject.

POWERS AND DUTIES OF REGULATORY AUTHORITY

**Additional powers**

**26** (1) The regulatory authority may carry out activities in addition to those provided for under this Act in accordance with its objects, subject to subsection (2).

**Commercial activities**

(2) The regulatory authority shall not engage in commercial activity through a person or entity that is related to the authority.

**Change to objects**

**27** The regulatory authority shall not make any changes to its objects unless the Minister's written approval is obtained in advance.

**Right to use French**

**28** (1) A person has the right to communicate in French with, and to receive available services in French from, the regulatory authority.

**Definition**

(2) In subsection (1),

“service” means any service or procedure that is provided to the public by the regulatory authority in carrying out its powers and duties under this Act or the regulations and includes,

- (a) responding to inquiries from members of the public, and
- (b) any other communications for the purpose of providing the service or procedure.

**Board's duty**

(3) The board of directors of the regulatory authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

**Limitation**

(4) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

**Forms and fees**

**29** (1) The regulatory authority may,

- (a) establish forms related to the administration of the delegated provisions and provide for their content;
- (b) in accordance with processes and criteria established by the authority and approved by the Minister, set and collect fees, costs or other charges related to the administration of the delegated provisions; and
- (c) make rules governing the payment of the fees, costs and charges described in clause (b).

**Setting fees**

(2) In setting the fees, costs and charges described in clause (1) (b), the regulatory authority may specify their amounts or the method for determining the amounts.

**Publication of fee schedule**

(3) The regulatory authority,

- (a) shall publish the fees, costs and charges, processes, criteria and rules on its website or by any other electronic means required under the administrative agreement; and
- (b) may publish that information in any other format that the authority considers advisable.

### **Advisory councils, advisory process**

**30** The Minister may require the regulatory authority to,

- (a) establish one or more advisory councils;
- (b) include, as members of an advisory council, representatives of the public, consumer groups, businesses or government organizations and other persons as the Minister determines; or
- (c) undertake an advisory process in which it seeks advice from one or both of the public and persons with experience or knowledge relating to this Act.

### **Duty to inform Minister**

**31** The regulatory authority shall advise the Minister with respect to,

- (a) any material fact that could affect the authority's ability to perform its duties under this Act or the regulations; or
- (b) any urgent or critical matter that is likely to require action by the Minister to ensure that the administration of the delegated provisions is carried out properly.

### **Advice to the Minister**

**32** (1) The regulatory authority shall advise or report to the Minister on any matter that the Minister refers to it and that relates to this Act or the administration of the delegated provisions.

### **Suggestions for legislative amendments**

(2) The regulatory authority may suggest to the Minister amendments to Ontario legislation that it considers would,

- (a) further the purpose of this Act; or
- (b) assist the authority in carrying out its powers and duties under this Act or the regulations.

### **Research and public education**

**33** (1) The regulatory authority shall participate, as prescribed, in,

- (a) doing research into cost-effective building techniques, processes and materials; and
- (b) identifying, in co-operation with other organizations, best practices for new home construction.

### **Consumer education**

(2) The regulatory authority shall engage in efforts to support consumer education and awareness about new home construction, ownership and maintenance.

### **Information for warranty authority**

**34** (1) The registrar may require vendors, builders and other prescribed persons to disclose to the registrar, in accordance with regulations, the information that is related to the administration of this Act, that is prescribed or that is designed to assist the warranty authority in carrying out its duties under section 36 of the *Protection for Owners and Purchasers of New Homes Act, 2017*.

### **Forwarding information**

(2) In accordance with the information sharing agreements and the regulations, the regulatory authority shall forward to the warranty authority the information that it collects under subsection (1).

## **MISCELLANEOUS**

### **Registrar**

**35** (1) The following person or body shall appoint a registrar for the purposes of this Act and may appoint one or more deputy registrars:

1. The board of the regulatory authority.
2. The Minister, if there is no regulatory authority.

### **Deputy registrars**

(2) A deputy registrar may exercise the powers and perform the duties of the registrar that the registrar specifies and shall, if the registrar so directs, act as the registrar in the registrar's absence.

### **If more than one deputy registrar**

(3) If more than one deputy registrar is appointed, only one deputy registrar may act as the registrar under subsection (2) at any one time in respect of the powers and duties that the registrar specifies.

**Director**

**36** (1) Subject to subsection (2), the following person or body shall appoint a Director for the purposes of this Act and may appoint one or more Deputy Directors:

1. The board of the regulatory authority.
2. The Minister, if there is no regulatory authority.

**Restriction**

(2) A person appointed as the registrar or a deputy registrar under section 35 shall not be appointed as the Director or a Deputy Director under subsection (1) of this section.

**Deputy Directors**

(3) A Deputy Director shall perform the duties that the Director assigns and shall, if directed by the Director, act as the Director in the Director's absence.

**If more than one Deputy Director**

(4) If more than one Deputy Director is appointed, only one Deputy Director may act as the Director under subsection (3) at any one time in respect of the powers and duties that the Director specifies.

**PART III  
LICENSING**

**Licences required**

**37** (1) No person shall act or hold oneself out as a vendor, offer to sell or transfer a new home, including as prescribed, or sell or transfer a new home, including as prescribed, unless the person is licensed as a vendor and meets the other prescribed requirements, if any.

**Same, builder**

(2) No person shall act or hold oneself out as a builder, offer to construct a new home or construct a new home unless the person is licensed as a builder and meets the other prescribed requirements, if any.

**Owner-builder**

(3) An owner-builder is not a builder unless prescribed otherwise.

**Application for licence**

**38** (1) An applicant is entitled to a licence or a renewal of a licence by the registrar if, in the registrar's opinion,

- (a) the applicant is not a corporation and,
  - (i) having regard to the past and present financial position of the applicant, all interested persons in respect of the applicant and all other prescribed persons, the applicant can reasonably be expected to be financially responsible in the conduct of business,
  - (ii) the past and present conduct of the applicant, of all interested persons in respect of the applicant and of all other prescribed persons affords reasonable grounds to believe that the applicant will carry on business in accordance with the law and with integrity and honesty, and
  - (iii) neither the applicant, nor any employee or agent of the applicant, nor any other prescribed person has made any false statement with respect to the conduct of the applicant's business;
- (b) the applicant is a corporation and,
  - (i) having regard to its past and present financial position and the past and present financial position of all interested persons in respect of the corporation, the applicant can reasonably be expected to be financially responsible in the conduct of its business,
  - (ii) having regard to the past and present financial position of its officers and directors and of all interested persons in respect of its officers and directors, the applicant can reasonably be expected to be financially responsible in the conduct of its business,
  - (iii) the past and present conduct of its officers and directors, of all interested persons in respect of its officers and directors and of all interested persons in respect of the corporation affords reasonable grounds for belief that its business will be carried on in accordance with the law and with integrity and honesty, and
  - (iv) no officer or director of the corporation has made any false statement with respect to the conduct of the applicant's business;
- (c) neither the applicant, nor any interested person in respect of the applicant, has carried on or is carrying on activities,

- (i) that are in contravention of this Act or the regulations, or
- (ii) that will be in contravention of this Act, the regulations or prescribed legislation if the applicant is issued a licence;
- (d) the applicant is not in breach of a condition of the licence, if the applicant is applying for a renewal of a licence;
- (e) the applicant meets the prescribed requirements, if any, including requirements for competency;
- (f) the applicant or, if the applicant is a corporation, its directors, officers and other prescribed persons, have complied with all tax laws and regulations that are prescribed; and
- (g) granting the licence or the renewal, as the case may be, would not be contrary to the public interest.

**Notice of prescribed material change**

- (2) An applicant for a licence or a renewal of a licence who experiences a material change, as prescribed, at any time shall,
- (a) promptly inform the registrar of the change;
  - (b) promptly answer any inquiries that the registrar has with respect to the change; and
  - (c) produce any documents or information that the registrar requests with respect to the change within the time that the registrar specifies.

**Information from warranty authority**

- (3) The registrar may request, from the warranty authority,
- (a) information about the financial position of an applicant for a licence or a renewal of a licence or a licensee; or
  - (b) information about any of the other criteria set out in subsection (1) with respect to the person described in clause (a).

**Same**

- (4) The warranty authority shall comply with the request.

**Notice to warranty authority**

- (5) Upon granting an application for a licence or a renewal of a licence, the registrar shall notify the warranty authority that the registrar has granted the application.

**Conditions of licence**

**39** A licence is subject to the conditions,

- (a) to which the applicant or licensee consents;
- (b) that the registrar applies under subsection 40 (3), (4) or (6);
- (c) that the Tribunal orders; or
- (d) that are prescribed.

**Registrar's powers with hearing**

- 40** (1) Subject to section 43, the registrar may refuse to license an applicant or renew the licence of a licensee if,
- (a) in the registrar's opinion, the applicant or licensee is not entitled to a licence under subsection 38 (1); or
  - (b) the applicant or licensee fails or refuses to comply with subsection 38 (2).

**Suspension or revocation of licence**

- (2) Subject to section 43, the registrar may suspend or revoke a licence at any time for any reason that would cause the licensee to be disentitled to the licence.

**Conditions**

- (3) Subject to section 43, the registrar may,
- (a) approve the licence or the renewal of a licence on the conditions that the registrar considers appropriate; and
  - (b) at any time, apply to a licence the conditions that the registrar considers appropriate.

**Same**

- (4) Subject to section 43, the registrar shall apply to a licence the conditions that the warranty authority requires the registrar to attach to the licence under subsection 43 (8) of the *Protection for Owners and Purchasers of New Homes Act, 2017*.

**Request for information**

(5) The registrar may request an applicant for a licence or a licensee to provide to the registrar, in the form and within the time period specified by the registrar,

- (a) information specified by the registrar that allows the registrar to determine whether the applicant for a licence or the licensee has become disentitled to the licence; and
- (b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant for a licence or the licensee is providing or has provided to the registrar.

**Consequence for non-compliance**

(6) If an applicant for a licence or a licensee fails or refuses to provide the information requested under subsection (5), the registrar may, subject to section 43, refuse to grant the licence or the renewal of licence, suspend or revoke the licence or apply conditions to the licence.

**Voluntary cancellation**

41 The registrar may cancel a licence upon the request in writing of the licensee and section 43 does not apply to the cancellation.

**Expiry of licence**

42 (1) A licence expires at the time that is specified in the licence or on the occurrence of an event that is described in the licence.

**No application for renewal**

(2) A licensee may allow a licence to expire by not applying to renew it before its expiry.

**Notice of conditions or proposal**

43 (1) The registrar shall notify an applicant or licensee in writing if the registrar proposes to,

- (a) refuse, under subsection 40 (1), to grant or renew a licence;
- (b) suspend or revoke a licence;
- (c) apply conditions to a licence under subsection 40 (3) to which the licensee has not consented; or
- (d) apply conditions to a licence under subsection 40 (4) or (6).

**Content of notice**

(2) The notice shall set out the reasons for the registrar's proposed action and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if the applicant or licensee mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

**Service of notice**

(3) The notice shall be served on the applicant or licensee in accordance with section 78.

**Service of hearing request**

(4) A request for a hearing under subsection (2) is sufficiently served if it is sent to the registrar and to the Tribunal by personal delivery, by registered mail or in accordance with the rules of the Tribunal.

**Same**

(5) If service is made by registered mail, it shall be deemed to be made on the third day after the day of mailing.

**Other methods**

(6) Despite subsection (4), the Tribunal may order any other method of service.

**If no request for hearing**

(7) If the applicant or licensee does not request a hearing in accordance with subsection (2), the registrar may carry out the proposed action.

**Hearing**

(8) If the applicant or licensee requests a hearing in accordance with subsection (2), the Tribunal shall hold the hearing and may, by order,

- (a) direct the registrar to carry out the registrar's proposed action; or
- (b) substitute its opinion for that of the registrar.

### **Powers of Tribunal**

(9) In addition to its powers under subsection (8), the Tribunal may attach conditions to its order or to a licence.

### **Parties**

(10) The registrar, the applicant or licensee and the other persons that the Tribunal specifies are parties to the proceedings under this section.

### **Immediate effect**

(11) Even if a licensee appeals an order of the Tribunal, the order takes effect immediately, unless the order provides otherwise, but the Divisional Court may grant a stay until the disposition of the appeal.

### **Continuation pending renewal**

**44** If, within the time prescribed or, if no time is prescribed, before the expiry of the licensee's licence, the licensee has applied for a renewal of a licence and paid the required fee, the licence shall be deemed to continue until,

- (a) the renewal is granted;
- (b) the registrar gives the licensee written notice of the registrar's refusal under section 40 to grant the renewal;
- (c) the time for requesting a hearing under section 43 has expired, if the licensee receives a notice of a proposal under that section and does not request such a hearing; or
- (d) the Tribunal makes its order, if the licensee receives a notice of a proposal under section 43 and does request such a hearing.

### **Immediate suspension**

**45** (1) If the registrar proposes to suspend or revoke a licence under subsection 40 (2) and if the registrar considers it in the public interest to do so, the registrar may, by order, temporarily suspend the licence.

### **Immediate effect**

(2) An order under subsection (1) takes effect immediately.

### **Expiry of order**

(3) If the licensee requests a hearing under section 43, the order expires 15 days after the Tribunal receives the written request for a hearing, but the Tribunal may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period.

### **Extension of expiry of order**

(4) Despite subsection (3), if the Tribunal is satisfied that the conduct of the licensee has delayed the commencement of the hearing, it may extend the time of the expiration for the order,

- (a) until the hearing commences; and
- (b) once the hearing commences, until the hearing is concluded.

### **Further application**

**46** Once a decision of the registrar to refuse a person a licence or a renewal of a licence or to revoke a licence of a person has become final, the person may reapply for a licence only if,

- (a) the time prescribed to reapply has passed since the refusal or revocation; and
- (b) the person satisfies the registrar that new or other evidence is available or that material circumstances have changed.

### **Licence not transferable**

**47** (1) A licence is not transferable.

### **Trustee in bankruptcy**

(2) The appointment of a trustee in bankruptcy, receiver, court-appointed receiver, monitor within the meaning of the *Companies' Creditors Arrangement Act* (Canada) or other insolvency agent for a licensee does not result in a transfer of any licence of the licensee, but this Act applies with necessary modifications to the person so appointed who deals with the licence, as if that person were the licensee.

### **Notice to registrar**

(3) Within 15 days after the date of the bankruptcy, as defined in section 2 of the *Bankruptcy and Insolvency Act* (Canada), or the prescribed insolvency proceeding with respect to a licensee, the trustee in bankruptcy, receiver, court-appointed receiver, monitor within the meaning of the *Companies' Creditors Arrangement Act* (Canada) or other insolvency agent shall

give the registrar a written notice of the bankruptcy or the prescribed insolvency proceeding, as applicable, together with a written plan specifying how the person so appointed intends to manage the operations of the licensee.

**Sale by person other than vendor**

**48** For purposes of this Act, a person, who at any time is licensed as a vendor and who acts as the vendor of a new home to which a warranty described in subsection 47 (1) of the *Protection for Owners and Purchasers of New Homes Act, 2017* applies, continues to be the vendor of the home even if another person sells or transfers, as prescribed, the home to an owner or completes a transaction to sell or transfer, as prescribed, the home to an owner.

**PART IV  
REGULATION OF LICENSEES**

**Notice of change of address for service**

**49** (1) Every licensee shall notify the registrar in writing within five days of any change in address for service.

**Timing**

(2) The registrar shall be deemed to have received a notice under this section on the day on which the registrar actually received it or, if the notice is sent by mail, on the day of mailing.

**Notice of change of control**

**50** (1) When a person ceases to have a controlling interest in a licensee, or acquires a controlling interest in a licensee, the licensee shall promptly notify the registrar.

**Review**

(2) When the registrar learns of a change of control occurring with respect to a licensee, the registrar may review the licensee's licence and request the licensee to provide to the registrar, in the form and within the time period specified by the registrar,

- (a) information specified by the registrar that allows the registrar to determine whether the licensee has become disentitled to the licence; and
- (b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant is providing or has provided to the registrar.

**Notice of issue or transfer of shares**

**51** (1) Every applicant for a licence or renewal of a licence that is a corporation and every licensee that is a corporation shall notify the registrar in writing within 30 days after the issue or transfer of any equity shares of the corporation, if the issue or transfer results in,

- (a) any person, or any persons that are associated with each other, acquiring or accumulating beneficial ownership or control of 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation; or
- (b) an increase in the percentage of issued and outstanding equity shares of the corporation beneficially owned or controlled by any person, or any persons who are associated with each other, where the person or the associated persons already beneficially owned or controlled 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation before the issue or transfer.

**Same**

(2) Despite subsection (1), if an applicant described in that subsection that is a corporation or a licensee that is a corporation becomes aware of a transfer to which that subsection would otherwise apply after the transfer has taken place, it shall notify the registrar in writing within 30 days after knowledge of the transfer comes to the attention of its officers or directors.

**Calculating number of shares**

(3) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purpose of this section, the total number shall be calculated as the total of all the shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equal to the total number of votes it carries.

**Notice of prescribed material change**

**52** Every licensee who experiences a material change, as prescribed, at any time shall,

- (a) promptly inform the registrar of the change;
- (b) promptly answer any inquiries that the registrar has with respect to the change; and
- (c) produce any documents or information that the registrar requests with respect to the change within the time that the registrar specifies.



### **Disclosures by licensees**

**53** (1) A vendor that enters into an agreement in respect of the sale or other transfer as prescribed of a new home to a purchaser shall deliver to the purchaser the information, if any, that is prescribed and do so in the form and manner prescribed and within the time prescribed, including whether the vendor is required to deliver the information before, at the time of or after entering into the agreement.

### **Same, builder**

(2) A builder that enters into a contract for the construction of a new home with an owner shall deliver to the owner the information, if any, that is prescribed and shall do so in the form and manner prescribed and within the time prescribed, including whether the builder is required to deliver the information before, at the time of or after entering into the contract.

### **Agreements of vendors with purchasers**

(3) An agreement that a vendor enters into with a purchaser shall include the terms or conditions that the regulations deem to be so included and shall not include any term or condition that the regulations prohibit from being so included.

### **Construction contracts with purchasers**

(4) A contract for the construction of a new home that a builder enters into with an owner shall include the terms or conditions that the regulations deem to be so included and shall not include any term or condition that the regulations prohibit from being so included.

### **Misrepresentations prohibited**

**54** No licensee shall make a false, misleading or deceptive representation in its advertising, documents or other prescribed materials.

### **Duties of licensees**

**55** Every licensee shall take all reasonable precautions to ensure that the licensee and the licensee's employees and agents comply with this Act, the regulations and orders made by the Director or the Tribunal under this Act or by the discipline committee or appeals committee under section 57.

## **PART V**

### **COMPLAINTS, DISCIPLINE, INSPECTIONS, INVESTIGATIONS AND ENFORCEMENT**

#### **COMPLAINTS AND DISCIPLINE**

### **Complaints**

**56** (1) If the registrar receives a complaint about a licensee, the registrar may request information in relation to the complaint from any licensee.

### **Request for information**

(2) A request for information under subsection (1) shall indicate the nature of the complaint.

### **Duty to comply with request**

(3) A licensee who receives a written request for information shall provide the information as soon as is reasonably possible.

### **Procedures**

(4) In handling complaints, the registrar may do any of the following, as appropriate:

1. Attempt to mediate or resolve the complaint.
2. Give the licensee a written warning that if the licensee continues with the activity that led to the complaint, action may be taken against the licensee.
3. Require the licensee to take further educational courses.
4. Require the licensee, in accordance with the terms, if any, that the registrar specifies, to fund educational courses for persons that the licensee employs or to arrange and fund the courses.
5. Refer the matter, in whole or in part, to the discipline committee.
6. Take an action under section 40, subject to section 43.
7. Take further action as is appropriate in accordance with this Act.

### **Discipline proceedings**

**57** (1) A discipline committee is established to hear and determine, in accordance with the procedures prescribed by the Minister, if a licensee has failed to comply with the code of ethics established under clause 81 (1) (f).

**Appeals committee**

(2) An appeals committee is established to consider, in accordance with the procedures prescribed by the Minister, appeals from the discipline committee.

**Appointment of members**

(3) The board of the regulatory authority shall appoint the members of the discipline committee and the members of the appeals committee and, in making the appointments, shall ensure that the prescribed requirements for the composition of each committee are met.

**Result of a determination**

(4) If the discipline committee makes a determination under subsection (1) that a licensee has failed to comply with the code of ethics, it may order any of the following, as appropriate:

1. Require the licensee to take further educational courses.
2. Require the licensee, in accordance with the terms, if any, that the committee specifies, to fund educational courses for persons that the licensee employs or to arrange and fund the courses.
3. Impose the fine that the committee considers appropriate, to a maximum of \$25,000, or such lesser amount as is prescribed, to be paid by the licensee to the regulatory authority.
4. Suspend or postpone the taking of further educational courses, the funding or the funding and arranging of educational courses or the imposition of the fine for the period and upon the terms that the committee designates.
5. Fix and impose costs that the licensee is required to pay to the regulatory authority.

**Appeal**

(5) A party to the discipline proceeding may appeal the final order of the discipline committee to the appeals committee.

**Power of the appeals committee**

(6) The appeals committee may, by order, overturn, affirm or modify the order of the discipline committee and may make an order under subsection (4).

**Taking of educational course**

(7) A licensee that is required under subsection (4) to take an educational course or to arrange for others to take an educational course under that subsection shall do so,

- (a) within the time period specified in the order of the discipline committee, if the requirement is not the subject of an appeal;
- (b) within the time period specified in the order of the appeals committee, if the requirement is the subject of an appeal; or
- (c) at the first reasonable opportunity after the last order made in respect of the educational course, if no time period is specified in that order.

**Arranging and funding educational courses**

(8) A licensee that is required under subsection (4) to fund educational courses shall do so,

- (a) within the time period specified in the order of the discipline committee, if the requirement is not the subject of an appeal;
- (b) within the time period specified in the order of the appeals committee, if the requirement is the subject of an appeal; or
- (c) at the first reasonable opportunity after the last order made in respect of the educational course, if no time period is specified in that order.

**Payment of fine**

(9) The licensee shall pay any fine imposed under subsection (4) on or before,

- (a) the day specified in the order of the discipline committee, if the fine is not the subject of an appeal;
- (b) the day specified in the order of the appeals committee, if the fine is the subject of an appeal; or
- (c) the 60th day after the date of the last order made in respect of the fine, if no day is specified in that order.

## INSPECTIONS AND INVESTIGATIONS

**Inspectors**

**58** (1) The registrar is, by virtue of the registrar's office, an inspector.

**Appointment**

(2) The registrar shall appoint persons to be inspectors for the purposes of conducting inspections under this Act.

**Certificate of appointment**

(3) The registrar shall issue to every inspector a certificate of appointment bearing the registrar's signature or a facsimile of it.

**Proof of appointment**

(4) Every inspector who is conducting an inspection under this Act shall, upon request, produce the certificate of appointment as an inspector.

**Inspections without warrant**

**59** (1) An inspector may, without a warrant or court order, conduct an inspection in accordance with this section for the purpose of,

- (a) ensuring compliance with this Act and the regulations;
- (b) dealing with a complaint under section 56; or
- (c) ensuring a licensee remains entitled to a licence.

**Power to enter premises**

(2) As part of an inspection, an inspector may, without a warrant or court order, enter and inspect, at any reasonable time, the business premises of a licensee.

**Expert help**

(3) An inspector conducting an inspection under this section may be accompanied by one or more persons with special, expert or professional knowledge, and other persons as necessary, as the inspector considers advisable.

**Powers on inspection**

(4) While carrying out an inspection, an inspector,

- (a) is entitled to free access to all money, valuables, documents and records of the person being inspected that are relevant to the inspection;
- (b) may make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the inspection;
- (c) may require a person to produce any document or record relevant to the inspection and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the document or record;
- (d) may use any data storage, processing or retrieval device or system used to engage in activities of a licensee in order to produce information that is relevant to the inspection and that is in any form;
- (e) may, upon giving a receipt for them, remove for examination and copy anything relevant to the inspection, including any data storage disk or other retrieval device in order to produce information, but shall promptly return to the person being inspected the thing that was removed; and
- (f) may, alone or in conjunction with the other persons described in subsection (3), make examinations or inquiries or take tests, as are necessary for the purposes of the inspection.

