

Schedule 4

New Home Construction Licensing Act, 2017

The Schedule amends the *New Home Construction Licensing Act, 2017*. The majority of the amendments have the effect of permitting the regulatory authority under the Act to interact with the Corporation designated under the *Ontario New Home Warranties Plan Act* as applicable while that Act is in force. Other technical amendments are made, including amendments relating to the administrative agreement between the Minister and the regulatory authority and amendments relating to the regulation-making powers in the Act.

Schedule 5

Ontario New Home Warranties Plan Act

The Schedule amends the *Ontario New Home Warranties Plan Act*.

Previous amendments to the Act provided for the Act's repeal. The Schedule provides that different provisions of the Act may be repealed on different dates by proclamation of the Lieutenant Governor. The Schedule amends the Act to provide for this phased repeal. The majority of the amendments have the effect of permitting the Corporation designated under the Act to interact, while the Act is in force and as applicable, with the regulatory authority under the *New Home Construction Licensing Act, 2017*.

Amendments are made to allow the Lieutenant Governor in Council to revoke the designation of the Corporation by regulation. The Lieutenant Governor in Council's regulation-making powers in the Act are expanded.

Amendments are made relating to the entering into of an administrative agreement between the Minister and the Corporation. Failure to enter into an administrative agreement in accordance with the Act is added as a reason for which the Minister may appoint an individual as an administrator of the Corporation for the purposes of assuming control of it and responsibility for its activities.

The provisions regarding the liability of the Corporation and of the Crown are modified to increase consistency among related pieces of legislation.

Other technical and complementary amendments are made.

Schedule 4

New Home Construction Licensing Act, 2017

1 (1) The definition of "new home" in subsection 1 (1) of the *New Home Construction Licensing Act, 2017* is repealed and the following substituted:

"new home" has the same meaning as "home" as defined in section 1 of the *Ontario New Home Warranties Plan Act*; ("logement neuf")

(2) The definition of "warranty authority" in subsection 1 (1) of the Act is repealed and the following substituted:

"warranty authority" has the same meaning as "Corporation" as defined in section 1 of the *Ontario New Home Warranties Plan Act*. ("organisme de garantie")

2 Subsection 3 (3) of the Act is repealed and the following substituted:

Compliance with operating principles

(3) In addition to the terms required under subsection (2), the administrative agreement shall require the regulatory authority to comply with the principles of,

- (a) maintaining a fair, safe and informed marketplace; and
- (b) promoting the protection of the public interest.

3 (1) Subsection 4 (4) of the Act is amended by striking out the portion before clause (a) and substituting the following:

Content of agreements

(4) The information sharing agreements mentioned in subsection (3) shall include, at a minimum, terms relating to the prescribed matters, which may include,

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(2) Subsection 4 (4) of the Act is amended by striking out “and” at the end of clause (l), by adding “and” at the end of clause (m) and by adding the following clause:

(n) all other content that is prescribed.

(3) Subsection 4 (5) of the Act is amended by striking out “An information sharing agreement” at the beginning and substituting “The information sharing agreements”.

4 Clause 7 (b) of the Act is repealed and the following substituted:

(b) the *Corporations Information Act* and the regulations made under it; and

5 Subsection 11 (1) of the Act is amended by striking out “that are prescribed” at the end and substituting “set out in the regulation”.

6 Subsection 33 (1) of the Act is amended by striking out “shall participate, as prescribed” in the portion before clause (a) and substituting “shall participate, in accordance with the administrative agreement and the regulations, if any”.

7 Section 34 of the Act is repealed and the following substituted:

Information for registrar

34 (1) The registrar may require vendors, builders and other prescribed persons to disclose to the registrar, in accordance with the regulations,

(a) information that is related to the administration of this Act; and

(b) any information that is prescribed.