**No use of force**

(5) An inspector shall not use force to enter and inspect premises under this section.

**No obstruction**

(6) No person shall obstruct an inspector conducting an inspection or a person accompanying the inspector under subsection (3) or withhold from the inspector or that other person or conceal, alter or destroy any money, documents or records that are relevant to the inspection.

**Compliance**

(7) If an inspector under clause (4) (c) requires a person to produce a document or record and to provide assistance, the person shall produce the document or record or provide the assistance, as the case may be.

**Admissibility of copies**

(8) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

### **Appointment of investigators**

**60** (1) The Director shall appoint persons to be investigators for the purposes of conducting investigations under this Act.

### **Certificate of appointment**

(2) The Director shall issue to every investigator a certificate of appointment bearing the Director's signature or a facsimile of it.

### **Proof of appointment**

(3) Every investigator who is conducting an investigation under this Act shall, upon request, produce the certificate of appointment as an investigator.

### **Investigations with warrant**

**61** (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Act or the regulations or has committed an offence under the law of any jurisdiction that is relevant to the person's fitness for a licence; and
- (b) there is,
  - (i) in any building, dwelling, receptacle or place anything relating to the contravention of this Act or the regulations or to the person's fitness for a licence, or
  - (ii) information or evidence relating to the contravention of this Act or the regulations or the person's fitness for a licence that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant.

### **Powers under warrant**

(2) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an investigator,

- (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and examine and seize anything described in the warrant;
- (b) to make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the investigation;
- (c) to require a person to produce the information or evidence described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the information or evidence described in the warrant;
- (d) to use any data storage, processing or retrieval device or system used to engage in the activities of a licensee in order to produce information or evidence described in the warrant, in any form; and
- (e) to use any investigative technique or procedure or do anything described in the warrant.

### **Entry of dwelling**

(3) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,

- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice of the peace authorizes the entry into the dwelling.

### **Conditions on warrant**

(4) A warrant obtained under subsection (1) shall contain the conditions that the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

### **Expiry of warrant**

(5) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator.

### **Time of execution**

(6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m. local time, unless the warrant specifies otherwise.

### **Use of force**

(7) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant.

**No obstruction**

(8) No person shall obstruct an investigator executing a warrant under this section or withhold from the investigator or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant.

**Expert help**

(9) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the investigator in respect of the execution of the warrant.

**Compliance**

(10) If an investigator under clause (2) (c) requires a person to produce information or evidence or to provide assistance, the person shall produce the information or evidence or provide the assistance, as the case may be.

**Return of seized items**

(11) An investigator who seizes anything under this section or section 62 may make a copy of it and shall return it within a reasonable time.

**Admissibility of copies**

(12) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

**Seizure of things not specified**

**62** An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of the investigator's duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations.

**Searches in exigent circumstances**

**63** (1) An investigator may exercise any of the powers described in subsection 61 (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be reasonably possible to obtain the warrant.

**Dwellings**

(2) Subsection (1) does not apply to a building or a part of a building that is being used as a dwelling.

**Use of force**

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary.

**Applicability of s. 61**

(4) Subsections 61 (8) to (12) apply, with necessary modifications, to a search under this section.

## ORDERS AND OFFENCES

**Order re false advertising**

**64** (1) If the registrar believes on reasonable grounds that any licensee is making a false, misleading or deceptive representation in an advertisement, circular, pamphlet or material published by any means with respect to an existing or proposed new home, the registrar may,

- (a) order the licensee to cease making the representation; and
- (b) order the licensee to retract the representation or publish a correction of equal prominence to the original publication.

**Order effective**

(2) The order takes effect immediately upon being made.

**Content of order**

(3) The order shall inform the licensee named in it that the licensee may request a hearing before the Tribunal by mailing or delivering a written notice of request for a hearing to the registrar and the Tribunal within 15 days after service of the order.

**Service**

(4) The registrar shall serve the order, together with written reasons for it, on the licensee named in it.

**Hearing**

(5) If the licensee gives a notice of request for a hearing within the allowed time, the Tribunal shall hold a hearing.

**Stay of order**

(6) The Tribunal may stay the order until it confirms or sets aside the order under subsection (8).

**Parties**

(7) The registrar, the licensee who requested the hearing and the persons whom the Tribunal specifies are parties to the hearing.

**Powers of Tribunal**

(8) After holding the hearing, the Tribunal may,

- (a) confirm the order with the amendments, if any, that the Tribunal considers proper to give effect to the purposes of the Act; or
- (b) set aside the order.

**Same**

(9) In confirming or setting aside the order, the Tribunal may substitute its opinion for that of the registrar.

**Appeal**

(10) Even if the licensee named in an order of the Tribunal made under this section appeals it under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

**Freeze order, licensees and former licensees**

**65** (1) If the conditions in subsection (2) are met, the Director may, in writing,

- (a) order any person having on deposit or controlling any assets or trust funds of a licensee or former licensee to hold those assets or funds;
- (b) order a licensee or former licensee to refrain from withdrawing any asset or trust fund from a person having them on deposit or controlling them; or
- (c) order a licensee or former licensee to hold any asset or trust fund of a purchaser or other person in trust for the person entitled to it.

**Conditions**

(2) The Director may make an order under subsection (1) if the Director believes that it is advisable for the protection of purchasers, owners or the guarantee fund under the *Protection for Owners and Purchasers of New Homes Act, 2017* and,

- (a) a search warrant has been issued under section 61; or
- (b) an order has been made under section 64.

**Limitation**

(3) In the case of a bank or authorized foreign bank as defined in section 2 of the *Bank Act (Canada)*, a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994* or a loan or trust corporation, the order under subsection (1) of this section applies only to the offices and branches named in the order.

**Release of assets**

(4) The Director may consent to the release of any particular asset or trust fund from the order or may wholly revoke the order.

**Exception**

(5) Subsection (1) does not apply if the person files with the Director, in the manner and amount that the Director determines,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another prescribed form of security.

**Application to court**

(6) An application may be made to the Superior Court of Justice for a determination in respect of the disposition of an asset or trust fund,

- (a) by a person in receipt of an order under subsection (1), if that person is in doubt as to whether the order applies to the asset or trust fund; or
- (b) by a person who claims an interest in the asset or trust fund subject to the order.

**Notice**

(7) If an order is made under this section, the Director may register in the appropriate land registry office a notice that an order under subsection (1) has been issued and that the order may affect land belonging to the person specified in the notice.

**Effect of notice**

(8) The notice has the same effect as the registration of a certificate of pending litigation except that the Director may in writing revoke or modify the notice.

**Cancellation or discharge application**

(9) A person in respect of whom an order has been made under subsection (1) or any person having an interest in land in respect of which a notice is registered under subsection (7) may apply to the Tribunal for cancellation in whole or in part of the order or for discharge in whole or in part of the registration.

**Disposition by Tribunal**

(10) The Tribunal shall dispose of the application after a hearing and may cancel the order or discharge the registration in whole or in part, if the Tribunal finds,

- (a) that the order or registration is not required in whole or in part for the protection of owners or of other persons having an interest in the land; or
- (b) that the interests of other persons are unduly prejudiced by the order or registration.

**Parties**

(11) The applicant, the Director and the other persons that the Tribunal specifies are parties to the proceedings before the Tribunal.

**Court application**

(12) If the Director has made an order under subsection (1) or registered a notice under subsection (7), the Director may apply to the Superior Court of Justice for directions or an order relating to the disposition of assets, trust funds or land affected by the order or notice.

**Notice not required**

(13) An application by the Director under this section may be made without notice to any other person.

**Freeze orders, non-licensees**

**66** (1) The Director may make an order described in subsection (2) in respect of the money or assets of a person who is not licensed and who is alleged to have engaged in activities for which licensing is required at a time when the person was not licensed to do so if,

- (a) the Director receives an affidavit in which it is alleged, and in which facts are set out supporting the allegation, that the person who is not licensed,
  - (i) is subject to criminal proceedings or proceedings in relation to a contravention under this Act or any other Act that are about to be or have been instituted against the person in connection with or arising out of activities for which licensing is required, or
  - (ii) owns a building, dwelling, receptacle or place, or carries on activities in a building, dwelling, receptacle or place, in respect of which a search warrant has been issued under section 61; and
- (b) the Director, based on the affidavit mentioned in clause (a), finds reasonable grounds to believe that,
  - (i) in the course of activities for which licensing is required under this Act, the person who is the subject of the allegation mentioned in clause (a) has received money or assets from purchasers or owners, and
  - (ii) the interests of those purchasers or owners require protection or the guarantee fund under the *Protection for Owners and Purchasers of New Homes Act, 2017* requires protection.

**Order**

(2) In the circumstances described in subsection (1), the Director may, in writing,

- (a) order any person having on deposit or controlling any money or asset of the person who is the subject of the allegation mentioned in clause (1) (a) to hold the money or asset; or
- (b) order the person who is the subject of the allegation mentioned in clause (1) (a),
  - (i) to refrain from withdrawing any money or asset from a person having it on deposit or controlling it, or
  - (ii) to hold any money or asset of a purchaser or other person in trust for the person who is entitled to it.

**Application**

(3) Subsections 65 (3) to (13) apply, with necessary modifications, to an order made under this section.

**Restraining order**

**67** (1) If it appears to the Director that a person is not complying with this Act or the regulations or an order made under this Act, the Director may apply to the Superior Court of Justice for an order restraining the person from acting in breach of them, and, upon the application, the court may make the order or any other order that the court thinks fit.

**Same**

(2) Subsection (1) applies despite the imposition of any penalty in respect of the non-compliance and in addition to any other procedures that may be available to the Director, whether or not the Director has exercised his or her rights under the procedures.

**Appeal**

(3) An appeal lies to the Divisional Court from an order made under subsection (1).

**Offences**

**68** (1) A person or entity, other than the regulatory authority, is guilty of an offence if the person or entity,

- (a) furnishes false information to the regulatory authority in any application under section 38, in any statement required under this Act or in any circumstance that is prescribed;
- (b) fails to comply with any condition of a licence that the person or entity holds;
- (c) fails to comply with any order or other requirement under this Act, other than an order made under section 57; or
- (d) contravenes or fails to comply with any section of this Act or the regulations made under the Act, other than the code of ethics established under clause 81 (1) (f).

**Officer or director of corporation**

(2) An officer or director of a corporation who fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1) is guilty of an offence, whether or not the corporation has been prosecuted or convicted.

**Other individuals**

(3) Any of the following individuals who act on behalf of an entity and who fail to take reasonable care to prevent the entity from committing an offence mentioned in subsection (1) are guilty of an offence, whether or not the entity has been prosecuted or convicted:

- 1. A partner or general manager and assistant general manager of the entity, if the entity is a partnership.
- 2. Any other individual designated for the purpose of this subsection by a by-law or resolution of the entity.
- 3. Any other individual who performs functions normally performed by an individual described in paragraph 2.

**Penalties**

(4) A person or entity that is convicted of an offence under this Act is liable to,

- (a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day or both, in the case of an individual; or
- (b) a fine of not more than \$250,000, if the person or entity is not an individual.

**Limitation**

(5) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the Director.

**Orders for compensation, restitution**

**69** (1) If a person or entity is convicted of an offence under section 68, the court making the conviction may, in addition to any other penalty, order the person or entity convicted to pay compensation or make restitution.

**If insurance has paid**

(2) If an order is made in favour of a person or entity under subsection (1) and that person or entity has already received compensation or restitution from an insurer, the person or entity ordered to pay the compensation or make restitution shall deliver the amount to the insurer.



**Default in payment of fines**

**70** (1) If a fine payable as a result of a conviction for an offence under section 68 is in default for at least 60 days, the Director may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default.

**If payment made**

(2) Within 10 days after the Director has received notice that the fine has been paid in full, the Director shall inform the consumer reporting agency of the payment.

**Transition**

(3) Despite the repeal of the *Ontario New Home Warranties Plan Act*, if a fine is payable as a result of a conviction under that Act, the Director may treat the fine as if it is payable as a result of a conviction under this Act, and subsections (1) and (2) apply to the fine as if it were a fine payable for a conviction under this Act.

**Liens and charges**

**71** (1) If a fine payable as a result of a conviction for an offence under section 68 is in default for at least 60 days, the Director may, by order, create a lien against the property of the person or entity that is liable to pay the fine.

**Liens on personal property**

- (2) If the lien created by the Director under subsection (1) relates to personal property,
- (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act;
  - (b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
  - (c) the Director may perfect the security interest mentioned in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act.

**Liens and charges on real property**

(3) If the lien created by the Director under subsection (1) relates to real property, the Director may register the lien against the property of the person or entity liable to pay the fine in the proper land registry office and on registration, the obligation under the lien becomes a charge on the property.

**Initiation of sale proceedings prohibited**

(4) The Director shall not initiate sale proceedings in respect of any real property against which the Director has registered a lien under subsection (3).

**Proceeds of sale**

(5) If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the Director shall ensure that the funds the Director receives as a result of the sale are used to pay the fine.

**Discharge of lien**

- (6) Within 10 days after the Director has knowledge of the payment in full of the fine, the Director shall,
- (a) discharge the registration of any financing statement registered under clause (2) (c); and
  - (b) register a discharge of a charge created on registration of a lien under subsection (3).

**ADMINISTRATIVE PENALTIES****Assessors**

**72** (1) The registrar is, by virtue of the registrar's office, an assessor.

**Appointment**

(2) The registrar shall appoint, in writing, persons to be assessors who are authorized to make an order under section 73 imposing an administrative penalty.

**Order**

**73** (1) An assessor may, by order, impose an administrative penalty against a person in accordance with this section and the regulations made by the Minister if the assessor is satisfied that the person,

- (a) has contravened or is contravening,
  - (i) a prescribed provision of this Act or the regulations, or

- (ii) a condition of a licence, if the person is the licensee; or
- (b) is contravening a prescribed provision of the *Protection for Owners and Purchasers of New Homes Act, 2017* or the regulations made under it.

#### **To whom payable**

- (2) An administrative penalty is payable to the regulatory authority.

#### **Purpose**

- (3) An administrative penalty may be imposed under this section for one or more of the following purposes:
1. To ensure compliance with this Act and the regulations.
  2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening a provision of this Act or the regulations.

#### **Amount**

- (4) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be determined in accordance with the regulations made by the Minister, but the amount of the penalty shall not exceed \$10,000.

#### **Form of order**

- (5) An order made under subsection (1) imposing an administrative penalty against a person shall be in the form that the registrar determines.

#### **Service of order**

- (6) The order shall be served on the person against whom the administrative penalty is imposed in the manner that the registrar determines.

#### **Absolute liability**

- (7) An order made under subsection (1) imposing an administrative penalty against a person applies even if,
- (a) the person took all reasonable steps to prevent the contravention on which the order is based; or
  - (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

#### **No effect on offences**

- (8) For greater certainty, nothing in subsection (7) affects the prosecution of an offence.

#### **Other measures**

- (9) Subject to section 75, an administrative penalty may be imposed alone or in conjunction with the exercise of any measure against a person provided by this Act or the regulations, including the application of conditions to a licence by the registrar, the suspension, immediate suspension or revocation of a licence or the refusal to renew a licence.

#### **Limitation**

- (10) An assessor shall not make an order under subsection (1) more than two years after the day the assessor became aware of the person's contravention on which the order is based.

#### **No hearing required**

- (11) Subject to the regulations made by the Minister, an assessor is not required to hold a hearing or to afford a person an opportunity for a hearing before making an order under subsection (1) against the person.

#### **Non-application of other Act**

- (12) The *Statutory Powers Procedure Act* does not apply to an order of an assessor made under subsection (1).

#### **Appeal**

- 74** (1) In this section,

“appeal body” means the person prescribed by the Minister or, if no person is prescribed by the Minister, the Tribunal.

#### **Same**

- (2) The person against whom an order made under subsection 73 (1) imposes an administrative penalty may appeal the order to the appeal body by delivering a written notice of appeal to the appeal body within 15 days after receiving the order.

#### **If no appeal**

- (3) If the appellant does not appeal the order in accordance with subsection (2), the order is confirmed.

**Hearing**

(4) If the appellant appeals the order in accordance with subsection (2), the appeal body shall hold a hearing and may, by order, confirm, revoke or vary the assessor's order, and the appeal body may attach conditions to its order.

**Parties**

(5) The assessor, the appellant and the other persons that the appeal body specifies are parties to the appeal.

**Non-application of other Act**

(6) If the appeal body is not the Tribunal, the *Statutory Powers Procedure Act* does not apply to an order of an assessor appealed under subsection (2).

**Immediate effect**

(7) Even if the appellant appeals an order of the appeal body, the order takes effect immediately, unless the order provides otherwise, but the Divisional Court may grant a stay until the disposition of the appeal.

**Effect of paying penalty**

**75** If a person against whom an order imposing an administrative penalty is made pays the penalty in accordance with the terms of the order, or if the order is varied on appeal, in accordance with the terms of the varied order, the person cannot be charged with an offence under this Act in respect of the same contravention on which the order is based and no other prescribed measure shall be taken against the person in respect of the same contravention on which the order is based.

**Enforcement**

**76** (1) If a person against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order, or if the order is varied on appeal, in accordance with the terms of the varied order, the order may be filed with the Superior Court of Justice and enforced as if it were an order of the court.

**Date of order**

(2) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court shall be deemed to be the date of the order.

**Liens and charges**

(3) If a person against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order, or if the order is varied on appeal, in accordance with the terms of the varied order, the Director may, by order, create a lien against the property of the person that is liable to pay the penalty.

**Application of s. 71**

(4) Subsections 71 (2) to (6) apply to the lien, with necessary modifications, as if it were a lien created by the Director under subsection 71 (1), and references to the fine shall be read as references to the administrative penalty.

**PART VI  
GENERAL**

**Confidentiality**

**77** (1) A person who obtains information in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations shall preserve secrecy with respect to the information and shall not communicate the information to any person except,

- (a) as is required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;
- (b) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act or legislation that protects consumers or to any other entity to which the administration of legislation similar to this Act or legislation that protects consumers has been assigned;
- (c) as authorized under the *Regulatory Modernization Act, 2007*;
- (d) to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- (e) to a law enforcement agency;
- (f) to the counsel of the person communicating the information; or
- (g) with the consent of the person to whom the information relates.

**Testimony**

(2) Except in a proceeding under this Act, no person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations.

**Service**

**78** (1) Any notice, order or request is sufficiently given or served if it is,

- (a) delivered personally;
- (b) sent by registered mail; or
- (c) sent by another manner if the sender can prove receipt of the notice, order or request.

**Deemed service**

(2) If service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice, order or request until a later date.

**Exception**

(3) Despite subsections (1) and (2), the Tribunal may order any other method of service it considers appropriate in the circumstances.

**Public information**

**79** (1) Subject to the regulations, the registrar shall make available publicly on the website of the regulatory authority and by any other means that the registrar determines,

- (a) information about the business activities of any class of licensees or prescribed persons, including their business name, business address, phone number and electronic mail address;
- (b) licensing information about a licensee, including the licensee's licence number, the date that the licence expires and the current status of the licence;
- (c) information about what persons are directors, officers or prescribed persons of a licensee, contact information for them and how they are interested in the licensee or associated with the licensee;
- (d) information about persons who are subject to a notice of proposal under section 43;
- (e) information about persons whose licence has been suspended, immediately suspended or revoked;
- (f) information about determinations and orders made by the discipline committee or appeals committee under section 57;
- (g) information about persons who have been subject to an order under any of sections 64, 65, 66, 67 and 69, including the terms of the order;
- (h) information about persons who have been convicted of an offence under this Act;
- (i) information about persons in respect of whom an assessor has imposed an administrative penalty, including the amount of the penalty;
- (j) information that the registrar receives under subsection 67 (1) of the *Protection for Owners and Purchasers of New Homes Act, 2017*; and
- (k) any other prescribed information.

**Searchable information**

(2) The public information described in subsection (1) shall be searchable, including by licensee name, names of directors, officers and principals, and as otherwise prescribed.

**Lieutenant Governor in Council regulations**

**80** (1) The Lieutenant Governor in Council may make regulations,

- (a) specifying any matter that is described in this Act as prescribed or dealt with in the regulations, except for any matter that this Act describes as being prescribed by the Minister or dealt with in regulations made by the Minister;
- (b) governing the revocation of the designation of the regulatory authority;
- (c) respecting classes of licences;
- (d) specifying the responsibilities of any former licensee or any class of former licensees, in connection with or arising out of the business in respect of which the former licensee was licensed or the class of former licensees was licensed or in respect of which licensing was required under this Act;

- (e) governing agreements that a vendor or builder enters into with the regulatory authority, including,
  - (i) deeming certain terms or conditions to be included in the agreements,
  - (ii) prohibiting the agreements from including certain terms or conditions specified in the regulations, and
  - (iii) specifying remedies for the parties to the agreements resulting from non-compliance;
- (f) governing the information that section 53 requires a vendor to deliver to a purchaser or a builder to deliver to an owner;
- (g) governing agreements that a vendor enters into with a purchaser, including,
  - (i) deeming certain terms or conditions to be included in the agreements,
  - (ii) requiring the parties to each agreement to include certain specified terms or conditions,
  - (iii) prohibiting the agreements from including certain terms or conditions specified in the regulations, and
  - (iv) specifying remedies for the purchaser resulting from non-compliance;
- (h) governing contracts for the construction of a new home that a builder enters into with an owner, including,
  - (i) deeming certain terms or conditions to be included in the contracts,
  - (ii) requiring the parties to each contract to include certain specified terms or conditions,
  - (iii) prohibiting the contracts from including certain terms or conditions specified in the regulations, and
  - (iv) specifying remedies for the owner resulting from non-compliance;
- (i) governing what constitutes a false, misleading or deceptive representation for the purpose of section 54;
- (j) governing the activities of licensees and prohibiting licensees from engaging in practices specified in the regulations, in addition to practices prohibited by this Act;
- (k) specifying procedures and other matters for handling complaints under section 56;
- (l) governing the documents and records that licensees must keep, including the manner in which licensees must keep them and the time periods for which they must be kept and authorizing the registrar to specify the location at which licensees must keep them;
- (m) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (n) exempting any person or entity or any class of persons or entities from any provision of this Act or the regulations and attaching conditions to an exemption;
- (o) delegating to the Minister or to the regulatory authority any power to make a regulation under this subsection;
- (p) respecting any matter necessary or advisable to carry out the intent or purpose of this Act;
- (q) providing for any transitional matter necessary for the effective implementation of this Act or the regulations or related to the repeal of the *Ontario New Home Warranties Plan Act*, including,
  - (i) deeming information provided under that Act to have been provided under this Act, and
  - (ii) governing fees and other amounts paid under that Act and deeming them to have been paid under this Act.

#### **Approval required**

- (2) The Lieutenant Governor in Council may make the regulation-making power delegated to the Minister under clause (1) (o) subject to its approval.

#### **Residual authority to act**

- (3) Despite any delegation to the Minister under clause (1) (o) and without having to revoke the delegation, the Lieutenant Governor in Council continues to have authority to make regulations in respect of the power that is the subject of the delegation.

#### **Making regulation not revocation**

- (4) If the Lieutenant Governor in Council makes a regulation to which subsection (3) applies, the regulation does not have the effect of revoking a delegation under clause (1) (o) unless the regulation so specifies.

#### **Minister's regulations preserved**

- (5) The Lieutenant Governor in Council may, by regulation, revoke a delegation to the Minister under clause (1) (o), but the revocation of a delegation does not result in the revocation of any regulation made by the Minister under the delegated power before the revocation of the delegation.

**Conflict**

(6) If there is a conflict between a regulation made under subsection (1) and a regulation made by the Minister under section 81 or the regulatory authority under section 82, the regulation of the Lieutenant Governor in Council prevails.

**Minister's regulations**

**81** (1) The Minister may make regulations,

- (a) requiring the registrar to share with the Minister the information that the registrar collects under subsection 34 (1);
- (b) requiring the regulatory authority to provide the Minister, the warranty authority or any other person prescribed by the Minister with the information specified in the regulation and governing the providing of the information, including the form, manner and time for providing the information;
- (c) respecting applications for a licence and for renewal of a licence;
- (d) requiring an applicant for a licence or a renewal of a licence to provide information to the registrar concerning persons other than the applicant in order to assist the registrar in determining whether the persons are or may be interested persons;
- (e) specifying information that licensees must provide to the registrar and requiring that specified information be verified by affidavit;
- (f) establishing a code of ethics for the purposes of subsection 57 (1);
- (g) governing the composition of the discipline committee and the appeals committee under section 57 and, subject to subsection 57 (3), governing matters relating to the appointment of the members of those committees;
- (h) governing administrative penalties that an assessor may order and all matters necessary and incidental to the administration of a system of administrative penalties, including,
  - (i) specifying the amount of an administrative penalty or providing for the determination of the amount of an administrative penalty by specifying the method of calculating the amount and the criteria to be considered in determining the amount,
  - (ii) providing for different amounts to be paid, or different calculations or criteria to be used, depending on the circumstances that gave rise to the administrative penalty or the time at which the penalty is paid,
  - (iii) specifying information that must be included in an order for payment of an administrative penalty,
  - (iv) governing the procedure for making an order under section 73 for an administrative penalty and the rights of the parties affected by the procedure, including the time at which the order is deemed to be served on the licensee against whom the order is made, and
  - (v) governing the appeal of an order for payment of an administrative penalty;
- (i) specifying the purposes for which the regulatory authority may use the funds that it collects as administrative penalties;
- (j) respecting any matter for which the power to make regulations is delegated by the Lieutenant Governor in Council to the Minister under clause 80 (1) (o);
- (k) delegating to the regulatory authority any power to make a regulation under this subsection.

**Approval required**

(2) The Minister may make the regulation-making power delegated to the regulatory authority under clause (1) (k) subject to the Minister's approval, and in that case shall not approve regulations unless, in his or her opinion, they have been made in accordance with the consultation process and criteria set out in the administrative agreement.

**Residual authority to act**

(3) Despite any delegation to the regulatory authority under clause (1) (k) and without having to revoke the delegation, the Minister continues to have authority to make regulations in respect of the power that is the subject of the delegation.

**Making regulation not revocation**

(4) If the Minister makes a regulation to which subsection (3) applies, the regulation does not have the effect of revoking a delegation under clause (1) (k) unless the regulation so specifies.

**Regulatory authority's regulations preserved**

(5) The Minister may, by regulation, revoke a delegation to the regulatory authority under clause (1) (k), but the revocation of a delegation does not result in the revocation of any regulation made by the authority under the delegated power before the revocation of the delegation.

### **Conflict**

(6) If there is a conflict between a regulation made under subsection (1) and a regulation made by the regulatory authority, the regulation of the Minister prevails.

### **Regulatory authority regulations**

**82** (1) The regulatory authority may make regulations respecting any matter for which the power to make regulations is delegated to it by the Lieutenant Governor in Council or the Minister.

### **Regulations**

(2) A regulation made by the regulatory authority under this section is a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*.

### **Transition**

**83** (1) In this section, a reference to the *Ontario New Home Warranties Plan Act* or any provision of it is a reference to that Act or the provision of it as that Act or the provision, as the case may be, read immediately before the repeal of that Act.

### **Licence as vendor**

(2) A person registered as a vendor within the meaning of the *Ontario New Home Warranties Plan Act* is deemed to be licensed as a vendor under this Act.

### **Licence as builder**

(3) A person registered as a builder within the meaning of the *Ontario New Home Warranties Plan Act* is deemed to be licensed as a builder under this Act.

### **Applications**

(4) An application for registration or renewal of registration as a vendor or builder within the meaning of the *Ontario New Home Warranties Plan Act* that has not been disposed of under that Act before its repeal is deemed to be an application for a licence or renewal of a licence, as the case may be, as a vendor or as a builder, as the case may be, under this Act.

### **Proceedings**

(5) A prescribed proceeding that the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* had commenced as of the day before the day that Act was repealed is continued as a proceeding of the regulatory authority under this Act.

## **PART VII AMENDMENTS TO THIS ACT**

### **Amendments to this Act**

**84** (1) **Clause 7 (b) of this Act is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”.**

(2) **The English version of subsection 21 (2) of this Act is amended by striking out “objects” at the end and substituting “purposes”.**

(3) **Subsection 22 (1) of this Act is amended by striking out “the *Corporations Act*” at the end and substituting “the *Not-for-Profit Corporations Act, 2010*”.**

(4) **The English version of subsection 26 (1) of this Act is amended by striking out “objects” and substituting “purposes”.**

(5) **The English version of section 27 of this Act is amended by striking out “objects” and substituting “purposes”.**

## **PART VIII CONSEQUENTIAL AMENDMENTS**

### ***Building Code Act, 1992***

**85** (1) **Clause 8 (2) (b) of the *Building Code Act, 1992* is repealed and the following substituted:**

(b) the applicant is a builder or vendor as defined in subsection 1 (1) of the *New Home Construction Licensing Act, 2017* and is not licensed under that Act;

**(2) Subsection 15.13 (2) of the Act is repealed and the following substituted:**

### **Exception**

(2) Subsection (1) does not apply to a person who is a builder or vendor as defined in subsection 1 (1) of the *New Home Construction Licensing Act, 2017* in respect of the construction of a building.

*Licence Appeal Tribunal Act, 1999*

**86** Subsection 11 (1) of the *Licence Appeal Tribunal Act, 1999* is amended by adding the following:

*New Home Construction Licensing Act, 2017*

*Protecting Condominium Owners Act, 2015*

**87 (1)** Subsection (2) applies only if section 147 of Schedule 1 to the *Protecting Condominium Owners Act, 2015* does not come into force before the day subsection 85 (1) of this Act comes into force.

(2) Section 147 of Schedule 1 to the Act is repealed.

**PART IX  
COMMENCEMENT AND SHORT TITLE**

**Commencement**

**88 (1)** Subject to subsections (2) to (6), the Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Subsection 84 (1) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day section 7 of this Act comes into force.

(3) Subsection 84 (2) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day subsection 21 (2) of this Act comes into force.

(4) Subsection 84 (3) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day subsection 22 (1) of this Act comes into force.

(5) Subsection 84 (4) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day subsection 26 (1) of this Act comes into force.

(6) Subsection 84 (5) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day section 27 of this Act comes into force.

**Short title**

**89** The short title of the Act set out in this Schedule is the *New Home Construction Licensing Act, 2017*.



**SCHEDULE 2  
PROTECTION FOR OWNERS AND PURCHASERS OF NEW HOMES ACT, 2017**

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**PART I**  
**INTERPRETATION AND APPLICATION**

**Purposes**

**1** The purposes of this Act are,

- (a) to establish strong warranties and other measures of protection for purchasers and owners of new homes for residential purposes; and
- (b) to promote the construction in Ontario of properly built new homes for residential purposes.

**Definitions**

**2** (1) In this Act,

“administrative agreement” means the agreement described in subsection 6 (1); (“accord d’application”)

“builder” means, subject to the prescribed requirements or restrictions, if any, a person who arranges for, manages or undertakes the construction of a new home or who agrees to do any of those things, whether the person is acting,

- (a) for the purposes of selling or transferring the home, as prescribed,

- (b) under a contract with a vendor,
- (c) under a contract with an owner, or
- (d) in the prescribed circumstances; (“constructeur”)

“claim” means a claim for compensation out of the guarantee fund in respect of a new home; (“réclamation”)

“common elements” means all the condominium property except the condominium units; (“parties communes”)

“common elements condominium corporation”, “common expenses” and “common interest” have the same meaning as in the *Condominium Act, 1998*; (“association condominiale de parties communes”, “dépenses communes”, “intérêt commun”)

“condominium corporation” means a corporation as defined in subsection 1 (1) of the *Condominium Act, 1998*; (“association condominiale”)

“condominium declaration” means a declaration as defined in subsection 1 (1) of the *Condominium Act, 1998*; (“déclaration de condominium”)

“condominium property” means property as defined in subsection 1 (1) of the *Condominium Act, 1998*; (“propriété condominiale”)

“condominium unit” means a unit as defined in subsection 1 (1) of the *Condominium Act, 1998*; (“partie privative de condominium”)

“delegated provisions” means the provisions of this Act and the regulations that the Lieutenant Governor in Council has designated as such under subsection 5 (2); (“dispositions déléguées”)

“Director” means the Director appointed under subsection 39 (1); (“directeur”)

“employ” means to employ, appoint, authorize or otherwise arrange to have another person act on one’s behalf, including as an independent contractor; (“employer”)

“guarantee fund” means the guarantee fund continued by subsection 49 (1); (“fonds de garantie”)

“information sharing agreement” means any of the agreements described in subsection 7 (3); (“accord d’échange de renseignements”)

“inspector” means an inspector appointed under subsection 55 (2) or the registrar acting as an inspector; (“inspecteur”)

“investigator” means an investigator appointed under subsection 57 (1); (“enquêteur”)

“licensee” means the holder of a licence issued under the *New Home Construction Licensing Act, 2017*; (“titulaire de permis”, see also “agrée”)

“Minister” means the Minister of Government and Consumer Services or any other member of the Executive Council to whom the responsibility for the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“new home” means, subject to the prescribed requirements or restrictions, if any, any of the following property and any structure or appurtenance used in conjunction with it:

1. A building that is a residential dwelling, whether detached or attached to one or more other buildings by common wall.
2. A residential dwelling in a building with more than one and less than the prescribed number of residential dwellings, all of which are under the same ownership.
3. In the case of a condominium corporation that is not a common elements condominium corporation,
  - i. a condominium unit that is a residential dwelling, including the common elements in respect of which the unit has an appurtenant common interest as described in the condominium declaration of the corporation, and
  - ii. the property owned by the corporation.
4. In the case of a common elements condominium corporation,
  - i. a parcel of land mentioned in subsection 139 (1) of the *Condominium Act, 1998* to which a common interest is attached and that is described in the condominium declaration of the corporation, including the common elements in respect of that common interest, unless the parcel of land is not a residential dwelling, and
  - ii. the property owned by the corporation.
5. Any other prescribed residential dwelling; (“logement neuf”)

“officer” includes,

- (a) the chair and any vice-chair of the board of directors, the president and any vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager and assistant general manager of a corporation or the warranty authority,
- (b) a partner or general manager and assistant general manager of a partnership,
- (c) any other individual designated as an officer by by-law or resolution of an organization,
- (d) any other individual who performs functions normally performed by an individual occupying an office described in clause (a), (b) or (c), and
- (e) any other prescribed individual; (“dirigeant”)

“owner” means, subject to the prescribed requirements or restrictions, if any, a person who,

- (a) first acquires an interest or right in a new home from a vendor,
- (b) for the purposes of a new home built under a contract with a person other than a vendor, is the owner of the land who has entered into the contract with the builder, or
- (c) a prescribed successor to the person described in clause (a) or (b); (“propriétaire”)

“owner-builder” means, subject to the prescribed requirements or restrictions, if any, an individual who constructs or manages the construction of a residential dwelling for the individual’s personal use and occupation and who meets the prescribed requirements, if any; (“constructeur-propriétaire”)

“Plan” means the Ontario New Home Warranties and Protection Plan continued by section 40; (“Régime”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“regulations” means regulations made under this Act; (“règlements”)

“regulatory authority” has the same meaning as in the *New Home Construction Licensing Act, 2017*; (“organisme de réglementation”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or whatever other tribunal is prescribed; (“Tribunal”)

“vendor” means, subject to the prescribed requirements or restrictions, if any, the person who sells or transfers, as prescribed, the prescribed property interest or right of the person in a new home to an owner, whether or not the person is a builder who builds the home under a contract with the owner; (“vendeur”)

“warranty authority” means the corporation that the Lieutenant Governor in Council has designated as such under subsection 5 (1). (“organisme de garantie”)

### **Interested person**

(2) For the purposes of this Act, a person shall be deemed to be an interested person in respect of another person if the person is associated with the other person or if, in the opinion of the registrar,

- (a) the person has or may have a beneficial interest in the other person’s activities;
- (b) the person exercises or may exercise control either directly or indirectly over the other person; or
- (c) the person has provided or may have provided financing either directly or indirectly for the other person’s activities.

### **Associated persons**

(3) For the purposes of this Act, one person is associated with another person in any of the following circumstances:

1. One person is a corporation of which the other person is an officer or director.
2. One person is a partnership of which the other person is a partner.
3. Both persons are partners of the same partnership.
4. One person is a corporation that is controlled directly or indirectly by the other person.
5. Both persons are corporations and one corporation is controlled directly or indirectly by the same person who controls directly or indirectly the other corporation.
6. Both persons are members of the same voting trust relating to shares of a corporation.
7. Both persons are associated within the meaning of paragraphs 1 to 6 with the same person.

**Owner of common elements**

(4) For the purposes of Parts III and IV, a condominium corporation shall be deemed to be the owner of the common elements in the corporation.

**Claim re common elements, etc.**

(5) For the purposes of Part IV and despite subsection (4), an owner who is not the condominium corporation described in that subsection may, in the circumstances that are prescribed, make a claim to the warranty authority with respect to the common elements or the property owned by the corporation that is a new home under subparagraph 3 ii or 4 ii of the definition of that term in subsection (1).

**Crown bound**

3 Subject to the prescribed restrictions, if any, this Act binds the Crown.

**Act prevails**

4 This Act applies despite any agreement to the contrary.

**PART II  
ADMINISTRATION**

DELEGATION

**Designation of warranty authority**

5 (1) The Lieutenant Governor in Council may, by regulation, designate a not-for-profit corporation without share capital incorporated under the laws of Ontario as the warranty authority for the purposes of this Act.

**Delegated provisions**

(2) Subject to subsection (3), the Lieutenant Governor in Council may, by regulation, designate provisions of this Act and the regulations, except for this Part and sections 68, 69 and 70, as the delegated provisions.

**Restriction**

(3) In a regulation mentioned in subsection (2), the Lieutenant Governor in Council may restrict the delegated provisions to specified aspects or purposes of the provisions.

**Delegation of administration**

(4) If the Lieutenant Governor in Council designates a corporation as the warranty authority, the administration of the delegated provisions is delegated to the authority and the authority shall carry out the administration of the delegated provisions.

**Administrative agreement**

6 (1) The Lieutenant Governor in Council shall not designate a corporation under subsection 5 (1) until the Minister and the corporation have entered into an agreement to be known as the administrative agreement.

**Contents**

(2) The administrative agreement shall include, at a minimum, terms related to the following matters:

1. The governance of the warranty authority.
2. All matters that the Minister considers necessary for the warranty authority to carry out the administration of the delegated provisions.
3. The maintenance by the warranty authority of adequate insurance against liability arising out of the carrying out of its powers and duties under this Act or the regulations.
4. The financial terms of the delegation of the administration of the delegated provisions, including payments to the Crown, licence fees, royalties and reimbursements for transfer of assets.

**Compliance with operating principle**

(3) The administrative agreement shall require the warranty authority to comply with the principle of promoting the protection of the public interest.

**Information sharing**

7 (1) The warranty authority shall share the prescribed information with the Minister, the regulatory authority and prescribed persons in accordance with the regulations and in the manner and within the time prescribed.

### **Personal information**

(2) For greater certainty, the prescribed information may include personal information as defined in subsection 2 (1) of the *Freedom of Information and Protection of Privacy Act*.

### **Agreements**

(3) For the purpose of complying with subsection (1), the warranty authority shall, in accordance with the regulations, enter into agreements with the Minister, the regulatory authority and prescribed persons in the manner and within the time prescribed.

### **Content of agreements**

(4) The information sharing agreements mentioned in subsection (3) shall include the prescribed information, which may include information about,

- (a) the enrolment, or qualification for enrolment, of new homes in the Plan;
- (b) claims for compensation from the guarantee fund;
- (c) the result of the claims mentioned in clause (b); and
- (d) all other information that is prescribed.

### **Sharing of enforcement information**

(5) An information sharing agreement may also require the sharing of enforcement information regarding actions that the registrar is taking or is proposing to take in relation to matters set out in subsection (4).

### **Compliance by warranty authority**

**8** In carrying out its powers and duties under this Act or the regulations, the warranty authority shall comply with this Act, the regulations, the administrative agreement, the information sharing agreements and other applicable law.

### **Review**

**9** (1) The Minister may,

- (a) require that policy, legislative or regulatory reviews related to the powers and duties of the warranty authority under this Act, the regulations, the administrative agreement or the information sharing agreements be carried out,
  - (i) by or on behalf of the authority, or
  - (ii) by a person or entity specified by the Minister; or
- (b) require that reviews of the warranty authority, of its operations, or of both, including, without limitation, performance, governance, accountability and financial reviews, be carried out,
  - (i) by or on behalf of the authority, or
  - (ii) by a person or entity specified by the Minister.

### **Access to records**

(2) If a review is carried out by a person or entity specified by the Minister, the warranty authority shall give the person or entity specified by the Minister and the employees of the person or entity access to all records and other information required to conduct the review.

### **Conflict**

**10** In the event of conflict, this Act and the regulations prevail over,

- (a) the administrative agreement and the information sharing agreements;
- (b) the *Corporations Act*, the *Corporations Information Act* or a regulation made under either of those Acts; and
- (c) the constating documents, by-laws and resolutions of the warranty authority.

### **Revocation of designation**

**11** (1) The Lieutenant Governor in Council may, by regulation, revoke the designation of the warranty authority if the Lieutenant Governor in Council considers it advisable to do so in the public interest.

### **Revocation for non-compliance**

(2) The Lieutenant Governor in Council may, by regulation, revoke the designation of the warranty authority if,

- (a) the authority has failed to comply with this Act, the regulations, the administrative agreement, any of the information sharing agreements or other applicable law;

- (b) the Minister has allowed the authority the opportunity of remedying its default within a specified time period that the Minister considers reasonable in the circumstances; and
- (c) the authority has not remedied its default to the Minister's satisfaction within the specified time period mentioned in clause (b) and the Minister has so advised the Lieutenant Governor in Council.

**Same, no restriction on subs. (1)**

(3) Nothing in subsection (2) restricts the ability of the Lieutenant Governor in Council to act under subsection (1).

**Revocation on request**

(4) The Lieutenant Governor in Council may, by regulation, revoke the designation of the warranty authority on the terms that the Lieutenant Governor in Council considers advisable in the public interest if the authority requests the revocation.

**Non-application of other Act**

(5) The *Statutory Powers Procedure Act* does not apply to the exercise by the Lieutenant Governor in Council of a right under this section to revoke the designation of the warranty authority.

**Transition**

(6) If the Lieutenant Governor in Council revokes the designation of the warranty authority under this section, the Lieutenant Governor in Council may, by regulation, provide for any transitional matter necessary for the effective implementation of the revocation, including,

- (a) the transfer, without compensation, of any property, including assets, liabilities, rights, obligations, records, databases, bank accounts and money, that the authority holds in respect of carrying out its activities; and
- (b) the assignment, without compensation, of any contracts that the authority has entered into before the revocation.

**No Crown liability**

(7) No cause of action arises against the Crown, a minister of the Crown, a Crown employee or a Crown agent as a direct or indirect result of the revocation of the designation of the warranty authority or any regulation made under subsection (6).

**No proceeding**

(8) No proceeding, including but not limited to any proceeding in contract, restitution, tort or trust, shall be instituted against the Crown, a minister of the Crown, a Crown employee or a Crown agent by a person who has suffered any damages, injury or other loss based on or related to any cause of action described in subsection (7).

**Condition precedent for exercise of certain powers**

**12** The Minister may exercise a power under subsection 27 (1) or any other prescribed provision only if the Minister is of the opinion that it is advisable to exercise the power in the public interest because at least one of the following conditions is satisfied:

1. The exercise of the power is necessary to prevent serious harm to the interests of the public, purchasers of new homes or owners.
2. An event of force majeure has occurred.
3. The warranty authority is facing a risk of insolvency.
4. The number of members of the board of the warranty authority is insufficient for a quorum.

WARRANTY AUTHORITY

**Competency criteria for board members**

**13** (1) The Minister may, by regulation, establish competency criteria for members of the board of the warranty authority.

**Restriction**

(2) A person is qualified to be appointed or elected to the board only if the person meets the competency criteria, if any, established under subsection (1).

**Conflict**

(3) In the event of a conflict, a regulation made under subsection (1) prevails over a constating document, by-law or resolution of the warranty authority.

**Composition of the board**

**14** (1) The Minister may, by regulation, provide that no more than a fixed percentage of members of the board of the authority shall be drawn from among the persons or classes of persons that are prescribed.

**Conflict**

(2) In the event of a conflict, a regulation made under subsection (1) prevails over a constating document, by-law or resolution of the warranty authority.

**Minister's appointments to board**

**15** (1) The Minister may appoint at pleasure one or more members to the board of the warranty authority for a term specified in the appointment.

**Majority**

(2) The number of members appointed by the Minister shall not form a majority of the board.

**Representation**

(3) The members appointed by the Minister may include,

- (a) representatives of the public, consumer groups, businesses or government organizations; and
- (b) representatives of other interests as the Minister determines.

**Appointment of chair**

**16** The Minister may appoint a chair from among the members of the board of the warranty authority.

**Public access to corporate information**

**17** (1) The warranty authority shall make available to the public, on its website and by any other means that the authority determines, the following information within the prescribed time:

1. Prescribed information relating to the compensation of board members, officers and employees and relating to any other payments that the authority makes or is required to make to them.
2. Corporate by-laws of the authority.
3. Any other information that is prescribed.

**Compensation information**

(2) A regulation made under paragraph 1 of subsection (1) may require that the warranty authority make available to the public under that subsection information relating to the compensation of a board member or officer who is in office on the day this section comes into force or an individual who is an employee on that day, where the information is for a period that begins before that day.

**Effect of compliance**

(3) If the warranty authority makes available to the public information relating to compensation in accordance with subsection (1), or in the reasonable belief that action is required by that subsection, no court or person shall find that the authority,

- (a) has contravened any Act enacted or regulation made before or after this section comes into force; or
- (b) is in breach of or has contravened any agreement that purports to restrict or prohibit that action, regardless of whether the agreement is made before or after this section comes into force.

**Processes and procedures**

(4) The warranty authority shall follow the prescribed processes and procedures with respect to providing access to the public to records of the authority and with respect to managing personal information contained in those records.

**Employees**

**18** (1) Subject to the administrative agreement, the warranty authority may employ or retain the services of any qualified person to carry out any of its powers and duties under this Act or the regulations.

**Not Crown employees**

(2) The following persons are not employees of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained under subsection (1).
2. Members, officers and agents of the warranty authority.
3. Members of the board of the warranty authority, including those appointed by the Minister.

**Not Crown agency**

**19** (1) Despite the *Crown Agency Act*, the warranty authority is not an agent of the Crown for any purpose and shall not hold itself out as such.



**Same**

(2) The following persons are not agents of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained by the warranty authority under subsection 18 (1).
2. Members, officers and agents of the warranty authority.
3. Members of the board of the warranty authority, including those appointed by the Minister.

**No personal liability, Crown employee**

**20** (1) No action or other proceeding shall be instituted against an employee of the Crown for an act done in good faith in the execution or intended execution of a duty under this Act or the regulations or for an alleged neglect or default in the execution in good faith of that duty.

**Tort by Crown employee**

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) of this section does not relieve the Crown of liability in respect of a tort committed by an employee of the Crown to which it would otherwise be subject.

**No Crown liability**

**21** (1) No cause of action arises against the Crown, a minister of the Crown, a Crown employee or a Crown agent as a result of any act or omission of a person who is not a minister of the Crown, a Crown employee or a Crown agent, if the act or omission is related, directly or indirectly, to the activities or affairs of the warranty authority or to the administration of this Act.

**No proceeding**

(2) No proceeding, including but not limited to any proceeding in contract, restitution, tort or trust, shall be instituted against the Crown, a minister of the Crown, a Crown employee or a Crown agent by a person who has suffered any damages, injury or other loss based on or related to any cause of action described in subsection (1).