Information provision

(2) The regulatory authority shall provide the information that is disclosed to the registrar under subsection (1) to such persons as may be required under the information sharing agreements or the regulations and shall do so in such manner and within such time as may be required under the information sharing agreements or the regulations.

8 Subsection 40 (4) of the Act is amended by adding “that the Registrar appointed by the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* requires the registrar to attach to the licence under subsection 10.3 (9) or 17.4 (2.2) of that Act or” after “the conditions”.

9 Section 48 of the Act is amended by adding “in subsection 13 (1) of the *Ontario New Home Warranties Plan Act* or” after “described”.

10 Subsection 65 (2) of the Act is amended by adding “the *Ontario New Home Warranties Plan Act* or” after “guarantee fund under” in the portion before clause (a).

11 Subclause 66 (1) (b) (ii) of the Act is amended by adding “the *Ontario New Home Warranties Plan Act* or” after “guarantee fund under”.

12 Subsection 73 (3) of the Act is repealed and the following substituted:

Transition

(3) If a fine is payable as a result of a conviction under the *Ontario New Home Warranties Plan Act*, the Director may, in the prescribed circumstances, treat the fine as if it were payable as a result of a conviction under this Act, and in those circumstances subsections (1) and (2) apply with respect to the fine as if it were a fine payable for a conviction under this Act.

13 Clause 76 (1) (b) of the Act is amended by adding “the *Ontario New Home Warranties Plan Act* or the regulations made under it or” after “provision of”.

14 Clause 82 (1) (j) of the Act is amended by adding “under section 5.6 of the *Ontario New Home Warranties Plan Act* or” after “receives”.

15 (1) Subsection 84 (1) of the Act is amended by adding the following clause:

(0.a) specifying any matter that is described in this Act as prescribed by the Minister or dealt with in the regulations made by the Minister;

(2) Clause 84 (1) (h) of the Act is amended by adding the following subclause:

(0.i) prescribing provisions for the purpose of subsection 76 (1),

16 Section 86 of the Act is repealed and the following substituted:

Transition — vendors

86 On the day this section comes into force, a person who was registered as a vendor under the *Ontario New Home Warranties Plan Act* immediately before this section came into force is deemed to be licensed as a vendor under this Act.

17 The Act is amended by adding the following section:

Transition — builders

86.1 On the day this section comes into force, a person who was registered as a builder under the *Ontario New Home Warranties Plan Act* immediately before this section came into force is deemed to be licensed as a builder under this Act.

18 The Act is amended by adding the following section:

Transition — applications

86.2 On the day this section comes into force, 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 the day this section came into force 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.

19 The Act is amended by adding the following section:

Transition — proceedings

86.3 On the day this section comes into force, a prescribed proceeding that the Corporation within the meaning of the *Ontario New Home Warranties Plan Act* had commenced as of the day before this section came into force is continued as a proceeding of the regulatory authority under this Act.

Strengthening Protections for Ontario Consumers Act, 2017

20 Subsections 87 (1) and 91 (2) of Schedule 1 to the *Strengthening Protections for Ontario Consumers Act, 2017* are repealed.

Commencement

21 (1) Subject to subsection (2), this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Section 20 and this section come into force on the day the *Rebuilding Consumer Confidence Act, 2019* receives Royal Assent

Schedule 5

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:

“administrative agreement” means the agreement described in section 2.0.1; (“accord d’application”)

(2) Section 1 of the Act is amended by adding the following definitions:

“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”)

(3) Clause (c) of the definition of “home” in section 1 of the Act is repealed and the following substituted:

(c) 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 condominium corporation, or

(4) Section 1 of the Act is amended by adding the following definition:

“information sharing agreement” means an agreement described in subsection 2.0.2 (3); (“accord d’échange de renseignements”)

(5) Section 1 of the Act is amended by adding the following definition:

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

(6) Section 1 of the Act is amended by adding the following definition:

“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 the Corporation or any other corporation,

(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”)

(7) Section 1 of the Act is amended by adding the following definition:

“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”)

(8) The definition of “Plan” in section 1 of the Act is repealed and the following substituted:

“Plan” means the Ontario New Home Warranties and Protection Plan continued under subsection 11 (1); (“Régime”)

(9) Section 1 of the Act is amended by adding the following definition:

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

(10) The definition of “Tribunal” in section 1 of the Act is repealed and the following substituted:

“tribunal” means, in respect of a prescribed matter, the adjudicative body determined in accordance with the regulations in respect of that matter; (“tribunal”)

(11) Section 1 of the Act is amended by adding the following definition:

“vacant land condominium corporation” means a condominium corporation described in subsection 155 (2) of the *Condominium Act, 1998*; (“association condominiale de terrain nu”)

(12) Section 1 of the Act is amended by adding the following subsection:

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.

(13) Section 1 of the Act is amended by adding the following subsection:

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.

(14) Section 1 of the Act is amended by adding the following subsection:

Tribunal

(4) For the purposes of the definition of "tribunal" in subsection (1), the adjudicative bodies that may be prescribed include,

- (a) a tribunal established under an Act of the Legislature of Ontario;
- (b) an arbitrator; and
- (c) a court.

2 The Act is amended by adding the following section:

Crown bound

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

3 The Act is amended by adding the following section:

Act prevails

1.2 This Act applies despite any agreement to the contrary.

4 (1) Subsection 2 (1) of the Act is amended by striking out "a non-profit corporation incorporated without share capital under the *Corporations Act*" and substituting "a not-for-profit corporation without share capital incorporated under the laws of Ontario".

(2) Subsection 2 (2) of the Act is amended by adding the following clauses:

- (c.1) promoting the resolution of claims as soon as reasonably possible in accordance with this Act and the regulations;

(c.2) promoting the construction in Ontario of properly built homes for residential purposes;

(3) Clause 2 (2) (e) of the Act is amended by striking out “the repeal of this Act” in the portion before subclause (i) and substituting “the repeal of all or any part of this Act”.

(4) Section 2 of the Act is amended by adding the following subsections:

Revocation of designation

(5) The Lieutenant Governor in Council may, by regulation, revoke the designation of the Corporation if the Lieutenant Governor in Council considers it advisable to do so in the public interest.

Revocation for non-compliance

(6) The Lieutenant Governor in Council may revoke the designation of the Corporation if,

(a) the Corporation has failed to comply with this Act, the regulations, the administrative agreement, an information sharing agreement or other applicable law;

(b) the Minister has allowed the Corporation the opportunity of remedying its default within a specified time period that the Minister considers reasonable in the circumstances; and

(c) the Corporation 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. (5)

(7) Nothing in subsection (6) restricts the ability of the Lieutenant Governor in Council to act under subsection (5).

Revocation on request

(8) The Lieutenant Governor in Council may revoke the designation of the Corporation on the terms that the Lieutenant Governor in Council considers advisable in the public interest if the Corporation requests the revocation.

Non-application of *Statutory Powers Procedure Act*

(9) 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 Corporation.

Transition

(10) If the Lieutenant Governor in Council revokes the designation of the Corporation 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 Corporation holds in respect of carrying out its activities; and

(b) the assignment, without compensation, of any contracts that the Corporation has entered into before the revocation.

No Crown liability

(11) 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 Corporation or any regulation made under subsection (10).

No proceeding

(12) 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 (11).

5 The Act is amended by adding the following section:

Administrative agreement

2.0.1 (1) The Corporation shall enter into an administrative agreement with the Minister on or before the day specified by the Minister.

Contents

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

1. The governance of the Corporation.
2. All matters that the Minister considers necessary for the Corporation to carry out the administration of this Act and the regulations.
3. The maintenance by the Corporation of adequate insurance against liability arising out of the carrying out of its powers and duties under this Act or the regulations.