**Indemnification of the Crown**

**22** The warranty authority shall indemnify the Crown, in accordance with the administrative agreement, in respect of damages and costs incurred by the Crown for any act or omission of the authority or its members, officers, directors, employees or agents in the execution or intended execution of their powers and duties under this Act, the regulations, the administrative agreement or the information sharing agreements.

**No personal liability, board members and others**

**23** (1) No action or other proceeding shall be instituted against a person mentioned in subsection (2) for an act done in good faith in the execution or intended execution of any of the person's powers or duties under this Act or the regulations or for an alleged neglect or default in the execution in good faith of that power or duty.

**Same**

(2) Subsection (1) applies to,

- (a) members of the board of the warranty authority;
- (b) persons who perform functions under this Act or the regulations as employees, agents or officers of the warranty authority or as persons whose services it retains;
- (c) members of committees of the warranty authority who perform functions under this Act or the regulations; and
- (d) individuals who perform functions under this Act or the regulations.

**Liability of warranty authority**

(3) Subsection (1) does not relieve the warranty authority of liability to which it would otherwise be subject.

**Not public money**

**24** (1) The money that the warranty authority collects in carrying out its powers and duties under this Act or the regulations is not public money within the meaning of the *Financial Administration Act*.

**Use of money**

(2) Subject to section 29 and the administrative agreement, the warranty authority may use the money described in subsection (1) to carry out activities in accordance with its objects.

**Audit**

**25** (1) The Auditor General appointed under the *Auditor General Act* may conduct an audit of the warranty authority, other than an audit required under the *Corporations Act*.

**Access to records and information**

(2) If the Auditor General conducts an audit under subsection (1), the warranty authority shall give the Auditor General and employees of the Auditor General access to all records and other information required to conduct the audit.

**Reports**

**26** (1) The board of the warranty authority shall report to the Minister on its activities and financial affairs as they relate to this Act, the administrative agreement and the information sharing agreements.

**Form and contents**

(2) The report shall be in a form acceptable to the Minister and shall provide the information that the Minister requires.

**Time for reports**

(3) The board of the warranty authority shall prepare the report for each year and at the other times that the Minister specifies.

**Disclosure by board**

(4) The board of the warranty authority shall publish the report on the authority's website and by any other method within the period and in the manner that the Minister requires.

**Administrator**

**27** (1) Subject to section 12, the Minister may, by order, appoint an individual as an administrator of the warranty authority for the purposes of assuming control of it and responsibility for its activities.

**Notice of appointment**

(2) The Minister shall give the board of the warranty authority the notice that the Minister considers reasonable in the circumstances before appointing the administrator.

**Immediate appointment**

(3) Subsection (2) does not apply if there are not enough members on the board to form a quorum.

**Term of appointment**

(4) The appointment of the administrator is valid until the Minister makes an order terminating it.

**Powers and duties of administrator**

(5) Unless the order appointing the administrator provides otherwise, the administrator has the exclusive right to exercise all the powers and perform all the duties of the directors, officers and members of the warranty authority.

**Same, limitations**

(6) In the order appointing the administrator, the Minister may specify the administrator's powers and duties and the conditions governing them.

**Right of access**

(7) The administrator has the same rights as the board in respect of the documents, records and information of the warranty authority.

**Report to Minister**

(8) The administrator shall report to the Minister as the Minister requires.

**Minister's directions**

(9) The Minister may issue directions to the administrator about any matter within the administrator's jurisdiction, and the administrator shall carry them out.

**No personal liability**

(10) No action or other proceeding shall be instituted against the administrator for an act done in good faith in the execution or intended execution of a duty or power under this Act, the regulations, the delegated provisions, a Minister's order or the appointment under subsection (1), or for an alleged neglect or default in the execution in good faith of that duty or power.

**Crown liability**

(11) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (10) of this section does not relieve the Crown of liability to which it would otherwise be subject.

**Liability of warranty authority**

(12) Subsection (10) does not relieve the warranty authority of liability to which it would otherwise be subject.

**Status of board during administrator's tenure**

**28** (1) On the appointment of an administrator under section 27, the members of the board of the warranty authority cease to hold office, unless the order provides otherwise.

**Same**

(2) During the term of the administrator's appointment, the powers of any member of the board who continues to hold office are suspended, unless the order provides otherwise.

**No personal liability**

(3) No action or other proceeding shall be instituted against a member or former member of the board for anything done by the administrator or the warranty authority after the member's removal under subsection (1) or while the member's powers are suspended under subsection (2).

**Crown liability**

(4) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, of this section subsection (3) does not relieve the Crown of liability to which it would otherwise be subject.

**Liability of warranty authority**

(5) Subsection (3) does not relieve the warranty authority of liability to which it would otherwise be subject.

#### POWERS AND DUTIES OF WARRANTY AUTHORITY

**Additional powers**

**29** (1) The warranty authority may carry out activities in addition to those provided for under this Act in accordance with its objects, subject to subsection (2).

**Commercial activities**

(2) The warranty authority shall not engage in commercial activity through a person or entity that is related to the authority.

**Change to objects**

**30** The warranty authority shall not make any changes to its objects unless the Minister's written approval is obtained in advance.

**Right to use French**

**31** (1) A person has the right to communicate in French with, and to receive available services in French from, the warranty authority.

**Definition**

(2) In subsection (1),

"service" means any service or procedure that is provided to the public by the warranty authority in carrying out its powers and duties under this Act or the regulations and includes,

- (a) responding to inquiries from members of the public, and
- (b) any other communications for the purpose of providing the service or procedure.

**Board's duty**

(3) The board of directors of the warranty authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

**Limitation**

(4) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

**Forms and fees**

**32** (1) The warranty authority may,

- (a) establish forms related to the administration of the delegated provisions and provide for their content;
- (b) in accordance with processes and criteria established by the authority and approved by the Minister, set and collect fees, costs or other charges related to the administration of the delegated provisions; and
- (c) make rules governing the payment of the fees, costs and charges described in clause (b).

**Setting fees**

(2) In setting the fees, costs and charges described in clause (1) (b), the warranty authority may specify their amounts or the method for determining the amounts.

**Publication of fee schedule**

- (3) The warranty authority,
- (a) shall publish the fees, costs and charges, processes, criteria and rules on its website or by any other electronic means required under the administrative agreement; and
  - (b) may publish that information in any other format that the authority considers advisable.

**Advisory councils, advisory process**

**33** The Minister may require the warranty authority to,

- (a) establish one or more advisory councils;
- (b) include, as members of an advisory council, representatives of the public, consumer groups, businesses or government organizations and other persons as the Minister determines; or
- (c) undertake an advisory process in which it seeks advice from one or both of the public and persons with experience or knowledge relating to this Act.

**Duty to inform Minister**

**34** The warranty authority shall advise the Minister with respect to,

- (a) any material fact that could affect the authority's ability to perform its duties under this Act or the regulations; or
- (b) any urgent or critical matter that is likely to require action by the Minister to ensure that the administration of the delegated provisions is carried out properly.

**Advice to the Minister**

**35** (1) The warranty authority shall advise or report to the Minister on any matter that the Minister refers to it and that relates to this Act or the administration of the delegated provisions.

**Suggestions for legislative amendments**

- (2) The warranty authority may suggest to the Minister amendments to Ontario legislation that it considers would,
- (a) further the purpose of this Act; or
  - (b) assist the authority in carrying out its powers and duties under this Act or the regulations.

**Research and public education**

**36** (1) The warranty authority shall participate, as prescribed, in,

- (a) doing research into cost effective building techniques, processes and materials; and
- (b) identifying, in cooperation with other organizations, best practices for new home construction.

**Consumer education**

(2) The warranty authority shall engage in efforts to support consumer education and awareness about new home construction, ownership and maintenance.

**Public information officer**

(3) The warranty authority may appoint a public information officer.

**Duties**

(4) If appointed, the duties of the public information officer shall include assisting the warranty authority in carrying out its consumer education and awareness efforts.

**Information for regulatory authority**

**37** (1) The registrar may require vendors, builders and other prescribed persons to disclose to the registrar, in accordance with regulations, the information that is related to the administration of this Act, that is prescribed or that is designed to assist the regulatory authority in carrying out its duties under section 33 of the *New Home Construction Licensing Act, 2017*.

**Forwarding information**

(2) In accordance with the information sharing agreements and the regulations, the warranty authority shall forward to the regulatory authority the information that it collects under subsection (1).

## MISCELLANEOUS

**Registrar**

**38** (1) The board of the warranty authority shall appoint a registrar for the purposes of this Act and may appoint one or more deputy registrars.

**Deputy registrars**

(2) A deputy registrar may exercise the powers and perform the duties of the registrar that the registrar specifies and shall, if the registrar so directs, act as the registrar in the registrar's absence.

**If more than one deputy registrar**

(3) If more than one deputy registrar is appointed, only one deputy registrar may act as the registrar under subsection (2) at any one time in respect of the powers and duties that the registrar specifies.

**Director**

**39** (1) Subject to subsection (2), the board of the warranty authority shall appoint a Director for the purposes of this Act and may appoint one or more Deputy Directors.

**Restriction**

(2) A person appointed as the registrar or a deputy registrar under section 38 shall not be appointed as the Director or a Deputy Director under subsection (1) of this section.

**Deputy Directors**

(3) A Deputy Director shall perform the duties that the Director assigns and shall, if directed by the Director, act as the Director in the Director's absence.

**If more than one Deputy Director**

(4) If more than one Deputy Director is appointed, only one Deputy Director may act as the Director under subsection (3) at any one time in respect of the powers and duties that the Director specifies.

**PART III  
WARRANTIES AND OTHER PROTECTION**

**Plan**

**40** The Ontario New Home Warranties Plan is continued under the name Ontario New Home Warranties and Protection Plan in English and Régime ontarien de garanties et de protection pour les logements neufs in French and is comprised of the warranties, protection, guarantee fund and compensation provided by this Act.

**Requirements for vendors of new homes**

**41** A vendor shall not sell or offer to sell a new home unless the vendor,

- (a) is licensed as a vendor under the *New Home Construction Licensing Act, 2017*;
- (b) has provided the registrar with the particulars that the registrar requires and in the manner that the registrar requires;
- (c) has paid the registrar the fee that the registrar requires;
- (d) has complied with the other requirements, if any, that are prescribed;
- (e) has received confirmation from the registrar that the home,
  - (i) qualifies for enrolment in the Plan, if construction of the home has not commenced, or
  - (ii) has been enrolled in the Plan, if construction of the home has commenced; and
- (f) has provided the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017* with a copy of the confirmation described in clause (e).

**Requirements for builders of new homes**

**42** (1) Subject to the prescribed requirements or restrictions, if any, a builder shall not offer to enter into a contract with an owner of land for the construction of a new home on the land unless the builder,

- (a) is licensed as a builder under the *New Home Construction Licensing Act, 2017*; and
- (b) has complied with the other requirements, if any, that are prescribed.

**Offering to commence construction**

(2) A builder shall not offer to commence constructing a new home unless the builder has complied with clauses (1) (a) and (b).

**Contract for construction**

(3) Subject to the prescribed requirements or restrictions, if any, a builder shall not enter into a contract with an owner of land for the construction of a new home on the land unless the builder,

- (a) is licensed as a builder under the *New Home Construction Licensing Act, 2017*;
- (b) has notified the registrar of the intention to commence construction;
- (c) has provided the registrar with the particulars that the registrar requires and in the manner that the registrar requires;
- (d) has paid the registrar the fee that the registrar requires;
- (e) has complied with the other requirements, if any, that are prescribed;
- (f) has received confirmation from the registrar that the home has been enrolled in the Plan; and
- (g) has provided the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017* with a copy of the confirmation described in clause (f).

**Commencing construction**

(4) A builder shall not commence constructing a new home unless the builder has complied with clauses (3) (a) to (g).

**Enrolment of new homes in Plan**

**43** (1) A vendor or a builder of a new home that has not been constructed may apply to the registrar for a determination whether the home qualifies for enrolment in the Plan.

**Same, enrolment**

(2) A builder of a new home may apply to the registrar to enrol the home in the Plan.

**Application**

(3) An application described in subsection (1) or (2) shall be in the form and manner that the registrar requires and shall include the information that the registrar reasonably requests with respect to the new home and the other information, if any, that is prescribed.

**Determination of registrar**

(4) Upon receiving an application described in subsection (1) or (2), the registrar shall, subject to section 46, determine whether to grant it and may consider the past and present financial position or conduct of the applicant, an interested person in respect of the applicant or any other prescribed person.

**Conditions**

- (5) Subject to section 46, the registrar may impose conditions that must be satisfied,
- (a) before the registrar makes a determination that a new home qualifies for enrolment in the Plan;
  - (b) in order for a new home to continue to qualify for enrolment in the Plan; or
  - (c) before the registrar enrolls a new home in the Plan.

**Registrar's confirmation**

(6) When the registrar grants an application described in subsection (1) and all conditions imposed under clause (5) (a) have been met, the registrar shall provide the confirmation that the home qualifies for enrolment in the Plan to the applicant under the application and any other prescribed person in the prescribed manner.

**Same, enrolment**

(7) When the registrar grants an application described in subsection (2) and all conditions imposed under clauses (5) (b) and (c) have been met, the registrar shall provide the confirmation that the home has been enrolled in the Plan to the builder and any other prescribed person in the prescribed manner.

**Licensing conditions**

(8) At any time after the registrar provides a confirmation described in subsection (6) or (7) to a licensee under that subsection, the registrar may notify the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017* of conditions that the warranty authority requests be attached to the licence of the licensee or, subject to subsection (9), that it requires be attached to the licence.

**Mandatory licensing conditions**

(9) The registrar may not require the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017* to attach conditions to the licence of the licensee except in the prescribed circumstances.

**Owner-builder**

(10) The prescribed provisions of this section apply to an owner-builder in the prescribed circumstances, if any, subject to the conditions, if any, that are prescribed.

**Suspension or revocation of qualification of enrolment**

**44** Subject to section 46, at any time after the registrar has made a determination that a new home qualifies for enrolment in the Plan and before the registrar enrolls the home in the Plan, the registrar may suspend or revoke the determination.

**Cancellation of enrolment**

**45** Subject to section 46, at any time after the registrar enrolls a new home in the Plan, the registrar may cancel the enrolment if the registrar determines that the home ceases to meet the definition of a new home.

**Notice of proposal**

**46** (1) The registrar shall notify an applicant or person if the registrar proposes to,

- (a) refuse to grant an application described in subsection 43 (1) or (2);
- (b) impose conditions under subsection 43 (5);
- (c) suspend or revoke a determination that the home qualifies for enrolment in the Plan;
- (d) cancel the enrolment of a new home in the Plan.

**Content of notice**

(2) The notice shall set out the reasons for the registrar's proposed action and shall state that the applicant or person is entitled to a hearing by the Tribunal if the applicant or person mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

**Service of notice**

(3) The notice shall be served on the applicant or person in accordance with section 66.

**Service of hearing request**

(4) A request for a hearing under subsection (2) is sufficiently served if it is sent to the registrar and to the Tribunal by personal delivery, by registered mail or in accordance with the rules of the Tribunal.

**Same**

(5) If service is made by registered mail, it shall be deemed to be made on the third day after the day of mailing.

**Other methods**

(6) Despite subsection (4), the Tribunal may order any other method of service.

**If no request for hearing**

(7) If the applicant or person does not request a hearing in accordance with subsection (2), the registrar may carry out the proposed action.

**Hearing**

(8) If the applicant or person requests a hearing in accordance with subsection (2), the Tribunal shall hold the hearing and may, by order,

- (a) direct the registrar to carry out the registrar's proposed action; or
- (b) substitute the conditions that it sees fit instead of the conditions described in clause (1) (b) or substitute its opinion for that of the registrar, as applicable.

**Powers of Tribunal**

(9) In addition to its powers under subsection (8), the Tribunal may attach conditions to its order or to a determination that a new home qualifies for enrolment in the Plan or to the enrolment of a new home in the Plan.

**Parties**

(10) The registrar, the applicant or person and the other persons that the Tribunal specifies are parties to the proceedings under this section.

**Immediate effect**

(11) Even if the applicant or person appeals an order of the Tribunal, the order takes effect immediately, unless the order provides otherwise, but the Divisional Court may grant a stay until the disposition of the appeal.

**Warranties**

- 47** (1) Subject to subsection (2), every vendor and builder of a new home warrants to the owner that the home is,
- (a) constructed in accordance with the Building Code within the meaning of the *Building Code Act, 1992* and other applicable law, as prescribed;
  - (b) constructed in a skilful manner and is free from defects in material;
  - (c) fit for habitation;
  - (d) free of major defects as prescribed; and
  - (e) protected by the other warranties, if any, that are prescribed.

**Exclusions, etc.**

- (2) The regulations may specify exclusions, qualifications or limitations in respect of a warranty described in subsection (1).

**No privity of contract required**

- (3) A warranty is enforceable even though there is no privity of contract between the owner and one or both of the vendor and the builder of the new home in respect of the warranties described in subsection (1).

**Application of warranties**

- (4) The warranties described in subsection (1) apply despite any agreement or waiver to the contrary and are in addition to any other rights the owner may have and to any other warranty agreed upon between the owner and one or both of the vendor and the builder.

**Protection of money paid**

- 48** (1) Subject to this section, a vendor shall ensure that all money, together with interest earned on it, is received, held and used in accordance with the regulations, as soon as a person makes a payment,

- (a) with respect to reserving a right to enter into an agreement of purchase and sale for the purchase of a new home from the vendor;
- (b) on account of an agreement of purchase and sale of a new home with the vendor; or
- (c) on account of a sale of a new home by the vendor.

**Payment from builder**

- (2) Subject to the prescribed requirements or restrictions, if any, an owner of land who has entered into a contract with a builder for the construction of a new home on the land, is entitled to receive payment from the builder of the amount by which the amount paid to the builder under the contract exceeds the value of the work and materials supplied to the owner under the contract, if the builder has not substantially completed the home, as prescribed.

**Exception, fixtures**

- (3) Subsections (1) and (2) do not apply to any amount received on account of the purchase of personal property that is included in the new home and that is not to be permanently affixed to land.

**Payment upon rescission, etc.**

- (4) Subject to the prescribed requirements or restrictions, if any, a person described in subsection (1) is entitled to receive payment from the vendor for the amount of money, together with interest earned on it, that the vendor received,
- (a) if the person has exercised a right to rescind the contract before closing; or
  - (b) if the other circumstances that are prescribed apply.

**Delayed occupancy or closing**

- (5) Subject to the prescribed requirements or restrictions, if any, a person described in subsection (1) is entitled to receive payment from the vendor in the event of,
- (a) a delay in occupancy of the new home, as determined by the regulations, or
  - (b) a delay in closing the agreement of purchase and sale, as determined by the regulations.

**Other rights to payment**

- (6) A vendor or builder, as prescribed, shall, in accordance with the regulations, pay compensation to a person who has entered into an agreement in respect of the purchase of a new home from a vendor in respect of other rights, if any, that are prescribed.



**Other recipients**

(7) The entitlement to receive payment under subsection (2), (4), (5) or (6) also applies to the other persons, if any, that are prescribed.

**No waiver**

(8) The entitlement to receive payment under this section with respect to a new home applies despite any agreement or waiver to the contrary and is in addition to any other rights the owner may have and to any other protection agreed upon between the owner and one or both of the vendor and the builder of the home.

**PART IV  
CLAIMS FOR COMPENSATION**

**Guarantee fund**

**49** (1) The guarantee fund established under Regulation 892 (Administration of the Plan) of the Revised Regulations of Ontario, 1990 made under the *Ontario New Home Warranties Plan Act*, as it exists on the day this section comes into force, is continued for the purpose of providing compensation under the Plan.

**Same**

(2) The guarantee fund includes all financial arrangements that are in place for providing money to the fund.

**Management of fund**

(3) The warranty authority shall maintain, manage and administer the guarantee fund and shall ensure that the money in the fund is adequate for the purpose of providing compensation under the Plan.

**Powers**

(4) The warranty authority may do anything necessary to carry out its duties under subsection (3), including,

- (a) making payments or loans out of the guarantee fund to the regulatory authority, or, if no regulatory authority has been designated, to a not-for-profit corporation without share capital incorporated under the laws of Ontario that may be designated as the regulatory authority, based on the information that the Minister provides to the warranty authority; and
- (b) using the fund to make payments in respect of any transitional matter that arises as a result of the coming into force of all or any portion of this Act or as a result of a designation made under section 5 and that is necessary for the effective implementation of this Act or the regulations.

**Compensation from guarantee fund**

**50** (1) Subject to the prescribed requirements or restrictions, if any, an owner of a new home is entitled to receive compensation out of the guarantee fund for damages resulting from a breach of a warranty described in subsection 47 (1) if,

- (a) the person became the owner of the home through,
  - (i) receiving a transfer of title to it,
  - (ii) the substantial completion, as prescribed, of it on land owned by the person; or
  - (iii) other circumstances as prescribed; and
- (b) the person has suffered damages resulting from the breach of warranty.

**Same, for additional entitlements**

(2) Subject to the prescribed requirements or restrictions, if any, a person is entitled to receive compensation out of the guarantee fund if the person is entitled to receive a payment from a vendor or a builder under subsection 48 (2), (4), (5), (6) or (7) and the vendor or the builder, as the case may be, fails to comply with the applicable subsection.

**Non-application of other Acts**

**51** (1) The *Insurance Act* does not apply to the warranty authority and its undertakings in respect of any matter authorized by this Act except as otherwise prescribed.

**Same, SPPA**

(2) The *Statutory Powers Procedure Act* does not apply to any decisions made or proceedings conducted under this Act with respect to a claim.

**Claim procedure**

**52** (1) A claim for compensation out of the guarantee fund shall be made to the warranty authority in accordance with the prescribed procedure.

**Information to the warranty authority**

(2) The following persons shall provide to the warranty authority the information and particulars regarding the claim that are prescribed:

1. The claimant making the claim.
2. The vendor or builder of the new home in respect of which the claim is made.
3. Other persons that are prescribed.

**Evidence required of claimant**

(3) Subject to subsection (4), a claimant making a claim,

- (a) shall explain, in accordance with the regulations, the reasons for the concern giving rise to the claim;
- (b) if the claim does not relate to an entitlement to receive compensation out of the guarantee fund under subsection 50 (2) or is not a prescribed claim, shall include in the reasons for the concern giving rise to the claim a description of the symptoms of the concern that have been observed or experienced, unless the regulations provide otherwise; and
- (c) is not required to prove the cause of the concern giving rise to the claim if the claimant has complied with clauses (a) and (b), unless the regulations provide otherwise.

**Exception**

(4) Subsection (3) does not apply to,

- (a) a claim after the warranty authority makes a decision mentioned in subsection (12) in respect of the claim; or
- (b) a claim in respect of common elements or prescribed property of a condominium corporation.

**Response of warranty authority**

(5) The warranty authority shall investigate the concern giving rise to a claim to verify that it relates to an entitlement to receive compensation out of the guarantee fund under subsection 50 (1) or (2) and, if it does, shall determine whether the claimant is entitled to receive such compensation and how it will deal with the claim.

**Inquiries, etc.**

(6) In investigating a concern under subsection (5), the warranty authority may make any inquiries, conduct any inspections or apply any technical and other expertise that it considers appropriate.

**Expert help**

(7) An individual making an inquiry or conducting an inspection under subsection (6) on behalf of the warranty authority may be accompanied by one or more persons with special, expert or professional knowledge, and other persons as necessary, as the individual considers advisable.

**Conduct of inquiries, etc.**

(8) The warranty authority shall ensure that any actions it takes under subsection (6) are done in accordance with the regulations, if any.

**Process of dealing with claims**

(9) In dealing with a claim, the warranty authority may use a range of processes for inquiring into the claim and for engaging with the claimant and other affected parties.

**Other recovery**

(10) In determining the amount for which a claimant is entitled to receive payment out of the guarantee fund, the warranty authority shall, subject to the prescribed requirements or restrictions, if any, take into consideration any benefit, compensation, indemnity payable or the value of work and materials furnished to the claimant from any source.