Compliance with operating principles

(3) The administrative agreement, in addition to the minimum terms required under subsection (2), shall require the Corporation to comply with the principles of,

- (a) maintaining a fair, safe and informed marketplace; and
- (b) promoting the protection of the public interest, and consumers in particular.

Amendment by Minister

(4) Subject to subsection (5), the Minister may unilaterally amend the administrative agreement, after giving the Corporation the notice that the Minister considers reasonable in the circumstances.

Conditions precedent

(5) The Minister may amend the administrative agreement under subsection (4) only if the Minister is of the opinion that it is advisable to do so in the public interest because at least one of the following conditions is satisfied:

1. Amending the administrative agreement 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 is insufficient for a quorum.

6 The Act is amended by adding the following section:

Information sharing

2.0.2 (1) The Corporation 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 Corporation 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, at a minimum, terms relating to the prescribed matters, which may include,

- (a) the enrolment, or qualification for enrolment, of 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 matters that are prescribed.

Sharing of enforcement information

(5) The information sharing agreements 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).

7 The Act is amended by adding the following section:

Compliance by Corporation

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

8 Subsection 2.1 (1) of the Act is repealed and the following substituted:

Conflict

- (1) In the event of conflict, this Act and the regulations prevail over,
- (a) the administrative agreement and the information sharing agreements;
 - (b) the *Corporations Information Act* and the regulations made under it; and
 - (c) the constating documents, the corporate by-laws and the resolutions of the Corporation.

9 The French version of subsection 2.6 (4) of the Act is amended by adding “judiciaire” after “tribunal” in the portion before clause (a).

10 Sections 2.8 to 2.10 of the Act are repealed and the following substituted:

No personal liability, employee of the Crown

2.8 (1) No action or other proceeding shall be instituted against a current or former employee of the Crown for,

- (a) any act done in good faith in the exercise or performance or intended exercise or performance of a duty or power under this Act, the regulations or a Minister’s order; or
- (b) any neglect or default in the exercise or performance in good faith of such a duty or power.

Tort by employee of the Crown

(2) Despite subsection 8 (3) of the *Crown Liability and Proceedings Act, 2019*, subsection (1) 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

(3) 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 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 exercise or performance or intended exercise or performance of a duty or power under this Act, the regulations or a Minister’s order.

Same

(4) 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 (3).

Application

(5) Without limiting the generality of subsection (4), that subsection applies to any action or other proceeding claiming any remedy or relief, including specific performance, injunction, declaratory relief, any form of compensation or damages, including loss of revenue and loss of profit, or any other remedy or relief, and includes a proceeding to enforce a judgement, order or award made by a court, tribunal or arbitrator outside of Canada.

Revocation

(6) Subsections (1) to (5) apply, with necessary modifications, in respect of a direct or indirect result of the revocation of a designation under section 2 or any regulation made under subsection 2 (10).

Indemnification

2.9 The Corporation 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 Corporation or its members, officers, directors, employees or agents in the exercise or performance or intended exercise or performance of their duties and powers under this Act, the regulations, a Minister's order, the administrative agreement or the information sharing agreements, or for any acts and omissions otherwise connected to this Act, the regulations, a Minister's order, the administrative agreement or the information sharing agreements.

No personal liability

2.10 (1) No action or other proceeding shall be instituted against a person mentioned in subsection (2), or who was formerly such a person, for any act done in good faith in the exercise or performance or intended exercise or performance of any of the person's duties or powers under this Act, the regulations or a Minister's order, or for any neglect or default in the exercise or performance in good faith of such a duty or power.

Application

(2) Subsection (1) applies to the following persons:

1. The Registrar.
2. A Deputy Registrar.
3. An inspector.
4. A director or officer of the Corporation.
5. A person whom the Corporation employs or whose services the Corporation retains.
6. An agent of the Corporation.
7. A member of a committee or an advisory body of the Corporation.
8. The ombudsperson mentioned in section 5.7.
9. A person whom the ombudsperson employs or whose services the ombudsperson retains.