**Performance**

(11) The warranty authority may perform or arrange for the performance of any work in lieu of or in mitigation of damages that are claimed.

**Notice of decision**

(12) When the warranty authority makes a decision in respect of a claim, it shall serve notice of the decision, together with reasons for the decision, on the claimant and the other persons, if any, that are prescribed.

**Appeal to Tribunal**

(13) A notice under subsection (12) shall state that the claimant is entitled to appeal the decision to the Tribunal by providing notice to the Tribunal and the other persons, if any, that are prescribed, in the form and within the time that is prescribed.

**Dispute resolution**

(14) The right to a hearing before the Tribunal does not preclude the warranty authority from making available one or more voluntary dispute resolution processes for a claim.

**Tribunal hearing**

(15) If the Tribunal receives a notice of appeal under subsection (13), it shall appoint a time for and hold a hearing.

**Parties**

(16) The warranty authority and the claimant are the parties to the proceedings before the Tribunal under this section.

**Order**

(17) After holding a hearing, the Tribunal may, by order,

- (a) direct the warranty authority to take the action that the Tribunal considers the authority ought to take in accordance with this Act and the regulations; and
- (b) for the purposes of the order, may substitute its opinion for that of the warranty authority.

**Other remedies unaffected**

(18) Unless the regulations specifically provide otherwise, nothing in this Act restricts the remedies otherwise available to an owner or any other prescribed person for the failure of another person to perform a duty imposed by this Act.

**PART V  
COMPLAINTS, INSPECTIONS, INVESTIGATIONS AND ENFORCEMENT**

**COMPLAINTS**

**Complaints**

**53** (1) If the registrar receives a complaint about a licensee or a prescribed vendor or builder in respect of a claim, the registrar may request information in relation to the complaint from any licensee or from any prescribed vendor or builder.

**Request for information**

(2) A request for information under subsection (1) shall indicate the nature of the complaint.

**Duty to comply with request**

(3) A licensee or prescribed vendor or builder who receives a written request for information shall provide the information as soon as is reasonably possible.

**Procedures**

(4) In handling complaints, the registrar may do any of the following, as appropriate:

1. Attempt to mediate or resolve the complaint.
2. Give the licensee or prescribed vendor or builder a written warning that if the person continues with the activity that led to the complaint, action may be taken against the person.
3. Refer the matter, in whole or in part, to the regulatory authority.
4. Take further action as is appropriate in accordance with this Act.

**Ombudsperson**

**54** The warranty authority shall make available an ombudsperson to carry out the following duties:

1. To inquire into and to respond to the administration of this Act by the authority.
2. To make recommendations in respect of the administration of this Act by the authority.
3. To carry out the other duties, if any, that are prescribed.

**INSPECTIONS AND INVESTIGATIONS**

**Inspectors**

**55** (1) The registrar is, by virtue of the registrar's office, an inspector.

**Appointment**

(2) The registrar shall appoint persons to be inspectors for the purposes of conducting inspections under this Act.

**Certificate of appointment**

(3) The registrar shall issue to every inspector a certificate of appointment bearing the registrar's signature or a facsimile of it.

**Proof of appointment**

(4) Every inspector who is conducting an inspection under this Act shall, upon request, produce the certificate of appointment as an inspector.

**Inspections without warrant**

**56** (1) An inspector may, without a warrant or court order, conduct an inspection in accordance with this section for the purpose of,

- (a) ensuring compliance with this Act and the regulations;
- (b) inspecting a new home during construction; or
- (c) dealing with a complaint under section 53.

**Power to enter premises**

(2) As part of an inspection, an inspector may, without a warrant or court order, enter and inspect, at any reasonable time, the business premises of a licensee.

**Expert help**

(3) An inspector conducting an inspection under this section may be accompanied by one or more persons with special, expert or professional knowledge, and other persons as necessary, as the inspector considers advisable.

**Powers on inspection**

(4) While carrying out an inspection, an inspector,

- (a) is entitled to free access to all money, valuables, documents and records of the person being inspected that are relevant to the inspection;
- (b) may make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the inspection;
- (c) may require a person to produce any document or record relevant to the inspection and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the document or record;
- (d) may use any data storage, processing or retrieval device or system used to engage in activities of a licensee in order to produce information that is relevant to the inspection and that is in any form;
- (e) may, upon giving a receipt for them, remove for examination and copy anything relevant to the inspection, including any data storage disk or other retrieval device in order to produce information, but shall promptly return to the person being inspected the thing that was removed; and
- (f) may, alone or in conjunction with the other persons described in subsection (3), make examinations or inquiries or take tests, as are necessary for the purposes of the inspection.

**No use of force**

(5) An inspector shall not use force to enter and inspect premises under this section.

**No obstruction**

(6) No person shall obstruct an inspector conducting an inspection or a person accompanying the inspector under subsection (3) or withhold from the inspector or that other person or conceal, alter or destroy any money, documents or records that are relevant to the inspection.

**Compliance**

(7) If an inspector under clause (4) (c) requires a person to produce a document or record and to provide assistance, the person shall produce the document or record or provide the assistance, as the case may be.

**Admissibility of copies**

(8) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

**Appointment of investigators**

**57** (1) The Director shall appoint persons to be investigators for the purposes of conducting investigations under this Act.

### **Certificate of appointment**

(2) The Director shall issue to every investigator a certificate of appointment bearing the Director's signature or a facsimile of it.

### **Proof of appointment**

(3) Every investigator who is conducting an investigation under this Act shall, upon request, produce the certificate of appointment as an investigator.

### **Investigations with warrant**

**58** (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Act or the regulations; and
- (b) there is,
  - (i) in any building, dwelling, receptacle or place anything relating to the contravention of this Act or the regulations, or
  - (ii) information or evidence relating to the contravention of this Act or the regulations that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant.

### **Powers under warrant**

- (2) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an investigator,
- (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and examine and seize anything described in the warrant;
  - (b) to make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the investigation;
  - (c) to require a person to produce the information or evidence described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the information or evidence described in the warrant;
  - (d) to use any data storage, processing or retrieval device or system used to engage in the activities of a licensee in order to produce information or evidence described in the warrant, in any form; and
  - (e) to use any investigative technique or procedure or do anything described in the warrant.

### **Entry of dwelling**

(3) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,

- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice of the peace authorizes the entry into the dwelling.

### **Conditions on warrant**

(4) A warrant obtained under subsection (1) shall contain the conditions that the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

### **Expiry of warrant**

(5) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator.

### **Time of execution**

(6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m. local time, unless the warrant specifies otherwise.

### **Use of force**

(7) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant.

### **No obstruction**

(8) No person shall obstruct an investigator executing a warrant under this section or withhold from the investigator or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant.

**Expert help**

(9) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the investigator in respect of the execution of the warrant.

**Compliance**

(10) If an investigator under clause (2) (c) requires a person to produce information or evidence or to provide assistance, the person shall produce the information or evidence or provide the assistance, as the case may be.

**Return of seized items**

(11) An investigator who seizes anything under this section or section 59 may make a copy of it and shall return it within a reasonable time.

**Admissibility of copies**

(12) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

**Seizure of things not specified**

**59** An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of the investigator's duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations.

**Searches in exigent circumstances**

**60** (1) An investigator may exercise any of the powers described in subsection 58 (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would not be reasonably possible to obtain the warrant.

**Dwellings**

(2) Subsection (1) does not apply to a building or a part of a building that is being used as a dwelling.

**Use of force**

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary.

**Applicability of s. 58**

(4) Subsections 58 (8) to (12) apply, with necessary modifications, to a search under this section.

## ENFORCEMENT

**Offences**

**61** (1) A person or entity, other than the warranty authority, is guilty of an offence if the person or entity,

- (a) furnishes false information to the warranty authority in any application under section 43, any claim, any statement required under this Act or any circumstance that is prescribed;
- (b) fails to comply with any condition imposed under 43 (5);
- (c) fails to comply with any order or other requirement under this Act; or
- (d) contravenes or fails to comply with any section of this Act or the regulations.

**Officer or director of corporation**

(2) An officer or director of a corporation who fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1) is guilty of an offence, whether or not the corporation has been prosecuted or convicted.

**Other individuals**

(3) Any of the following individuals who act on behalf of an entity and who fail to take reasonable care to prevent the entity from committing an offence mentioned in subsection (1) are guilty of an offence, whether or not the entity has been prosecuted or convicted:

1. A partner or general manager and assistant general manager of the entity, if the entity is a partnership.
2. Any other individual designated for the purpose of this subsection by a by-law or resolution of the entity.
3. Any other individual who performs functions normally performed by an individual described in paragraph 2.

**Penalties**

(4) A person or entity that is convicted of an offence under this Act is liable to,

- (a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day or both, in the case of an individual; or
- (b) a fine of not more than \$250,000, if the person or entity is not an individual.

#### **Limitation**

(5) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the Director.

#### **Orders for compensation, restitution**

**62** (1) If a person or entity is convicted of an offence under section 61, the court making the conviction may, in addition to any other penalty, order the person or entity convicted to pay compensation or make restitution.

#### **If insurance or warranty authority has paid**

(2) If an order is made in favour of a person or entity under subsection (1) and that person or entity has already received compensation or restitution from an insurer or from the guarantee fund, the person or entity ordered to pay the compensation or make restitution shall deliver the amount to the insurer or warranty authority, as applicable.

#### **Default in payment of fines**

**63** (1) If a fine payable as a result of a conviction for an offence under section 61 is in default for at least 60 days, the Director may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default.

#### **If payment made**

(2) Within 10 days after the Director has received notice that the fine has been paid in full, the Director shall inform the consumer reporting agency of the payment.

#### **Liens and charges**

**64** (1) If a fine payable as a result of a conviction for an offence under section 61 is in default for at least 60 days, the Director may, by order, create a lien against the property of the person or entity that is liable to pay the fine.

#### **Liens on personal property**

- (2) If the lien created by the Director under subsection (1) relates to personal property,
  - (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) (a) of that Act;
  - (b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
  - (c) the Director may perfect the security interest mentioned in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act.

#### **Liens and charges on real property**

(3) If the lien created by the Director under subsection (1) relates to real property, the Director may register the lien against the property of the person or entity liable to pay the fine in the proper land registry office and on registration, the obligation under the lien becomes a charge on the property.

#### **Initiation of sale proceedings prohibited**

(4) The Director shall not initiate sale proceedings in respect of any real property against which the Director has registered a lien under subsection (3).

#### **Proceeds of sale**

(5) If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the Director shall ensure that the funds the Director receives as a result of the sale are used to pay the fine.

#### **Discharge of lien**

- (6) Within 10 days after the Director has knowledge of the payment in full of the fine, the Director shall,
  - (a) discharge the registration of any financing statement registered under clause (2) (c); and
  - (b) register a discharge of a charge created on registration of a lien under subsection (3).

**PART VI  
GENERAL**

**Confidentiality**

**65** (1) A person who obtains information in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations shall preserve secrecy with respect to the information and shall not communicate the information to any person except,

- (a) as is required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;
- (b) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act or legislation that protects consumers or to any other entity to which the administration of legislation similar to this Act or legislation that protects consumers has been assigned;
- (c) as authorized under the *Regulatory Modernization Act, 2007*;
- (d) to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- (e) to a law enforcement agency;
- (f) to the counsel of the person communicating the information; or
- (g) with the consent of the person to whom the information relates.

**Testimony**

(2) Except in a proceeding under this Act, no person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations.

**Service**

**66** (1) Any notice, order or request is sufficiently given or served if it is,

- (a) delivered personally;
- (b) sent by registered mail; or
- (c) sent by another manner if the sender can prove receipt of the notice, order or request.

**Deemed service**

(2) If service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice, order or request until a later date.

**Exception**

(3) Despite subsections (1) and (2), the Tribunal may order any other method of service it considers appropriate in the circumstances.

**Information to provide to regulatory authority**

**67** (1) Subject to the prescribed requirements or restrictions, if any, the registrar shall provide the following information to the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017*:

1. Information about the enrolment, or qualification for enrolment, of new homes in the Plan.
2. Information about claims that the registrar has received.
3. All other information, if any, that is prescribed.

**Searchable information**

(2) The information described in subsection (1) shall be searchable, including by the name of the person or entity to which the information relates, by the name of directors, officers and principals of that person or entity, and as otherwise prescribed.

**Lieutenant Governor in Council regulations**

**68** (1) The Lieutenant Governor in Council may make regulations,

- (a) governing any matter that is described in this Act as prescribed or dealt with in the regulations, except for any matter that this Act describes as being prescribed by the Minister or dealt with in regulations made by the Minister;
- (b) specifying anything that is described in any other Act as prescribed for the purpose of any provision of that Act by regulations made under this Act;



- (c) governing the revocation of the designation of the warranty authority;
- (d) governing security and other financial arrangements in respect of the enrolment, or qualification for enrolment, of a new home in the Plan;
- (e) governing agreements between the warranty authority and a vendor or builder, including in respect of the enrolment, or qualification for enrolment, of a new home in the Plan;
- (f) specifying the date a warranty described in subsection 47 (1) or an entitlement to receive payment under subsection 48 (2), (4), (5), (6) or (7) takes effect and the time it expires;
- (g) governing rules and procedures for determining whether exclusions apply under subsection 48 (2);
- (h) governing procedures for making and determining claims and for providing payment out of the guarantee fund, including services in lieu of payment;
- (i) respecting the payment out of the guarantee fund in respect of claims in respect of which the warranty authority has made a determination to make payment of the fund and respecting the procedures and rules to be followed in respect of the payment, including prescribing maximum amounts that may be paid out of the guarantee fund, including different maximum amounts for different circumstances;
- (j) governing the subrogation of the warranty authority to any rights of a person in respect of a claim;
- (k) governing the right of recovery of the warranty authority in respect of payments made out of the guarantee fund and costs incurred relating to a claim;
- (l) prescribing the circumstances in which a person is required to reimburse the guarantee fund in respect of a payment out of the guarantee fund of a claim, or the value of services provided by the warranty authority in respect of the claim, and prescribing rules respecting the time and manner for the reimbursement and the imposition of penalties and interest;
- (m) requiring the warranty authority to make available to the public decisions that it makes in respect of claims, prescribing the manner in which the decisions are to be made available to the public, including requiring their publication, and governing the personal information contained in the decisions that shall not be made available to the public;
- (n) defining any word or expression used in this Act that has not already been expressly defined in this Act;
- (o) exempting any person or entity or any class of persons or entities from any provision of this Act or the regulations and attaching conditions to an exemption;
- (p) delegating to the Minister or to the warranty authority any power to make a regulation under this subsection;
- (q) respecting any matter necessary or advisable to carry out the intent or purpose of this Act;
- (r) providing for any transitional matter necessary for the effective implementation of this Act or the regulations or related to the repeal of the *Ontario New Home Warranties Plan Act*, including,
  - (i) deeming information provided under that Act to have been provided under this Act, and
  - (ii) governing fees and other amounts paid under that Act and deeming them to have been paid under this Act.

#### **Approval required**

- (2) The Lieutenant Governor in Council may make the regulation-making power delegated to the Minister under clause (1) (p) subject to its approval.

#### **Residual authority to act**

- (3) Despite any delegation to the Minister under clause (1) (p) and without having to revoke the delegation, the Lieutenant Governor in Council continues to have authority to make regulations in respect of the power that is the subject of the delegation.

#### **Making regulation not revocation**

- (4) If the Lieutenant Governor in Council makes a regulation to which subsection (3) applies, the regulation does not have the effect of revoking a delegation under clause (1) (p) unless the regulation so specifies.

#### **Minister's regulations preserved**

- (5) The Lieutenant Governor in Council may, by regulation, revoke a delegation to the Minister under clause (1) (p), but the revocation of a delegation does not result in the revocation of any regulation made by the Minister under the delegated power before the revocation of the delegation.

**Conflict**

(6) If there is a conflict between a regulation made under subsection (1) and a regulation made by the Minister under section 69 or the warranty authority under section 70, the regulation of the Lieutenant Governor in Council prevails.

**Minister's regulations**

**69** (1) The Minister may make regulations,

- (a) requiring the registrar to share with the Minister the information that the registrar collects under subsection 37 (1);
- (b) requiring the warranty authority to provide the Minister, the regulatory authority or any other person prescribed by the Minister with the information specified in the regulation and governing the providing of the information, including the form, manner and time for providing the information;
- (c) governing applications for a determination that a new home qualifies for enrolment in the Plan and evidence of the qualifications that an applicant for the determination must submit in the application;
- (d) governing applications for enrolment of a new home in the Plan and the evidence that an applicant for enrolment must submit in the application;
- (e) governing the duties of the ombudsperson under section 54, including prescribing additional duties of the ombudsperson;
- (f) respecting any matters for which the power to make regulations is delegated by the Lieutenant Governor in Council to the Minister under clause 68 (1) (p);
- (g) delegating to the warranty authority any power to make a regulation under this subsection.

**Approval required**

(2) The Minister may make the regulation-making power delegated to the warranty authority under clause (1) (g) subject to the Minister's approval, and in that case shall not approve regulations unless, in his or her opinion, they have been made in accordance with the consultation process and criteria set out in the administrative agreement.

**Residual authority to act**

(3) Despite any delegation to the warranty authority under clause (1) (g) and without having to revoke the delegation, the Minister continues to have authority to make regulations in respect of the power that is the subject of the delegation.

**Making regulation not revocation**

(4) If the Minister makes a regulation to which subsection (3) applies, the regulation does not have the effect of revoking a delegation under clause (1) (g) unless the regulation so specifies.

**Warranty authority's regulations preserved**

(5) The Minister may, by regulation, revoke a delegation to the warranty authority under clause (1) (g), but the revocation of a delegation does not result in the revocation of any regulation made by the authority under the delegated power before the revocation of the delegation.

**Conflict**

(6) If there is a conflict between a regulation made under subsection (1) and a regulation made by the warranty authority, the regulation of the Minister prevails.

**Warranty authority regulations**

**70** (1) The warranty authority may make regulations respecting any matter for which the power to make regulations is delegated to it by the Lieutenant Governor in Council or the Minister.

**Regulations**

(2) A regulation made by the warranty authority under this section is a regulation within the meaning of Part III (Regulations) of the *Legislation Act, 2006*.

**Transition**

**71** (1) In this section, a reference to the *Ontario New Home Warranties Plan Act* or any provision of it is a reference to that Act or the provision of it as that Act or the provision, as the case may be, read immediately before the day this section comes into force.

**Enrolment of new home**

(2) A new home that qualified for enrolment in the Ontario New Home Warranties Plan or that was so enrolled immediately before the day this section comes into force is deemed to be enrolled in the Ontario New Home Warranties and Protection Plan on that day.

**Security**

(3) Security that a person has provided under clause 23 (1) (1) of the *Ontario New Home Warranties Plan Act* immediately before this section comes into force is deemed to be security provided under clause 68 (1) (d) of this Act.

**Claims**

(4) A claim that a person has made to the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* and for which that Corporation has not made a decision under section 14 of that Act to pay compensation out of the guarantee fund by the day this section comes into force is deemed to be a claim made under this Act.

**Unpaid claims**

(5) If the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* has made a decision under section 14 of that Act to pay compensation out of the guarantee fund in respect of a claim before the day this section comes into force but no compensation has been paid out of the guarantee fund by that day in payment of the claim, the decision is deemed to be a decision made by the warranty authority under section 52 of this Act.

**Money**

(6) Despite the repeal of the *Ontario New Home Warranties Plan Act*, subsections 2 (2) and (3) and section 4 of that Act continue to apply to the Corporation within the meaning of that Act.

**Proceedings**

(7) A prescribed proceeding that the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* had commenced as of the day before the day that Act was repealed is continued as a proceeding of the warranty authority under this Act.

**PART VII  
AMENDMENTS TO THIS ACT**

**Amendments to this Act**

**72 (1) Clause 10 (b) of this Act is amended by striking out “the Corporations Act” and substituting “the Not-for-Profit Corporations Act, 2010”.**

**(2) The English version of subsection 24 (2) of this Act is amended by striking out “objects” at the end and substituting “purposes”.**

**(3) Subsection 25 (1) of this Act is amended by striking out “the Corporations Act” at the end and substituting “the Not-for-Profit Corporations Act, 2010”.**

**(4) The English version of subsection 29 (1) of this Act is amended by striking out “objects” and substituting “purposes”.**

**(5) The English version of section 30 of this Act is amended by striking out “objects” and substituting “purposes”.**

**(6) Subsection 67 (1) of this Act is repealed and the following substituted:**

**Public information**

(1) Subject to the prescribed requirements or restrictions, if any, the registrar shall make available publicly on the website of the warranty authority and by any other means that the registrar determines,

- (a) information about the enrolment, or qualification for enrolment, of new homes in the Plan;
- (b) information about claims that the registrar has received; and
- (c) all other information, if any, that is prescribed.

**(7) Subsection (9) applies only if Bill 142 (*An Act to amend the Construction Lien Act*), introduced on May 31, 2017, receives Royal Assent.**

**(8) The reference in subsection (9) to a provision of Bill 142 is a reference to that provision as it was numbered at the first reading of the bill.**

**(9) On the later of the day subsection 68 (1) of this Act comes into force and the day subsection 11 (1) of Bill 142 comes into force, subsection 68 (1) of this Act is amended by adding the following clause:**

- (h.1) governing the procedures for resolution of disputes between any of a claimant, the warranty authority, a vendor and a builder, including prescribing circumstances when a person is not entitled to refer a dispute to adjudication under Part II.1 of the *Construction Act*;

**PART VIII  
REPEAL AND CONSEQUENTIAL AMENDMENTS**

*Ontario New Home Warranties Plan Act*

**73** The *Ontario New Home Warranties Plan Act* is repealed.

*Building Code Act, 1992*

**74** Subsection 8 (8.1) of the *Building Code Act, 1992* is amended by striking out “the corporation designated under section 2 of the *Ontario New Home Warranties Plan Act*” and substituting “the warranty authority within the meaning of the *Protection for Owners and Purchasers of New Homes Act, 2017*”.

*Condominium Act, 1998*

**75 (1)** Subsection 1 (1) of the *Condominium Act, 1998* is amended by adding the following definition:

“guarantee fund” has the same meaning as in subsection 2 (1) of the *Protection for Owners and Purchasers of New Homes Act, 2017*; (“fonds de garantie”)

**(2)** The definitions of “pre-existing elements” and “pre-existing elements fund study” in subsection 1 (1) of the Act are repealed and the following substituted:

“pre-existing elements” and “pre-existing elements fund study” have the meaning prescribed by the regulations made under the *Protection for Owners and Purchasers of New Homes Act, 2017*; (“éléments préexistants”, “étude du fonds des éléments préexistants”)

**(3)** The definition of “residential condominium conversion project” in subsection 1 (1) of the Act is repealed and the following substituted:

“residential condominium conversion project” has the meaning prescribed by the regulations made under the *Protection for Owners and Purchasers of New Homes Act, 2017*; (“projet de conversion en condominiums à usage d’habitation”)

**(4)** Subsection 1 (1) of the Act is amended by adding the following definition:

“warranty authority” has the same meaning as in subsection 2 (1) of the *Protection for Owners and Purchasers of New Homes Act, 2017*. (“organisme de garantie”)

**(5)** Subsection 2 (2.1) of the Act is repealed and the following substituted:

**Same, residential condominium conversion project**

(2.1) A declaration and description that would create a corporation for a residential condominium conversion project shall not be registered unless the declaration contains confirmation from the registrar appointed under section 38 of the *Protection for Owners and Purchasers of New Homes Act, 2017* that,

- (a) the project, the units or proposed units of it, the common elements of it and the real property, if any, that is prescribed have been enrolled in the Plan, within the meaning of that Act, in accordance with the regulations made under that Act;
- (b) the builder, within the meaning of the *New Home Construction Licensing Act, 2017*, is licensed as a builder in respect of the project under that Act;
- (c) the vendor, within the meaning of the *New Home Construction Licensing Act, 2017*, is licensed as a vendor in respect of the project under that Act; and
- (d) all other conditions, if any, that are prescribed have been satisfied.

**(6)** Clause 43 (5) (f) of the Act is amended by striking out the portion before subclause (i) and substituting the following:

- (f) if the property is subject to the *Protection for Owners and Purchasers of New Homes Act, 2017*,

**(7)** The French version of subclause 43 (5) (f) (i) of the Act is amended by striking out “d’une part, la preuve, rédigée selon la formule” at the beginning and substituting “la preuve, rédigée selon le formulaire”.

**(8)** Clause 43 (5) (f) of the Act is amended by striking out “and” at the end of subclause (i) and by striking out subclause (ii) and substituting the following:

- (ii) a copy of all final reports on inspections that the warranty authority requires be carried out on the common elements, and
- (iii) all other material, if any, in respect of the property that is prescribed.

**(9)** Clause 44 (4) (a) of the Act is repealed and the following substituted:

(a) may give rise to a claim for payment to the corporation out of the guarantee fund under the prescribed provisions of the *Protection for Owners and Purchasers of New Homes Act, 2017* or the regulations made under that Act; or

**(10) Clause 44 (4) (b) of the Act is repealed and the following substituted:**

(b) subject to the regulations, would give rise to a claim described in clause (a) if the property were subject to the *Protection for Owners and Purchasers of New Homes Act, 2017*.

**(11) Clause 44 (5) (c) of the Act is repealed and the following substituted:**

(c) review all final reports on inspections that the warranty authority requires be carried out on the common elements and the real property that is the subject of the audit; and

**(12) Clause 44 (9) (b) of the Act is repealed and the following substituted:**

(b) file the report with the warranty authority if the property is subject to the *Protection for Owners and Purchasers of New Homes Act, 2017*.

**(13) Subsection 44 (10) of the Act is repealed and the following substituted:**

**Claim under other Act**

(10) The filing of the report with the warranty authority shall be deemed to constitute a notice of claim that the corporation gives to the warranty authority under the regulations made under the *Protection for Owners and Purchasers of New Homes Act, 2017* for the deficiencies disclosed in the report.

**(14) Clause 72 (3) (f) of the Act is repealed and the following substituted:**

(f) a statement indicating whether the property or part of the property, and the real property, if any, that is prescribed are or may be subject to the *Protection for Owners and Purchasers of New Homes Act, 2017* or whether the declarant has enrolled or intends to enrol the proposed units, common elements and the real property, if any, that is prescribed, in the Plan, within the meaning of that Act, in accordance with the regulations made under that Act;

**(15) Subclauses 72 (3) (f.1) (iv), (v) and (vi) of the Act are repealed and the following substituted:**

(iv) a statement that the prescribed provisions of the *Protection for Owners and Purchasers of New Homes Act, 2017* or the regulations made under that Act do not apply to the pre-existing elements,

(v) a copy of the text of the provisions mentioned in subclause (iv), and

(vi) a statement that the registrar appointed under section 38 of the *Protection for Owners and Purchasers of New Homes Act, 2017* has confirmed that the conditions set out in the prescribed provisions of that Act or the regulations made under that Act have been satisfied;

**(16) Paragraph 2 of subsection 72 (4) of the Act is repealed and the following substituted:**

2. The property or part of the property and the real property, if any, that is prescribed are or may be subject to the *Protection for Owners and Purchasers of New Homes Act, 2017* or the proposed units and common elements and the real property, if any, that is prescribed are enrolled or are intended to be enrolled in the Plan, within the meaning of that Act, in accordance with the regulations made under that Act.

**(17) Subsection 100 (3) of the Act is amended by striking out the portion before clause (a) and substituting the following:**

**Payment from Ontario New Home Warranties and Protection Plan**

(3) A corporation that receives a payment out of the guarantee fund under the prescribed provisions of the *Protection for Owners and Purchasers of New Homes Act, 2017* or the regulations made under that Act for remedial work to the common elements shall promptly use the payment for the remedial work, unless,

**(18) Subsection 100 (4) of the Act is repealed and the following substituted:**

**Limitation, mortgage**

(4) Despite any provision in a mortgage or subsection 6 (2) of the *Mortgages Act*, a mortgagee may not require that proceeds received under an insurance policy on the property or on a part of the property or a payment received out of the guarantee fund under the prescribed provisions of the *Protection for Owners and Purchasers of New Homes Act, 2017*, or the regulations made under that Act, be applied towards the discharge of the mortgage; a requirement that contravenes this subsection is void.

**Construction Lien Act**

**76 (1) Clause (b) of the definition of “home buyer” in subsection 1 (1) of the *Construction Lien Act* is amended by striking out “the issuance under the *Ontario New Home Warranties Plan Act* of a certificate of completion and**

possession” and substituting “the issuance of material prescribed for the purpose of this clause by the regulations made under the *Protection for Owners and Purchasers of New Homes Act, 2017*”.

(2) Subparagraph 3 ii of subsection 39 (1) of the Act is repealed and the following substituted:

- ii. the date on which the permit or material described in clause (b) of the definition of home buyer in subsection 1 (1) has been issued.

(3) Subsection (5) applies only if Bill 142 (*An Act to amend the Construction Lien Act*), introduced on May 31, 2017, receives Royal Assent and section 1 of that Bill comes into force before subsection (1) of this section comes into force.

(4) The reference in subsection (3) to a provision of Bill 142 is a reference to that provision as it was numbered at the first reading of the bill.

(5) Subsection (1) of this section is amended by striking out “the *Construction Lien Act*” and substituting “the *Construction Act*”.

#### *Land Transfer Tax Act*

77 The definition of “newly constructed home” in subsection 9.2 (1) of the *Land Transfer Tax Act* is repealed and the following substituted:

“newly constructed home” means a home in respect of which the purchaser is entitled to a warranty described in subsection 47 (1) of the *Protection for Owners and Purchasers of New Homes Act, 2017* and that is sold to the purchaser by a vendor within the meaning of that Act; (“logement neuf”)

#### *Licence Appeal Tribunal Act, 1999*

78 (1) Subsection 11 (1) of the *Licence Appeal Tribunal Act, 1999* is amended by adding the following:

*Protection for Owners and Purchasers of New Homes Act, 2017*

(2) Subsection 11 (1) of the Act is amended by striking out “*Ontario New Home Warranties Plan Act*”.

#### *Protecting Condominium Owners Act, 2015*

79 (1) Subsection (2) applies only if subsection 1 (13) of Schedule 1 to the *Protecting Condominium Owners Act, 2015* does not come into force before the day subsection 75 (2) of this Act comes into force.

(2) Subsection 1 (13) of Schedule 1 to the Act is repealed.

(3) Subsection (4) applies only if subsection 1 (17) of Schedule 1 to the Act does not come into force before the day subsection 75 (3) of this Act comes into force.

(4) Subsection 1 (17) of Schedule 1 to the Act is repealed.

(5) Subsection (6) applies only if subsection 7 (2) of Schedule 1 to the Act does not come into force before the day subsection 75 (5) of this Act comes into force.

(6) Subsection 7 (2) of Schedule 1 to the Act is repealed.

(7) Subsection (8) applies only if subsection 36 (5) of Schedule 1 to the Act does not come into force before the day subsection 75 (6) of this Act comes into force.

(8) Subsection 36 (5) of Schedule 1 to the Act is repealed.

(9) Subsection (10) applies only if subsection 37 (3) of Schedule 1 to the Act does not come into force before the day subsection 75 (10) of this Act comes into force.

(10) Subsection 37 (3) of Schedule 1 to the Act is repealed.

(11) Subsection (12) applies only if subsection 37 (5) of Schedule 1 to the Act does not come into force before the day subsection 75 (11) of this Act comes into force.

(12) Subsection 37 (5) of Schedule 1 to the Act is repealed.

(13) Subsection (14) applies only if subsection 62 (5) of Schedule 1 to the Act does not come into force before the day subsection 75 (15) of this Act comes into force.

(14) Subsection 62 (5) of Schedule 1 to the Act is repealed.

## PART IX COMMENCEMENT AND SHORT TITLE

### Commencement

80 (1) Subject to subsections (2) to (8), the Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

- (2) Section 71 comes into force on the day section 73 comes into force.
- (3) Subsection 72 (1) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day section 10 of this Act comes into force.
- (4) Subsection 72 (2) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day subsection 24 (2) of this Act comes into force.
- (5) Subsection 72 (3) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day subsection 25 (1) of this Act comes into force.
- (6) Subsection 72 (4) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day subsection 29 (1) of this Act comes into force.
- (7) Subsection 72 (5) comes into force on the later of the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force and the day section 30 of this Act comes into force.
- (8) Subsections 72 (7), (8) and (9) come into force on the day the *Strengthening Protection for Ontario Consumers Act, 2017* receives Royal Assent.

**Short title**

**81** The short title of the Act set out in this Schedule is the *Protection for Owners and Purchasers of New Homes Act, 2017*.

**SCHEDULE 3  
TICKET SALES ACT, 2017**

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**PART I  
DEFINITIONS**

**Definitions**

**1** In this Act,

“Director” means the person designated as the Director under the *Ministry of Consumer and Business Services Act*; (“directeur”)

“face value”, in respect of a ticket, means the base price and any applicable fees or service charges paid by a ticket purchaser when the ticket was purchased from the primary seller, excluding any applicable taxes; (“valeur nominale”)

“Minister” means the member of the Executive Council to whom the administration of this Act or part of this Act is assigned under the *Executive Council Act*; (“ministre”)

“Ministry” means the ministry of the Minister; (“ministère”)

“operator of a secondary ticketing platform” means a person who owns or controls a secondary ticketing platform; (“exploitant de plateforme de revente de billets”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“primary seller” means a person, other than a secondary seller, who is engaged in the business of making tickets available for sale, and includes the owner of the place to which a ticket provides admission, the promoter of the event occurring at that place and any agent of those persons; (“vendeur”)

“regulations” means the regulations made under this Act; (“règlements”)

“season ticket subscription” is a subscription that entitles the subscriber to receive tickets to several different events; (“abonnement”)

“secondary seller” means a person who is engaged in the business of making available for sale tickets that were originally made available for sale by a primary seller; (“revendeur”)

“secondary ticketing platform” means a website, online service, electronic application, print publication or physical location that facilitates the sale of tickets by providing ticket sellers, other than primary sellers, with a venue to make their tickets available for sale; (“plateforme de revente de billets”)

“ticket” means any card, pass, paper, document or thing, whether in electronic form or otherwise, that, on presentation, entitles the holder to admission to a recreational, sporting or cultural event or other prescribed event in Ontario; (“billet”)

“ticket business” means a primary seller, a secondary seller or an operator of a secondary ticketing platform; (“billetterie”)

“ticket purchaser” means a person who participates as a purchaser in a transaction involving the sale of a ticket; (“acheteur de billet”)

“total price”, in respect of a ticket, means the base price plus any applicable fees, service charges and taxes; (“prix total”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999*. (“Tribunal”)

**PART II**  
**TICKET SALES AND SOFTWARE**

TICKET SALES

**Ticket sale on secondary market above face value**

**2** (1) Every person who makes a ticket available for sale on the secondary market or who facilitates the sale of a ticket on the secondary market for a total amount, including any applicable fees or service charges but excluding any applicable taxes, that exceeds the ticket's face value shall provide one of the following guarantees or confirmations to the ticket purchaser:

1. A guarantee issued by a secondary seller or operator of a secondary ticketing platform of a full refund for the ticket purchaser if,
  - i. the event that the ticket provides admission to is cancelled before the ticket can be used,
  - ii. the ticket does not grant the ticket purchaser admission to the event for which it was issued, unless this failure is due to an action taken by the primary seller or venue after the ticket is sold,
  - iii. the ticket is counterfeit, or
  - iv. the ticket does not match its description as advertised or as represented to the ticket purchaser.
2. A confirmation from the primary seller that the ticket is valid, provided directly or indirectly through a service that offers to confirm for any person in Ontario, for free or for a single, standard fee, whether or not a ticket that was originally made available for sale by the primary seller is valid.
3. Any other prescribed guarantee or confirmation.

**Maximum amount**

(2) Despite subsection (1), no person shall make a ticket available for sale on the secondary market or facilitate the sale of a ticket on the secondary market for an amount, including any applicable fees or service charges but excluding any applicable taxes, that exceeds the ticket's face value by more than 50 per cent of the ticket's face value.

**Meaning of secondary market**

(3) For the purposes of this section, a ticket sale on the secondary market refers to the sale of a ticket that was originally made available for sale by a primary seller.

**Exception**

(4) This section does not apply if the ticket sale is for the benefit of a registered charity as defined in subsection 248 (1) of the *Income Tax Act* (Canada).

**Prohibition, ticket not in possession or control**

**3** No person shall make a ticket available for sale if the ticket is not in the person's possession or control.

USE AND SALE OF CERTAIN SOFTWARE

**Prohibition, use or sale of certain software**

**4** (1) No person shall use or sell software, including automated ticket purchasing software, intended to circumvent any of the following on a website, online service or electronic application of a ticket business:

1. A security measure.
2. An access control system.
3. A control or measure that is used to ensure an equitable ticket buying process.
4. A prescribed control, measure or system.

**Exception**

(2) Subsection (1) does not apply to the use or sale of software that is intended,

- (a) to investigate a contravention of this or any other Act or law;
- (b) to engage in research to identify and analyse flaws and vulnerabilities of measures, systems, or controls referred to in subsection (1) for the purpose of advancing the state of knowledge in the field of computer system security or assisting in the development of a computer security product; or
- (c) for a prescribed research or educational purpose.

**Prohibition, sale of tickets acquired using certain software**

(3) No person shall knowingly make a ticket available for sale or facilitate the sale of a ticket that was obtained through the use of software described in subsection (1).

**PART III  
TICKET BUSINESS TRANSPARENCY**

**DISCLOSURE**

**Primary seller to disclose ticket numbers**

**5** (1) At least seven days before making any tickets to an event available for sale, a primary seller shall publicly disclose, on its website or otherwise, the following information:

1. The total number of tickets to the event that will be made available for sale by the primary seller to the general public.
2. The distribution method of all of the tickets to the event that will be made available for sale by the primary seller, including any sale that will occur before tickets are made available for sale to the general public.
3. The maximum capacity for the event.

**Exception**

(2) The disclosure referred to in subsection (1) is not required for the sale of season ticket subscriptions.

**Disclosure of face value and total price**

**6** (1) Every primary seller that makes a ticket available for sale shall ensure,

- (a) that the offer discloses the total price of the ticket and includes a separately itemized list of any applicable fees, service charges and taxes; and
- (b) that the face value of the ticket is printed on or is otherwise displayed on the ticket when it is issued to the ticket purchaser.

**Secondary sale**

(2) If a secondary seller makes a ticket available for sale, the secondary seller and, if applicable, the operator of the secondary ticketing platform that facilitates the sale shall ensure that the offer,

- (a) discloses the face value of the ticket and the total price of the ticket; and
- (b) includes a separately itemized list of any applicable fees, service charges and taxes.

**General ticket business disclosure requirements**

**7** (1) This section applies to any ticket business that makes a ticket available for sale or that facilitates the sale of a ticket.

**Canadian currency to be used unless otherwise indicated**

(2) The ticket business shall ensure that any dollar amounts in the offer are listed in Canadian currency unless the offer indicates in a clear, prominent and comprehensible manner that a different currency is used.

**Location of seat or standing area to be disclosed**

(3) The ticket business shall ensure that the location of the seat or standing area that the ticket entitles the ticket holder to occupy, if applicable, is disclosed in the offer.

**Other prescribed information**

(4) The ticket business shall ensure that any other prescribed information is disclosed in the offer.

**Identity of secondary seller to be disclosed**

**8** (1) A secondary seller shall disclose his, her or its name, location and contact information when it makes a ticket available for sale.

**Secondary ticketing platform to ensure identity disclosed in offer**

(2) A secondary ticketing platform that facilitates the sale of a ticket by a secondary seller shall ensure that the secondary seller's name, location and contact information is listed in the offer.

**MISCELLANEOUS REQUIREMENTS**

**Prohibition, related primary and secondary sellers**

**9** (1) No primary seller shall make a ticket available for sale if a ticket for admission to the same event is or has been made available for sale by a secondary seller who is related to the primary seller.

**Same**

(2) No secondary seller shall make a ticket available for sale if a ticket for admission to the same event is or has been made available for sale by a primary seller who is related to the secondary seller.

**Related**

(3) For the purposes of subsections (1) and (2), a primary seller and a secondary seller are related if a relationship between them, whether corporate, contractual or other, results, directly or indirectly, in an incentive for the primary seller to withhold tickets for sale by the primary seller so that the secondary seller can make them available for sale instead.

**Incorporation or address**

**10** No ticket business shall make a ticket available for sale or facilitate the sale of a ticket unless,

- (a) it is incorporated under the laws of Canada or Ontario; or
- (b) he, she or it maintains an address in Ontario.

**PART IV  
RIGHT OF ACTION**

**Right of action**

**11** (1) Subject to subsection (2), a ticket business or ticket purchaser who has suffered a loss as a result of a person's contravention of a provision of this Act or the regulations may commence an action in a court against that person.

**Requirement for certain remedies**

(2) A person seeking a remedy mentioned in clause (3) (c) or (d) must commence the action in the Superior Court of Justice.

**Court order**

- (3) If the court finds that the defendant has contravened the provision, the court may,
- (a) order restitution of any money or other consideration given or furnished by the plaintiff;
  - (b) award the plaintiff damages in the amount of any loss suffered because of the contravention, including exemplary or punitive damages;
  - (c) grant an injunction restraining the person from continuing to contravene the provision;
  - (d) make an order of specific performance against the person; or
  - (e) make any other order the court considers appropriate.

**Exemplary or punitive damages**

(4) An order under clause (3) (b) for exemplary or punitive damages may not be made if the person took reasonable precautions and exercised due diligence to avoid contravening the provision.

**PART V  
COMPLAINTS, INSPECTIONS AND INVESTIGATIONS**

**COMPLAINTS AND MEDIATION**

**Ministry receives complaints and makes inquiries**

**12** (1) The Ministry may,

- (a) receive complaints concerning conduct that may be in contravention of this Act, whether the conduct constitutes an offence or not; and
- (b) make inquiries, gather information and attempt to mediate or resolve complaints, as appropriate, concerning any matter that comes to its attention that may be in contravention of this Act, whether the matter constitutes an offence or not.

**Mediation**

(2) The Ministry may mediate a complaint if the parties to the complaint agree to mediation.

**Agreement to mediate**

(3) The agreement to mediate a complaint shall be signed by the parties to the complaint and be on a form approved by the Director that contains the terms and conditions of the mediation and the parties' obligations regarding the mediation.

**Documents and other evidence**

(4) If the Ministry attempts to mediate or resolve a complaint between the parties, the Ministry may request in writing that either party to the mediation provide, to the Ministry within the time specified by the Ministry, documents or other evidence that are relevant to the complaint.

**Party's failure to respond**

(5) If a party fails to provide a document or other evidence as required by the Ministry under subsection (4), the Ministry may terminate the mediation.

**Director's powers saved**

(6) Nothing in a mediation or its results affects the authority of the Director to address the complaint even if the mediation results in a settlement.

**Protection of settlement records**

(7) None of the records, evidence or information that are disclosed in the course of attempting to effect a settlement and that are subject to mediation privilege shall be used or disclosed outside the attempted settlement.

**Protection for mediator**

(8) A person who conducts a mediation under this section shall not be required to testify in a civil proceeding or in a proceeding before any tribunal respecting the mediation.

## INSPECTORS

**Inspectors**

13 The Director may, in writing,

- (a) appoint persons as inspectors for the purposes of this Act; and
- (b) designate persons, including persons engaged as inspectors for the purposes of any other Act, as inspectors for the purposes of this Act or for any specific purposes under this Act provided for in the designation.

**Inspection powers**

14 (1) An inspector may, without a warrant, enter and inspect any place in order to ensure that section 2, 3, 5, 6, 7, 8, 9 or 10 of this Act, or a prescribed provision of the regulations, is being complied with.

**Time of entry**

(2) The power to enter and inspect a place without warrant may only be exercised during the place's regular business hours, or during other reasonable times.

**Dwellings**

(3) The power to enter and inspect a place without a warrant shall not be used to enter and inspect a place or a part of a place that is used as a dwelling.

**Use of force**

(4) An inspector is not entitled to use force to enter and inspect a place.

**Identification**

(5) An inspector shall, upon request, produce evidence of his or her appointment or designation.

**Powers of inspector**

(6) An inspector conducting an inspection may,

- (a) examine a record or other thing that the inspector thinks may be relevant to the inspection;
- (b) require the production of a record or other thing that the inspector thinks may be relevant to the inspection;
- (c) remove for review and copying a record or other thing that the inspector thinks may be relevant to the inspection;
- (d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place; and
- (e) question any person on matters the inspector thinks may be relevant to the inspection.

**Written demand**

(7) A demand that a record or other thing be produced must be in writing and must include a statement of the nature of the record or other thing to be produced.

**Obligation to produce and assist**

(8) If an inspector demands that a record or other thing be produced, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

**Records and things removed from place**

(9) An inspector who removes a record or other thing under clause (6) (c) shall provide a receipt and return the record or thing to the person within a reasonable time.

**Copy admissible in evidence**

(10) A copy of a record that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value.

**Additional contact**

(11) In addition to the power to enter a place under this section, an inspector may, by any means, contact any person who is in control of the operations of a ticket business and may exercise the powers that he or she has to conduct an inspection under this section with respect to the ticket business or person, without entering any place, if the inspector establishes that,

- (a) the ticket business is subject to this Act; and
- (b) the person is in control of the operations of the ticket business.

**Identification**

(12) An inspector who establishes contact with a person under subsection (11) shall provide a written confirmation to the person of the inspector's authority to conduct the inspection, whether or not there is a request under subsection (5).

**Time for production**

(13) If an inspector establishes contact with a person under subsection (11) and requires the person to produce a record or other thing under clause (6) (b), the person shall provide the record or other thing to the inspector in the manner specified by the inspector and within the time specified by the inspector, which shall not be less than 15 days from the day of the demand to produce.

**Duty to assist**

(14) A person who is contacted by an inspector under subsection (11) shall assist the inspector in accordance with subsection (8), subject to the time period mentioned in subsection (13).

**Obstruction**

(15) No person shall,

- (a) hinder, obstruct or interfere with or attempt to hinder, obstruct or interfere with an inspector conducting an inspection;
- (b) refuse to answer questions on matters that an inspector thinks may be relevant to an inspection;
- (c) provide an inspector with information on matters the inspector thinks may be relevant to an inspection that the person knows to be false or misleading; or
- (d) prevent or attempt to prevent an inspector from making inquiries of any person separate and apart from another person under clause (6) (e).

**Delegation of order-making powers**

**15** (1) The Director may delegate to an inspector, subject to any conditions set out in the delegation, the power to make any proposal or order that the Director may make under the following sections and a proposal or order made by an inspector pursuant to such a delegation is, for all purposes, as effective as if it were made by the Director:

1. Section 20.
2. Section 21.
3. Section 22.
4. Section 23.
5. Section 25.
6. Section 26.

**In writing**

(2) A delegation under this section must be in writing.

**References to Director**

(3) If an inspector has made a proposal or an order pursuant to a delegation under this section, every reference to the Director in or with respect to the section under which the proposal or order, as the case may be, was made and every reference to the Director in sections 27 and 28 is deemed to be a reference to that inspector.

## INVESTIGATORS

### **Appointment of investigators**

**16** (1) The Director may appoint persons to be investigators for the purposes of conducting investigations in order to ensure that the provisions referred to in subsection 14 (1) are being complied with.

### **Certificate of appointment**

(2) The Director shall issue to every investigator a certificate of appointment bearing his or her signature or a facsimile of the signature.

### **Production of certificate of appointment**

(3) Every investigator who is conducting an investigation, including under section 17, shall, upon request, produce the certificate of appointment as an investigator.

### **Search warrant**

**17** (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if he or she is satisfied on information under oath that there are reasonable grounds for believing that,

- (a) an inspector is being prevented from doing anything the inspector is entitled to do under section 14; or
- (b) a person has contravened or is contravening a provision referred to in subsection 14 (1), and there is,
  - (i) in any building, dwelling, receptacle or place, anything relating to the contravention, or
  - (ii) information or evidence relating to the contravention that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant.