Liability of Corporation

(3) Subsection (1) does not relieve the Corporation of liability to which it would otherwise be subject in respect of the acts or omissions of a person mentioned in subsection (2).

11 Subsection 5.1 (2) of the Act is amended by adding the following paragraph:

5. The Corporation has failed to enter into an administrative agreement in accordance with section 2.0.1.

12 Subsection 5.4 (1) of the Act is amended by striking out "*Corporations Act*" at the end and substituting "*Not-for-Profit Corporations Act, 2010*".

13 The Act is amended by adding the following section:

Regulatory Authority — Information

Information for regulatory authority

5.5 (1) The Registrar may require vendors, builders and other prescribed persons to disclose to the Registrar, in accordance with the regulations,

- (a) information that is related to the administration of this Act;
- (b) the information that the Registrar determines is necessary to assist the regulatory authority in carrying out its duties under section 33 of the *New Home Construction Licensing Act, 2017*; or
- (c) any information that is prescribed.

Information provision

(2) The Corporation shall provide the information that is disclosed to the Registrar under subsection (1) to such persons as may be required under the information sharing agreements or the regulations and shall do so in such manner and within such time as may be required under the information sharing agreements or the regulations.

14 The Act is amended by adding the following section:

Information to provide to regulatory authority

5.6 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 homes in the Plan.
- 2. Information about claims that the Registrar has received.
- 3. All other information, if any, that is prescribed.

15 The Act is amended by adding the following section:

Ombudsperson

Ombudsperson

5.7 The Corporation shall make available, in accordance with the administrative agreement and the regulations, if any, an ombudsperson to carry out the following duties:

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

16 (1) Clause 7 (1) (a) of the Act is amended by adding “or the financial position of an interested person in respect of the applicant” after “financial position”.

(2) Clause 7 (1) (b) of the Act is amended by adding “or of an interested person in respect of the applicant” before “affords”.

(3) Clause 7 (1) (c) of the Act is repealed and the following substituted:

(c) the applicant is a corporation and,

(i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in the conduct of the applicant’s undertakings,

(ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in the conduct of the applicant's undertakings,

(iii) the past or present conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that its undertaking will not be carried on in accordance with the law and with integrity and honesty, or

(iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for registration or for a renewal; or

(4) Subsection 7 (2) of the Act is amended by striking out "Tribunal" and substituting "tribunal".

17 Section 9 of the Act is amended by striking out "Tribunal" wherever it appears and substituting in each case "tribunal".

18 The Act is amended by adding the following sections:

Protections

Requirements for vendors of homes

10.1 A vendor shall not sell or offer to sell a 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 homes

10.2 (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 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 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 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 home unless the builder has complied with clauses (3) (a) to (g).

Enrolment of homes in Plan

10.3 (1) A vendor or a builder of a home that has not been constructed may apply to the Registrar for a determination as to whether the home qualifies for enrolment in the Plan.

Same

(2) A builder of a 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 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 10.6, 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 10.6, the Registrar may impose conditions that must be satisfied,

(a) before the Registrar makes a determination that a home qualifies for enrolment in the Plan;

(b) in order for a home to continue to qualify for enrolment in the Plan; or

(c) before the Registrar enrolls a 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, the Registrar may notify the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017* of conditions that the Registrar 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) In the prescribed circumstances, the Registrar may require the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017* to attach conditions to the licence of the licensee if the Registrar determines it is necessary to do so.

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

10.4 Subject to section 10.6, at any time after the Registrar has made a determination that a 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

10.5 Subject to section 10.6, at any time after the Registrar enrolls a home in the Plan, the Registrar may cancel the enrolment if the Registrar determines that the home ceases to meet the definition of a home in subsection 1 (1).