### **Powers under warrant**

(2) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an investigator,

- (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and examine and seize anything described in the warrant;
- (b) to use any data storage, processing or retrieval device or system used in carrying on business in order to produce information or evidence described in the warrant, in any form;
- (c) to exercise any of the powers specified in subsection (10); and
- (d) to use any investigative technique or procedure or do anything described in the warrant.

### **Entry of dwelling**

(3) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,

- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
- (b) the justice of the peace authorizes the entry into the dwelling.

### **Conditions on warrant**

(4) A warrant obtained under subsection (1) shall contain such conditions as the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

### **Expert help**

(5) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the investigator in respect of the execution of the warrant.

### **Time of execution**

(6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise.

### **Expiry of warrant**

(7) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator.

### **Use of force**

(8) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant.

**Obstruction**

(9) No person shall obstruct an investigator executing a warrant under this section or withhold from him or her or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant.

**Assistance**

(10) An investigator may, in the course of executing a warrant, require a person to produce the evidence or information described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the evidence or information described in the warrant and the person shall produce the evidence or information or provide the assistance.

**Return of seized items**

(11) An investigator who seizes any thing under this section or section 18 may make a copy of it and shall return it within a reasonable time.

**Admissibility**

(12) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

**Seizure of things not specified**

**18** An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of his or her duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations.

**Searches in exigent circumstances**

**19** (1) An investigator may exercise any of the powers described in subsection 17 (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant.

**Dwellings**

(2) Subsection (1) does not apply to a building or part of a building that is being used as a dwelling.

**Use of force**

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary.

**Applicability of s. 17**

(4) Subsections 17 (5), (9), (10), (11) and (12) apply with necessary modifications to a search under this section.

**ORDERS****False, misleading or deceptive representation in offer**

**20** (1) If the Director believes on reasonable grounds that a person is making a false, misleading or deceptive representation in a ticket offer, the Director may,

- (a) order the person to cease making the representation; and
- (b) order the person to retract the representation or publish a correction of equal prominence to the original publication.

**Definition**

(2) In subsection (1),

“false, misleading or deceptive representation” has the meaning set out in subsection 14 (2) of the *Consumer Protection Act, 2002*.

**Order effective**

(3) The order takes effect immediately upon being made.

**Service**

(4) The Director shall serve the order, together with written reasons for it, on the person named in it.

**Request for a hearing**

(5) The order shall inform the person named in it that the person may request a hearing before the Tribunal by mailing or delivering a written notice of request for a hearing to the Director and the Tribunal within 15 days after service of the order.

**Hearing date**

(6) If the person gives a notice of request for a hearing within the allowed time, the Tribunal shall hold a hearing.



**Stay of order**

(7) The Tribunal may stay the order until it confirms or sets aside the order under subsection (9).

**Parties**

(8) The Director, the person who requested the hearing and the persons whom the Tribunal specifies are parties to the hearing.

**Powers of Tribunal**

(9) After holding the hearing, the Tribunal may,

- (a) confirm the order with the amendments, if any, that the Tribunal considers proper to give effect to the purposes of the Act; or
- (b) set aside the order.

**Same**

(10) In confirming or setting aside the order, the Tribunal may substitute its opinion for that of the Director.

**Appeal**

(11) Even if the person named in an order made under this section appeals it under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

**Freeze order**

**21** (1) If the conditions in subsection (2) are met, the Director may, in writing,

- (a) order any person having on deposit or controlling any assets or trust funds of a ticket business or former ticket business to hold those funds or assets;
- (b) order a ticket business or former ticket business to refrain from withdrawing any asset or trust fund from a person having them on deposit or controlling them; or
- (c) order a ticket business or former ticket business to hold any asset or trust fund of a ticket purchaser or other person in trust for the person entitled to it.

**Conditions**

(2) The Director may make an order under subsection (1) if he or she believes that it is advisable for the protection of ticket purchasers and,

- (a) a search warrant has been issued under this Act;
- (b) an order has been made under section 22 or 23; or
- (c) there has been an undertaking of voluntary compliance under section 25.

**Release of assets**

(3) The Director may consent to the release of any particular asset or trust fund from the order or may wholly revoke the order.

**Exception**

(4) Subsection (1) does not apply if the person files with the Director, in such manner and amount as the Director determines,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another prescribed form of security.

**Application to court**

(5) An application may be made to the Superior Court of Justice for a determination in respect of the disposition of an asset or trust fund,

- (a) by a person in receipt of an order under subsection (1), if that person is in doubt as to whether the order applies to the asset or trust fund; or
- (b) by a person who claims an interest in the asset or trust fund subject to the order.

**Notice**

(6) If an order is made under this section, the Director may register in the appropriate land registry office a notice that an order under subsection (1) has been issued and that the order may affect land belonging to the person referred to in the notice and the notice has the same effect as the registration of a certificate of pending litigation except that the Director may, in writing, revoke or modify the notice.

**Cancellation or discharge application**

(7) A person in respect of whom an order has been made under subsection (1) or any person having an interest in land in respect of which a notice is registered under subsection (6) may apply to the Tribunal for cancellation in whole or in part of the order or for discharge in whole or in part of the registration.

**Disposition by Tribunal**

(8) The Tribunal shall dispose of the application after a hearing and may cancel the order or discharge the registration in whole or in part, if the Tribunal finds,

- (a) that the order or registration is not required in whole or in part for the protection of ticket purchasers or of other persons having an interest in the land; or
- (b) that the interests of other persons are unduly prejudiced by the order or registration.

**Parties**

(9) The applicant, the Director and such other persons as the Tribunal may specify are parties to the proceedings before the Tribunal.

**Court application**

(10) If the Director has made an order under subsection (1) or registered a notice under subsection (6), he or she may apply to the Superior Court of Justice for directions or an order relating to the disposition of assets, trust funds or land affected by the order or notice.

**Notice not required**

(11) An application by the Director under this section may be made without notice to any other person.

**Compliance order**

**22** (1) The Director may propose to make an order directing a person to comply with this Act if the Director believes on reasonable grounds that the person has engaged or is engaging in any activity that contravenes any provision under this Act, whether the activity constitutes an offence or not.

**Notice**

(2) If the Director proposes to make an order under subsection (1), the Director shall serve notice of the proposed order, together with written reasons, on the person.

**Request for hearing**

(3) The notice shall state that the person is entitled to a hearing by the Tribunal if the person mails or delivers, within 15 days after the notice under subsection (2) is served, notice in writing requiring a hearing to the Director and the Tribunal.

**No hearing required**

(4) If the person does not require a hearing in accordance with subsection (3), the Director may make the order.

**Hearing**

(5) If the person requires a hearing in accordance with subsection (3), the Tribunal shall hold the hearing and may order the Director to make the proposed order or to refrain from making the proposed order or may make an order of its own in substitution for that of the Director.

**Conditions**

(6) The Tribunal may attach such conditions to its order as it considers proper.

**Parties**

(7) The Director and the person who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

**Order for immediate compliance**

**23** (1) Despite section 22, the Director may make an order requiring immediate compliance with this Act if, in the Director's opinion, it is the public interest to do so and subject to subsection (2), such an order takes effect immediately.

**Notice of order**

(2) If the Director makes an order for immediate compliance, he or she shall serve on the person named in the order a notice that includes the order and the written reasons for making it.

**Hearing**

(3) When a person named in the order requires a hearing in accordance with the notice under subsection (2), the Tribunal shall hold the hearing and may confirm or set aside the order or exercise such other powers as may be exercised in a proceeding under section 22.

**Expiration of order**

(4) If a hearing by the Tribunal is required,

- (a) the order expires 15 days after the written request for a hearing is received by the Tribunal; or
- (b) the Tribunal may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period referred to in clause (a).

**Same**

(5) Despite subsection (4), if it is satisfied that the conduct of the person named in the order has delayed the commencement of the hearing, the Tribunal may extend the time of the expiration for the order,

- (a) until the hearing commences; and
- (b) once the hearing commences, until the hearing is concluded.

**Parties**

(6) The Director and the person who has required the hearing, and such other persons as the Tribunal may specify, are parties to proceedings before the Tribunal under this section.

**Appeal**

**24** Even if, under section 11 of the *Licence Appeal Tribunal Act, 1999*, a party to a proceeding before the Tribunal appeals an order of the Tribunal made under section 22 or 23 of this Act, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

**Undertaking of voluntary compliance**

**25** (1) At any time before all rights of appeal are exhausted or the time for appeals has expired without an appeal being commenced, any person against whom the Director has made or is considering making an order to comply under section 22 or 23 may enter into a written undertaking of voluntary compliance,

- (a) to not engage in the specified act after the date of the undertaking;
- (b) to provide compensation to any ticket purchaser who has suffered a loss;
- (c) to publicize the undertaking or the actions being undertaken as a result of the undertaking;
- (d) to pay any cost incurred in investigating the person's activities, any legal costs incurred in relation to the person's activities and any cost associated with the undertakings; and
- (e) to take any such action as the Director considers appropriate in the circumstances.

**Undertaking deemed order**

(2) When an undertaking of voluntary compliance is accepted by the Director, the undertaking has and shall be given the force and effect of an order made by the Director for all purposes of this Act.

**Security for any undertaking**

(3) The Director may require any person who is giving an undertaking of voluntary compliance to provide, in such manner and amount as the Director determines, security in the form of,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another prescribed form of security.

**Release of security**

(4) The bond and any collateral security required under subsection (3) shall not be released until the Director is satisfied that the person has fulfilled the undertaking.

**Restraining orders**

**26** (1) If it appears to the Director that a person is not complying with this Act or the regulations or an order made under this Act, the Director may apply to the Superior Court of Justice for an order directing that person to comply and, upon the application, the court may make such order as the court thinks fit.

**Same**

(2) Subsection (1) applies in addition to any other procedures that may be available to the Director, whether or not the Director has exercised his or her rights under such procedures.

**Appeal**

(3) An appeal lies to the Divisional Court from an order made under subsection (1).

**PART VI  
GENERAL**

**Service by the Director of notice or order**

**27** (1) Any notice or order required to be given or served by the Director under this Act is sufficiently given or served if,

- (a) delivered personally;
- (b) sent by registered mail;
- (c) sent by a prescribed method; or
- (d) sent by another manner if the Director can prove receipt of the notice or order.

**Deemed service**

(2) Where service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice or order until a later date.

**Exception**

(3) Despite subsection (1), the Tribunal may order any other method of service.

**Certificate as evidence**

**28** (1) For all purposes in any proceeding, a statement purporting to be certified by the Director is, without proof of the office or signature of the Director, admissible in evidence as proof in the absence of evidence to the contrary, of the facts stated in it in relation to,

- (a) the filing or non-filing of any document or material required or permitted to be filed under this Act; or
- (b) the time when the facts upon which the proceedings are based first came to the knowledge of the Director.

**Same**

(2) A statement purporting to be certified by an official acting under legislation that protects consumers in another jurisdiction, as prescribed, shall have the same force and effect as a certificate of the Director issued under subsection (1).

**Proof of document**

(3) Any document made under this Act that purports to be signed by the Director or a certified copy of the document is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, that the document is signed by the Director without proof of the office or signature of the Director.

**Confidentiality**

**29** (1) A person who obtains information in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations shall preserve secrecy with respect to the information and shall not communicate the information to any person except,

- (a) as may be required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;
- (b) to a ministry, department or agency of a government engaged in the administration of legislation that protects consumers or to any other entity to which the administration of legislation that protects consumers has been assigned;
- (c) as authorized under the *Regulatory Modernization Act, 2007*;
- (d) to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- (e) to a law enforcement agency;

- (f) to his, her or its counsel; or
- (g) with the consent of the person to whom the information relates.

### **Testimony**

(2) Except in a proceeding under this Act, no person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations.

## **PART VII ADMINISTRATIVE PENALTIES**

### **Order**

**30** (1) If the Director is satisfied that a ticket business has contravened or is contravening a prescribed provision of this Act or the regulations, the Director may, by order, impose an administrative penalty against the ticket business in accordance with this section and the regulations made by the Minister.

### **Purpose**

(2) The purpose of an administrative penalty is to promote compliance with the requirements established by this Act and the regulations.

### **Amount**

(3) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be the amount prescribed by the Minister, which prescribed amount shall not exceed \$10,000.

### **Form of order**

(4) An order made under subsection (1) imposing an administrative penalty against a ticket business shall be in the form that the Director determines.

### **Absolute liability**

- (5) An order made under subsection (1) imposing an administrative penalty against a ticket business applies even if,
- (a) the ticket business took all reasonable steps to prevent the contravention on which the order is based; or
  - (b) at the time of the contravention, the ticket business had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

### **No effect on offences**

(6) For greater certainty, nothing in subsection (5) affects the prosecution of an offence.

### **Other measures**

(7) Subject to section 33, an administrative penalty may be imposed alone or in conjunction with the exercise of any measure against a ticket business provided by this Act or the regulations.

### **Limitation**

(8) The Director shall not make an order under subsection (1) more than two years after the day the Director became aware of the ticket business's contravention on which the order is based.

### **No hearing required**

(9) Subject to the regulations made by the Minister, the Director is not required to hold a hearing or to afford a ticket business an opportunity for a hearing before making an order under subsection (1).

### **Non-application of other Act**

(10) The *Statutory Powers Procedure Act* does not apply to an order the Director made under subsection (1).

### **Delegation**

**31** (1) The Director may delegate to an inspector, subject to any conditions set out in the delegation, the power to make an order imposing an administrative penalty under this section, and an order made by an inspector pursuant to such a delegation is, for all purposes, as effective as if it were made by the Director.

### **In writing**

(2) A delegation under this section must be in writing.

### **References to Director**

(3) If an inspector has made an order pursuant to a delegation under this section, every reference to the Director in section 30 is deemed to be a reference to that inspector.

**Appeal**

**32** (1) The ticket business against whom an order made under subsection 30 (1) imposes an administrative penalty may appeal the order to the Tribunal by delivering a written notice of appeal to the Tribunal within 15 days after receiving the order.

**Extension of time for appeal**

(2) The Tribunal may extend the time period for appealing and may determine the circumstances in which extensions are given.

**Form of notice**

(3) The notice of appeal shall be in the form that the Tribunal determines.

**Filing of notice**

(4) The appellant shall file the notice of appeal in the manner that the Tribunal determines.

**Stay**

(5) An appeal commenced in accordance with subsection (1) operates as a stay of the order until disposition of the appeal.

**Opportunity for submissions**

(6) Before disposing of an appeal, the Tribunal shall give the appellant a reasonable opportunity to make written submissions.

**Powers on appeal**

(7) On an appeal, the Tribunal may confirm, revoke or vary the order.

**Effect of paying penalty**

**33** If a ticket business pays an administrative penalty in accordance with the terms of the order imposing it against the ticket business or, if the order is varied on appeal, in accordance with the terms of the varied order, the ticket business cannot be charged with an offence under this Act in respect of the same contravention on which the order is based and no other prescribed measure shall be taken against the ticket business in respect of the same contravention on which the order is based.

**Enforcement**

**34** (1) If a ticket business fails to pay an administrative penalty in accordance with the terms of the order imposing it against the ticket business or, if the order is varied on appeal, in accordance with the terms of the varied order, the order may be filed with the Superior Court of Justice and enforced as if it were an order of the court.

**Date of order**

(2) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court shall be deemed to be the date of the order.

**Debt due to Crown**

(3) An administrative penalty that is not paid in accordance with the terms of the order imposing it or, if the order is varied on appeal, in accordance with the terms of the varied order is a debt due to the Crown and is enforceable as such.

**PART VIII  
OFFENCES**

**Offences**

**35** (1) A person is guilty of an offence if the person,

- (a) fails to comply with any order, direction or other requirement under this Act; or
- (b) contravenes or fails to comply with,
  - (i) in respect of Part II, section 2, 3 or 4,
  - (ii) in respect of Part III, section 5, 6, 7, 8, 9 or 10, or
  - (iii) in respect of Part V, subsection 14 (15) or 17 (9).

**Same**

(2) A person who contravenes or fails to comply with a provision of a regulation made under this Act is guilty of an offence.

**Corporation**

(3) An officer or director of a corporation is guilty of an offence if he or she fails to take reasonable care to prevent the corporation from committing an offence mentioned in subsection (1) or (2).

**Attempt**

(4) Any person who attempts to commit any offence referred to in subsection (1) or (2) is guilty of an offence.

**Penalties**

(5) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$50,000 or to imprisonment for a term of not more than two years less a day, or both, and a corporation that is convicted of an offence under this Act is liable to a fine of not more than \$250,000.

**Limitation**

(6) A proceeding under this section shall not be commenced more than two years after the facts upon which the proceeding is based first came to the attention of,

- (a) a provincial offences officer designated under the *Provincial Offences Act*, in the case of an offence under section 4 of this Act; or
- (b) the Director, in the case of any other offence under this Act.

**PART IX  
REGULATIONS**

**Lieutenant Governor in Council regulations**

**36** The Lieutenant Governor in Council may make regulations,

- (a) prescribing anything in this Act that is referred to as being prescribed;
- (b) clarifying the meaning of any of the paragraphs in subsection 4 (1);
- (c) exempting any person, class of persons, events or tickets from any provision of this Act and attaching conditions to the exemption.

**Minister regulations**

**37** The Minister may make regulations,

- (a) governing any matter that this Act describes as being prescribed by the Minister or provided for in regulations made by the Minister;
- (b) specifying a different administrative penalty for a contravention of different prescribed provisions of this Act or the regulations, different portions of those prescribed provisions or different prescribed requirements in those prescribed provisions;
- (c) providing that the prescribed amount of an administrative penalty mentioned in subsection 30 (3) shall be calculated on the basis specified in the regulation, including an amount reflecting the number of transactions involved in the contravention on which an order for the administrative penalty is based;
- (d) governing the procedure for making an order under section 30 for an administrative penalty and the rights of the parties affected by the procedure, including the time at which the order is deemed to be served on the ticket business against whom the order is made.

**PART X  
COMPLEMENTARY AMENDMENT, REPEAL AND REVOCATION**

***Licence Appeal Tribunal Act, 1999***

**38** Subsection 11 (1) of the *Licence Appeal Tribunal Act, 1999* is amended by adding the following:

*Ticket Sales Act, 2017*

**Repeal**

**39** The *Ticket Speculation Act* is repealed.

**Revocation**

**40** Ontario Regulation 151/15 (Exemptions), made under the *Ticket Speculation Act*, is revoked.

**PART XI  
COMMENCEMENT AND SHORT TITLE**

**Commencement**

**41 The Act set out in this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.**

**Short title**

**42 The short title of the Act set out in this Schedule is the *Ticket Sales Act, 2017*.**



**SCHEDULE 4  
AMENDMENTS TO THE ONTARIO NEW HOME WARRANTIES PLAN ACT**

**ONTARIO NEW HOME WARRANTIES PLAN ACT**

**1 (1) Section 1 of the *Ontario New Home Warranties Plan Act* is amended by adding the following definition:**

“claim” means a claim for compensation out of the guarantee fund in respect of a home; (“réclamation”)

**(2) The definition of “Minister” in section 1 of the Act is repealed and the following substituted:**

“Minister” means the Minister of Government and Consumer Services or whatever other member of the Executive Council to whom the responsibility for the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

**2 (1) Subsection 2 (2) of the Act is amended by striking out “and” at the end of clause (c), by adding “and” at the end of clause (d) and by adding the following clause:**

- (e) the planning, implementation and financing related to any amendments made to this Act or the regulations or the repeal of this Act, including making payments or loans out of the guarantee fund to any not-for-profit corporation without share capital incorporated under the laws of Ontario that,
  - (i) is designated to administer any Act that replaces all or any part of this Act, or
  - (ii) may be designated to administer any Act that replaces all or any part of this Act, based on the information that the Minister provides to the Corporation.

**(2) Section 2 of the Act is amended by adding the following subsection:**

**No personal liability**

(4) No action or other proceeding shall be commenced against a current or former director, officer or employee of the Corporation for any act or omission done in good faith in carrying out the objects described in clause (2) (e).

**3 Section 4 of the Act is repealed and the following substituted:**

**Revenues and expenses**

4 The Corporation shall retain all money paid or payable to it under this Act even if the money forms part of the guarantee fund and, subject to the regulations, shall apply the money to defray the expenses that it incurs and the expenditures that it makes in carrying out its duties under this Act or its objects set out in subsection 2 (2).

**4 The Act is amended by adding the following sections:**

**Administrator**

5.1 (1) Subject to subsection (2), the Minister may, by order, appoint an individual as an administrator of the Corporation for the purposes of assuming control of it and responsibility for its activities.

**Condition precedent**

(2) The Minister may exercise the power described in subsection (1) only if the Minister is of the opinion that it is advisable to exercise the power in the public interest because at least one of the following conditions is satisfied:

1. The exercise of the power is necessary to prevent serious harm to the interests of the public, purchasers of homes or owners.
2. An event of force majeure has occurred.
3. The Corporation is facing a risk of insolvency.
4. The number of members of the board of the Corporation is insufficient for a quorum.

**Notice of appointment**

(3) The Minister shall give the board of the Corporation the notice that the Minister considers reasonable in the circumstances before appointing the administrator.

**Immediate appointment**

(4) Subsection (3) does not apply if there are not enough members on the board to form a quorum.

**Term of appointment**

(5) The appointment of the administrator is valid until the Minister makes an order terminating it.

**Powers and duties of administrator**

(6) Unless the order appointing the administrator provides otherwise, the administrator has the exclusive right to exercise all the powers and perform all the duties of the directors, officers and members of the Corporation.

**Same, limitations**

(7) In the order appointing the administrator, the Minister may specify the administrator's powers and duties and the conditions governing them.

**Right of access**

(8) The administrator has the same rights as the board in respect of the documents, records and information of the Corporation.

**Report to Minister**

(9) The administrator shall report to the Minister as the Minister requires.

**Minister's directions**

(10) The Minister may issue directions to the administrator about any matter within the administrator's jurisdiction, and the administrator shall carry them out.

**No personal liability**

(11) No action or other proceeding shall be instituted against the administrator for an act done in good faith in the execution or intended execution of a duty or power under this Act, the regulations, the delegated provisions, a Minister's order or the appointment under subsection (1), or for an alleged neglect or default in the execution in good faith of that duty or power.

**Crown liability**

(12) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (11) does not relieve the Crown of liability to which it would otherwise be subject.

**Liability of Corporation**

(13) Subsection (11) does not relieve the Corporation of liability to which it would otherwise be subject.

**Status of board during administrator's tenure**

**5.2** (1) On the appointment of an administrator under section 5.1, the members of the board of the Corporation cease to hold office, unless the order provides otherwise.

**Same**

(2) During the term of the administrator's appointment, the powers of any member of the board who continues to hold office are suspended, unless the order provides otherwise.

**No personal liability**

(3) No action or other proceeding shall be instituted against a member or former member of the board for anything done by the administrator or the Corporation after the member's removal under subsection (1) or while the member's powers are suspended under subsection (2).

**Crown liability**

(4) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (3) does not relieve the Crown of liability to which it would otherwise be subject.

**Liability of Corporation**

(5) Subsection (3) does not relieve the Corporation of liability to which it would otherwise be subject.

**Oversight fees**

**5.3** The Corporation shall pay to the Minister, for each fiscal year of the Province or part of the year, an oversight fee in the amount that the Minister determines in respect of the cost that the Crown incurs in overseeing the activities of the Corporation in carrying out its objects, performing its duties and exercising its powers under this Act.

**5 (1) Subsection 14 (1) of the Act is amended by adding "or other payment" after "deposit" in the portion before clause (a).**

**(2) Section 14 of the Act is amended by adding the following subsections:**

**Evidence required of claimant**

(5.1) Subject to subsection (5.2), a claimant under a claim,

- (a) shall explain, in accordance with the regulations, the reasons for the concern giving rise to the claim;
- (b) if the claim does not relate to an entitlement to receive compensation out of the guarantee fund under subsection (1) or (2) or is not a prescribed claim, shall include, in the reasons for the concern giving rise to the claim, a description of the symptoms of the concern that have been observed or experienced, unless the regulations provide otherwise; and

- (c) is not required to prove the cause of the concern giving rise to the claim if the claimant has complied with clauses (a) and (b), unless the regulations provide otherwise.