Notice of proposal

10.6 (1) The Registrar shall notify an applicant or a prescribed person if the Registrar proposes to,

- (a) refuse to grant an application described in subsection 10.3 (1) or (2);
- (b) impose conditions under subsection 10.3 (5);
- (c) suspend or revoke a determination that the home qualifies for enrolment in the Plan; or
- (d) cancel the enrolment of a 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 20, but this section prevails over section 20 to the extent of a conflict.

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 have been 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 home qualifies for enrolment in the Plan or to the enrolment of a 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.

Non-application, residential condominium conversion projects

10.7 Sections 10.1 to 10.6 do not apply with respect to residential condominium conversion projects.

19 The heading before section 11 and subsection 11 (1) of the Act are repealed and the following substituted:

Ontario New Home Warranties and Protection Plan

Ontario New Home Warranties and Protection Plan

(1) 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, protections, guarantee fund and compensation provided by this Act.

20 Subsections 14 (6) and (7) of the Act are repealed and the following substituted:

Response of Corporation

(6) The Corporation 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 (1), (2), (3) or (4) 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.

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

Expert help

(8) An individual making an inquiry or conducting an inspection under subsection (7) on behalf of the Corporation 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.

(9) The Corporation shall ensure that any actions it takes under subsection (7) are done in accordance with the regulations, if any.

Process of dealing with claims

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

Other recovery

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

Performance

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

Notice of decision

(13) When the Corporation 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

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

Copy of notice of appeal

(15) The Corporation shall provide a copy of any notice of appeal it receives under subsection (14) to the relevant vendor or builder and to any other persons that may be prescribed.

Dispute resolution

(16) The right to a hearing before the tribunal does not preclude the Corporation from making available one or more voluntary dispute resolution processes for a claim.

Tribunal hearing

(17) If the tribunal receives a notice of appeal under subsection (14), it shall appoint a time for and hold a hearing.

Parties

(18) The Corporation and the claimant are the parties to the proceedings before the tribunal under this section, unless the regulations provide otherwise.

Order

(19) After holding a hearing, the tribunal may,

(a) by order, direct the Corporation to take the action that the tribunal considers the Corporation ought to take in accordance with this Act and the regulations; and

(b) for the purposes of the order, substitute its opinion for that of the Corporation.

Other remedies unaffected

(20) 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.

21 (1) Clause 15 (a) of the Act is amended by striking out “of the corporation” and substituting “in the corporation”.

(2) Clause 15 (b) of the Act is repealed and the following substituted:

(b) subject to clauses (c) and (d), if a condominium unit that is a residential dwelling is included in a condominium property, the warranties on the common elements in the condominium corporation take effect on the date of the registration of the condominium declaration and description in accordance with the *Condominium Act, 1998*;

(3) Clause 15 (c) of the Act is amended by striking out “of a common elements condominium corporation” and substituting “in a common elements condominium corporation”.

(4) Clause 15 (d) of the Act is repealed and the following substituted:

(d) the warranties on common elements in a phased condominium corporation that are added to the corporation after the registration of the condominium declaration and description, in accordance with the *Condominium Act, 1998*, take effect on the date of the registration of the amendments to the condominium declaration and description that created them;

(5) Clause 15 (e) of the Act is amended by striking out “of the amalgamating corporations” at the end and substituting “in the amalgamating corporations”.

22 Section 15.1 of the Act is amended by adding “or is licensed under the *New Home Construction Licensing Act, 2017*” after “this Act”.

23 Section 16 of the Act is amended by striking out “Tribunal” wherever it appears and substituting in each case “tribunal”.

24 (1) Clause 17.2 (1) (a) of the Act is amended by striking out “is registered as a builder under this Act” and substituting “holds a licence as a builder under the *New Home Construction Licensing Act, 2017*”.

(2) Clause 17.2 (1) (b) of the Act is amended by striking out “is registered as a vendor under this Act” and substituting “holds a licence as a vendor under the *New Home Construction Licensing Act, 2017*”.