**Exception**

(5.2) Subsection (5.1) does not apply to,

- (a) a claim after the Corporation makes a decision mentioned in subsection (1) in respect of the claim; or
- (b) a claim in respect of common elements or prescribed property of a condominium corporation.

**6 Section 22.1 of the Act is repealed and the following substituted:**

**Lieutenant Governor in Council regulations**

**22.1** The Lieutenant Governor in Council may make regulations,

- (a) governing the expenses and expenditures to which section 4 applies;
- (b) governing the evidence described in subsection 14 (5.1) and any matter relating to providing it;
- (c) prescribing the manner of determining the date mentioned in subsection 17.1 (2);
- (d) prescribing the anniversary mentioned in subsection 17.1 (2);
- (e) prescribing requirements for the purposes of clause 17.5 (2) (a);
- (f) providing for any transitional matter necessary for the effective implementation of,
  - (i) a revocation by the Lieutenant Governor in Council of a designation under subsection 2 (1), or
  - (ii) the repeal of this Act and its replacement in full or in part by another Act.

**7 (1) Clause 23 (1) (b) of the Act is amended by adding “subject to the approval of the Minister” at the beginning.**

**(2) Clause 23 (1) (h) of the Act is repealed and the following substituted:**

- (h) subject to the approval of the Minister, governing the procedures for conciliation of disputes;
- (h.1) providing for the payment and refunding of fees respecting requests for conciliation;

**(3) The following provisions of subsection 23 (1) of the Act are amended by adding “subject to the approval of the Minister” at the beginning in each case:**

1. Clause (i).
2. Clause (j).
3. Clause (k).
4. Clause (l.1).

**(4) Subsection 23 (1) of the Act is amended by adding the following clauses:**

- (m.2) subject to the approval of the Minister, governing deposits or other payments for the purpose of subsection 14 (1), including,
  - (i) what payments are included as deposits or other payments,
  - (ii) the way in which a vendor or builder is required to hold and deal with a deposit or other payment,
  - (iii) the security and other financial obligations that a vendor or builder is required to fulfil, and
  - (iv) the reporting that a vendor or builder is required to make to the Corporation in respect of deposits or other payments;
- (m.3) subject to the approval of the Minister, governing the entitlement of an owner to payment out of the guarantee fund, including interest, as compensation under section 14;

**COMMENCEMENT**

**Commencement**

**8 (1) Subject to subsection (2), this Schedule comes into force on the day the *Strengthening Protection for Ontario Consumers Act, 2017* receives Royal Assent.**

**(2) Subsection 1 (1), section 3, subsection 5 (2) and section 6 come into force on a day to be named by proclamation of the Lieutenant Governor.**

**SCHEDULE 5  
OTHER AMENDMENTS**

**CONDOMINIUM MANAGEMENT SERVICES ACT, 2015**

**1 Paragraph 26 of subsection 78 (1) of the *Condominium Management Services Act, 2015* is repealed and the following substituted:**

26. delegating to the Minister the power to make regulations with respect to any matter that may be the subject of a regulation under this section;

**FUNERAL, BURIAL AND CREMATION SERVICES ACT, 2002**

**2 Subsection 112 (6) of the *Funeral, Burial and Cremation Services Act, 2002* is repealed.**

**3 (1) Paragraph 55 of subsection 113 (1) of the Act is repealed and the following substituted:**

55. delegating to the Minister the power to make regulations with respect to any matter that may be the subject of a regulation under this subsection or subsection (2), (3), (4) or (4.1);

**(2) Subsection 113 (9) of the Act is repealed.**

**MOTOR VEHICLE DEALERS ACT, 2002**

**4 Subsection 43 (6) of the *Motor Vehicle Dealers Act, 2002* is repealed.**

**5 (1) Paragraph 40 of subsection 44 (1) of the Act is repealed and the following substituted:**

40. delegating to the Minister the power to make regulations with respect to any matter that may be the subject of a regulation under this section;

**(2) Subsection 44 (5) of the Act is repealed.**

**REAL ESTATE AND BUSINESS BROKERS ACT, 2002**

**6 (1) Paragraph 3 of subsection 21 (4) of the *Real Estate and Business Brokers Act, 2002* is amended by striking out “to a maximum of \$25,000, or such lesser amount as may be prescribed” and substituting “subject to subsection (4.1)”.**

**(2) Paragraph 3 of subsection 21 (4) of the Act, as re-enacted by subsection 51 (2) of Schedule 11 to the *Strong Action for Ontario Act (Budget Measures), 2012*, is amended by striking out “such fine as the committee considers appropriate to a maximum of \$25,000, or such lesser amount as may be prescribed” and substituting “the fine that the committee considers appropriate, subject to subsection (4.1)”.**

**(3) Section 21 of the Act is amended by adding the following subsection:**

**Maximum fine**

(4.1) The maximum amount of the fine mentioned in paragraph 3 of subsection 21 (4) is,

- (a) \$50,000, or the lesser amount that is prescribed, if the registrant is a broker or a salesperson; or
- (b) \$100,000, or the lesser amount that is prescribed, if the registrant is a brokerage.

**7 Subsection 50 (6) of the Act is repealed.**

**8 (1) Subsection 51 (1) of the Act is amended by adding the following paragraphs:**

- 19.1 specifying circumstances in which registrants are prohibited from representing more than one party in a trade;
- 19.2 if a registrant is prohibited from representing more than one party in a trade, specifying requirements that the registrant must fulfil in order to provide services to a party in the trade;
- 19.3 requiring a registered brokerage that represents more than one party in a trade, or that provides services to a party in a trade, to provide the prescribed information to the registrar within the prescribed time;

**(2) Paragraph 25 of subsection 51 (1) of the Act is repealed and the following substituted:**

25. delegating to the Minister the power to make regulations with respect to any matter that may be the subject of a regulation under this section;

**(3) Subsection 51 (5) of the Act is repealed.**

**TRAVEL INDUSTRY ACT, 2002**

**9 (1) Subsection 1 (1) of the *Travel Industry Act, 2002* is amended by adding the following definitions:**

“administrative penalty” means an administrative penalty imposed under section 34.2; (“pénalité administrative”)

“assessor” means an assessor appointed under subsection 34.1 (2) who is authorized to impose an administrative penalty or the registrar acting as an assessor; (“évaluateur”)

**(2) The definitions of “Minister” and “registrant” in subsection 1 (1) of the Act are repealed and the following substituted:**

“Minister” means the Minister of Government and Consumer Services or any other member of the Executive Council to whom the responsibility for the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“registrant” means a travel seller who is registered under this Act or a travel salesperson who is registered under this Act; (“personne inscrite”)

**(3) The definition of “travel agent” in subsection 1 (1) of the Act is repealed.**

**(4) Subsection 1 (1) of the Act is amended by adding the following definitions:**

“travel salesperson” means a person who, on behalf of a travel seller, sells, to consumers or other travel sellers, travel services provided by another person and who is employed by that travel seller; (“représentant en voyages”)

“travel seller” means a person who is not acting as a travel salesperson and who,

- (a) sells, to consumers, travel services provided by another person, or
- (b) carries on the business of dealing with other travel sellers for the sale of travel services provided by another person; (“vendeur de voyages”)

**(5) The definition of “travel wholesaler” in subsection 1 (1) of the Act is repealed.**

**10 Section 4 of the Act is repealed and the following substituted:**

**Registration required for acting**

**4** No person shall act or hold oneself out as being available to act,

- (a) as a travel seller, unless the person is registered as a travel seller under this Act; or
- (b) as a travel salesperson, unless the person is registered as a travel salesperson under this Act.

**11 Subsection 5 (1) of the Act is amended by striking out “a travel agent or travel wholesaler” and substituting “a travel seller or a prescribed travel salesperson”.**

**12 (1) Subsection 6 (1) of the Act is repealed and the following substituted:**

**Offices of travel sellers**

(1) No travel seller who sells, to consumers, travel services provided by another person shall conduct business from a place at which the public is invited to deal unless the place is named as an office in the travel seller’s registration.

**(2) Subsection 6 (3) of the Act is repealed and the following substituted:**

**Offices named in registration**

(3) A travel seller who sells, to consumers, travel services provided by another person, or an applicant for registration as such a travel seller, is entitled to have any place of business specified by the travel seller or applicant, as the case may be, named in the registration, except branch offices that are in contravention of the regulations.

**13 Section 7 of the Act is repealed and the following substituted:**

**Registration required for bringing action**

**7** No action shall be brought against a customer for a commission or other remuneration in relation to the provision of travel services unless, at the time of providing the services, the person bringing the action was registered or exempt from registration under this Act and the court may stay any such action upon motion.

**14 Subsection 9 (1) of the Act is amended by striking out “a travel agent or travel wholesaler” in the portion before clause (a) and substituting “a travel seller or prescribed travel salesperson”.**

**15 The Act is amended by adding the following section:**

**Transition**

**14.1 (1)** A person who was registered as a travel agent or travel wholesaler under this Act, as it read immediately before the day this section comes into force, is deemed to be registered as a travel seller.

**Same, applications**

(2) An application for registration as a travel agent or travel wholesaler under this Act, as it read immediately before the day this section comes into force, that has not been disposed of is deemed to be an application for registration as a travel seller.

**16 (1) The following provisions of section 15 of the Act are amended by striking out “registrant that is a corporation” wherever that expression appears and substituting in each case “registered travel seller or prescribed travel salesperson that is a corporation”:**

**1. Subsection (1), in the portion before clause (a).**

**2. Subsection (2).**

**(2) The French version of subsection 15 (2) of the Act is amended by striking out “elle en avise” and substituting “il en avise”.**

**17 Subsection 16 (4) of the Act is amended by adding the following paragraph:**

3.1 Require the person to take further educational courses, if the registrant is a travel salesperson.

**18 The Act is amended by adding the following section:**

**Inspection of non-registrants**

**17.1 (1)** If the registrar has reasonable grounds to believe that an activity for which registration is required is occurring, the registrar, or a person designated in writing by the registrar, may conduct an inspection and may, as part of the inspection, enter and inspect at any reasonable time the business premises of a person or entity that is not a registrant, other than any part of the premises used as a dwelling, for the purpose of determining whether the person or entity is carrying on the activity.

**Inspection of former registrants**

(2) The registrar, or a person designated in writing by the registrar, may conduct an inspection and may, as part of the inspection, enter and inspect at any reasonable time the business premises of a former registrant, other than any part of the premises used as a dwelling, for the purpose of ensuring compliance with this Act and the regulations by the former registrant.

**Application of s. 17**

(3) Subsections 17 (2) to (7) apply to an inspection described in subsection (1) or (2) of this section.

**19 (1) Paragraph 1 of subsection 18 (4) of the Act is repealed and the following substituted:**

1. In accordance with the terms that the committee may specify, require the registered travel seller to fund educational courses for the travel salespersons employed by the travel seller or to arrange and fund such educational courses.

1.1 In accordance with the terms that the committee may specify, require the registrant to take further educational courses if the registrant is a travel salesperson.

**(2) Paragraph 3 of subsection 18 (4) of the Act is repealed and the following substituted:**

3. Suspend or postpone the requirement to fund, to arrange and fund or to take educational courses, or the imposition of a fine, for the period and upon the terms that the committee designates.

**(3) Subsection 18 (8) of the Act is repealed.**

**(4) Subsection 18 (9) of the Act is amended by striking out the portion before clause (a) and substituting the following:**

**Arranging and funding educational courses**

(9) The registrant shall arrange and fund the educational courses for travel salespersons as required under subsection (4),

. . . . .

**(5) Section 18 of the Act is amended by adding the following subsection:**

**Taking educational courses**

(9.1) A registrant that is required to take educational courses under subsection (4) shall do so,

(a) within the time period specified in the order of the discipline committee or, if the requirement is the subject of an appeal, within the time period specified in the order of the appeals committee; or

(b) at the first reasonable opportunity after the last order made in respect of the courses if no time period is specified in that order.

**20 (1) Subsection 22 (1) of the Act is amended by striking out “a registrant” in the portion before clause (a) and substituting “a registered travel seller”.**

**(2) Clause 22 (1) (a) of the Act is amended by striking out “the registrant” and substituting “the registered travel seller”.**

**(3) Clause 22 (1) (c) of the Act is repealed and the following substituted:**

(c) the director has reasonable grounds to believe that the registered travel seller has failed or is about to fail to provide contracted and paid for travel services to a customer;

**(4) Subsection 22 (2) of the Act is amended by striking out “a registrant” at the end and substituting “a registered travel seller”.**

**(5) Clause 22 (6) (a) of the Act is amended by striking out “the registrant’s business” at the end and substituting “the registered travel seller’s business”.**

**(6) Clause 22 (6) (b) of the Act is amended by striking out “the registrant” and substituting “the registered travel seller”.**

**(7) Subsection 22 (7) of the Act is repealed and the following substituted:**

**Powers of receiver and manager**

(7) The receiver and manager has all the powers of the board of directors of the corporation, if the registered travel seller is a corporation, or of a sole proprietor or all partners if the registered travel seller is not a corporation.

**21 (1) Clause 23 (1) (a) of the Act is amended by striking out “of a registrant or former registrant” and substituting “of a registered travel seller or former registered travel seller”.**

**(2) The following provisions of section 23 of the Act are amended by striking out “a registrant or former registrant” wherever that expression appears and substituting in each case “a registered travel seller or former registered travel seller”:**

1. Clause (1) (b).

2. Clause (1) (c).

**(3) Subsection 23 (2) of the Act is amended by striking out “of a registrant or former registrant” in the portion before clause (a) and substituting “of a registered travel seller or former registered travel seller”.**

**(4) The following provisions of section 23 of the Act are amended by striking out “registrant or former registrant” wherever that expression appears and substituting in each case “registered travel seller or former registered travel seller”:**

1. Clause (2) (b).

2. Subsection (5), in the portion before clause (a).

**(5) Subsection 23 (8) of the Act is amended by striking out “registrant or former registrant” and substituting “registered travel seller or former registered travel seller”.**

**22 (1) The heading before section 24 of the Act is repealed and the following substituted:**

**PART VI  
CONDUCT**

**(2) Subsections 24 (3) and (4) of the Act are repealed and the following substituted:**

**Financial statements**

(3) When required by the registrar, every registered travel seller shall file a financial statement that,

(a) shows the matters that the registrar specifies;

(b) is signed by the travel seller in the case of a sole proprietorship or by an officer of the travel seller in the case of a partnership or corporation; and

(c) is certified by a person licensed under the *Public Accounting Act, 2004*.

**Same**

(4) The registrar may require that registered travel sellers with a prescribed value of sales submit financial statements on a quarterly basis.

**23 Subsections 25 (1) and (2) of the Act are repealed and the following substituted:**

**Liability for deposits**

(1) If any person is entitled to the repayment of any money paid for or on account of a travel service, any travel seller or prescribed travel salesperson that received the money or any part of it is liable jointly and severally with any other person liable for the money or any part of it, for repaying the money to the extent of the amount of it that the travel seller or prescribed travel salesperson received.

**Exception**

- (2) Subsection (1) does not apply if,
- (a) the travel seller or prescribed travel salesperson has properly disbursed the money received;
  - (b) the travel seller or prescribed travel salesperson has acted in good faith and at arm's length with the person with whom the travel seller or prescribed travel salesperson would be jointly and severally liable under subsection (1); and
  - (c) the person with whom the travel seller or prescribed travel salesperson would be jointly and severally liable under subsection (1) is not in breach of a requirement to be registered under this Act.

**24 The Act is amended by adding the following headings before section 29:**

**PART VI.1  
ENFORCEMENT**

GENERAL

**25 Part VI.1 of the Act is amended by adding the following sections:**

ADMINISTRATIVE PENALTIES

**Assessors**

**34.1** (1) The registrar is, by virtue of the registrar's office, an assessor.

**Appointment**

(2) The registrar shall appoint in writing persons to be assessors who are authorized to make an order under section 34.2 imposing an administrative penalty.

**Order**

**34.2** (1) An assessor may, by order, impose an administrative penalty against a person in accordance with this section and the regulations made by the Minister if the assessor is satisfied that the person has contravened or is contravening,

- (a) a prescribed provision of this Act or the regulations; or
- (b) a condition of registration, if the person is a registrant.

**To whom payable**

(2) An administrative penalty is payable to the administrative authority.

**Purpose**

(3) An administrative penalty may be imposed under this section for one or more of the following purposes:

1. To ensure compliance with this Act and the regulations.
2. To prevent a person from deriving, directly or indirectly, any economic benefit as a result of contravening a provision of this Act or the regulations.

**Amount**

(4) The amount of an administrative penalty shall reflect the purpose of the penalty and shall be determined in accordance with the regulations made by the Minister, but the amount of the penalty shall not exceed \$10,000.

**Form of order**

(5) An order made under subsection (1) imposing an administrative penalty against a person shall be in the form that the registrar determines.

**Service of order**

(6) The order shall be served on the person against whom the administrative penalty is imposed in the manner that the registrar determines.

**Absolute liability**

(7) An order made under subsection (1) imposing an administrative penalty against a person applies even if,

- (a) the person took all reasonable steps to prevent the contravention on which the order is based; or
- (b) at the time of the contravention, the person had an honest and reasonable belief in a mistaken set of facts that, if true, would have rendered the contravention innocent.

**No effect on offences**

(8) For greater certainty, nothing in subsection (7) affects the prosecution of an offence.



**Other measures**

(9) Subject to section 34.4, an administrative penalty may be imposed alone or in conjunction with the exercise of any measure against a person provided by this Act or the regulations, including the application of conditions to a registration by the registrar, the suspension, immediate suspension or revocation of a registration or the refusal to renew a registration.

**Limitation**

(10) An assessor shall not make an order under subsection (1) more than two years after the day the assessor became aware of the person's contravention on which the order is based.

**No hearing required**

(11) Subject to the regulations made by the Minister, an assessor is not required to hold a hearing or to afford a person an opportunity for a hearing before making an order under subsection (1) against the person.

**Non-application of other Act**

(12) The *Statutory Powers Procedure Act* does not apply to an order of an assessor made under subsection (1).

**Appeal**

**34.3** (1) In this section,

“appeal body” means the person prescribed by the Minister or, if no person is prescribed by the Minister, the Tribunal.

**Same**

(2) The person against whom an order made under subsection 34.2 (1) imposes an administrative penalty may appeal the order to the appeal body by delivering a written notice of appeal to the appeal body within 15 days after receiving the order.

**If no appeal**

(3) If the appellant does not appeal the order in accordance with subsection (2), the order is confirmed.

**Hearing**

(4) If the appellant appeals the order in accordance with subsection (2), the appeal body shall hold a hearing and may, by order, confirm, revoke or vary the assessor's order and the appeal body may attach conditions to its order.

**Parties**

(5) The assessor, the appellant and the other persons that the appeal body specifies are parties to the appeal.

**Non-application of other Act**

(6) If the appeal body is not the Tribunal, the *Statutory Powers Procedure Act* does not apply to an order of an assessor appealed under subsection (2).

**Immediate effect**

(7) Even if the appellant appeals an order of the appeal body, the order takes effect immediately, unless the order provides otherwise, but the Divisional Court may grant a stay until the disposition of the appeal.

**Effect of paying penalty**

**34.4** If a person against whom an order imposing an administrative penalty is made pays the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the person cannot be charged with an offence under this Act in respect of the same contravention on which the order is based and no other prescribed measure shall be taken against the person in respect of the same contravention on which the order is based.

**Enforcement**

**34.5** (1) If a person against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the order may be filed with the Superior Court of Justice and enforced as if it were an order of the court.

**Date of order**

(2) For the purposes of section 129 of the *Courts of Justice Act*, the date on which the order is filed with the court shall be deemed to be the date of the order.

**Liens and charges**

(3) If a person against whom an order imposing an administrative penalty is made fails to pay the penalty in accordance with the terms of the order or, if the order is varied on appeal, in accordance with the terms of the varied order, the director may, by order, create a lien against the property of the person that is liable to pay the penalty.

**Application of s. 34**

(4) Subsections 34 (2) to (6) apply to the lien, with necessary modifications, as if it were a lien created by the director under subsection 34 (1) and references to the fine shall be read as references to the administrative penalty.

**26. Section 40 of the Act is repealed.****27 (1) Subsection 42 (1) of the Act is amended by adding the following clauses:**

- (b.1) governing administrative penalties that an assessor may order and all matters necessary and incidental to the administration of a system of administrative penalties, including,
  - (i) specifying the amount of an administrative penalty or providing for the determination of the amount of an administrative penalty by specifying the method of calculating the amount and the criteria to be considered in determining the amount,
  - (ii) providing for different amounts to be paid, or different calculations or criteria to be used, depending on the circumstances that gave rise to the administrative penalty or the time at which the penalty is paid,
  - (iii) specifying information that must be included in an order for payment of an administrative penalty,
  - (iv) governing the procedure for making an order under section 34.2 for an administrative penalty and the rights of the parties affected by the procedure, including the time at which the order is deemed to be served on the person against whom the order is made, and
  - (v) governing the appeal of an order for payment of an administrative penalty;
- (b.2) specifying the purposes for which the administrative authority may use the funds that it collects as administrative penalties;

**(2) Subsection 42 (6) of the Act is repealed.****28 (1) Paragraph 2.1 of subsection 43 (1) of the Act is amended by striking out “and their employees and contractors” in the portion before subparagraph i.****(2) Subsection 43 (1) of the Act is amended by adding the following paragraph:**

- 6.1 governing the administration of the financial security that the administrative authority receives from registrants;

**(3) Paragraphs 8 and 9 of subsection 43 (1) of the Act are repealed and the following substituted:**

- 8. regulating the management and operation of branch offices of travel sellers who sell, to consumers, travel services provided by another person and permitting the registrar to determine whether an individual is qualified to manage or supervise an office operated by such a travel seller;
- 9. governing contracts for the purchase or acquisition of travel services by travel sellers;

**(4) Paragraph 11 of subsection 43 (1) of the Act is amended by adding “and to impose trust accounting requirements in certain cases based on the financial risk posed by the registrant” at the end.****(5) Subsection 43 (1) of the Act is amended by adding the following paragraph:**

- 14.1 prescribing the responsibilities of any person who is a former registrant, or any class of person that is a class of former registrant, in connection with or arising out of the business in respect of which the person or class of person was registered or in respect of which registration was required under this Act;

**(6) Paragraph 16 of subsection 43 (1) of the Act is repealed and the following substituted:**

- 16. prescribing information that a travel seller or travel salesperson must disclose to a customer or to another registrant;

**(7) Paragraphs 27 and 28 of subsection 43 (1) of the Act are repealed and the following substituted:**

- 27. requiring travel sellers to participate in the Fund and governing their participation;
- 28. requiring and respecting payments into the Fund by travel sellers and governing the amounts of the payments;

**(8) Paragraph 29.1 of subsection 43 (1) of the Act is amended by striking out “the director” wherever that expression appears and substituting in each case “the registrar”.****(9) Paragraph 38 of subsection 43 (1) of the Act is repealed and the following substituted:**

- 38. regulating advertising and representations or promises intended to induce the sale of travel services, whether or not made by a person who is registered, including those made to a consumer in Ontario by a person who is acting as a travel seller or travel salesperson in a jurisdiction other than Ontario;

**(10) Paragraph 41 of subsection 43 (1) of the Act is repealed and the following substituted:**

41. delegating to the Minister the power to make regulations with respect to any matter that may be the subject of a regulation under this section;

**(11) Subsection 43 (5) of the Act is repealed.**

#### COMMENCEMENT

##### Commencement

**29 (1) Subject to subsections (2) and (3), this Schedule comes into force on the day the *Strengthening Protection for Ontario Consumers Act, 2017* receives Royal Assent.**

**(2) Subsection 6 (2) comes into force on the day subsection 51 (2) of Schedule 11 to the *Strong Action for Ontario Act (Budget Measures), 2012* comes into force.**

**(3) Sections 9 to 26 and subsections 27 (1) and 28 (1) to (9) come into force on a day to be named by proclamation of the Lieutenant Governor.**