25 (1) Clause 17.4 (2) (a) of the Act is amended by striking out “have been enrolled in the Plan” at the end and substituting “have qualified for enrolment in the Plan or have been enrolled in the Plan, as the case may be”.

(2) Clause 17.4 (2) (b) of the Act is repealed and the following substituted:

(b) the fact that the builder of the project holds a licence as a builder under the *New Home Construction Licensing Act, 2017* in respect of the project;

(3) Clause 17.4 (2) (c) of the Act is repealed and the following substituted:

(c) the fact that the vendor of the project holds a licence as a vendor under the *New Home Construction Licensing Act, 2017* in respect of the project;

(4) Section 17.4 of the Act is amended by adding the following subsections:

Licensing conditions

(2.1) At any time after the Registrar provides a confirmation described in subsection (1) to a licensee, the Registrar may notify the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017* of conditions that the Registrar requests be attached to the licence of the licensee or, subject to subsection (2.2), that it requires be attached to the licence.

Mandatory licensing conditions

(2.2) In the prescribed circumstances, the Registrar may require the registrar appointed under section 35 of the *New Home Construction Licensing Act, 2017* to attach conditions to the licence of the licensee if the Registrar determines it is necessary to do so.

26 (1) Subsection 18 (1) of the Act is amended by striking out “for the purposes of this Act” at the end and substituting “to conduct inspections for the purposes of this Act and as may be required by the regulations”.

(2) Subsection 18 (3) of the Act is amended by adding “Subject to the regulations” at the beginning of the portion before clause (a).

(3) Section 18 of the Act is amended by adding the following subsection:

Reports to Minister

(3.1) The Corporation shall report to the Minister respecting inspections under this Act in accordance with the regulations.

27 (1) The Act is amended by adding the following section:

Non-application, *Corporations Act*

21.1 Subsections 129 (2) and (3) of the *Corporations Act* do not apply to the Corporation with respect to corporate by-laws that are necessary to implement a Minister’s order made under this Act, whether the order was made before or after this section comes into force.

(2) Section 21.1 of the Act, as enacted by subsection (1), is repealed and the following substituted:

Non-application, *Not-for-Profit Corporations Act, 2010*

21.1 Subsections 17 (2) to (5) of the *Not-for-Profit Corporations Act, 2010* do not apply to the Corporation with respect to corporate by-laws that are necessary to implement a Minister’s order made under this Act, whether the order was made before or after this section comes into force.

28 (1) 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) prescribing individuals for the purposes of the definition of “officer” in subsection 1 (1);
- (b) prescribing requirements or restrictions for the purposes of the definition of “owner-builder” in subsection 1 (1);
- (c) prescribing matters and governing the determination of adjudicative bodies for the purposes of the definition of “tribunal” in subsection 1 (1);
- (d) prescribing restrictions for the purposes of section 1.1;
- (e) respecting anything that is to be prescribed or done by regulation under section 2.0.2;
- (f) governing the expenses and expenditures to which section 4 applies;
- (g) respecting anything that is to be prescribed or done by regulation under sections 5.5 and 5.6;
- (h) respecting the ombudsperson for the purposes of section 5.7, including governing the duties of the ombudsperson and prescribing additional duties;
 - (i) respecting anything that is to be prescribed or done by regulation under sections 10.1 to 10.6, other than matters in respect of which the Corporation may make by-laws under clauses 23 (1) (b.1), (b.2) and (b.3);
 - (j) governing the evidence described in subsection 14 (5.1) and any matter relating to providing it;
 - (k) respecting anything that is to be prescribed or done by regulation under subsections 14 (6) to (20);
 - (l) respecting procedures to be followed for the purposes of subsections 14 (14) to (19) where the tribunal is an arbitrator, including,
 - (i) providing for modifications to the procedures set out in subsections 14 (14) to (19) and the related regulations,
 - (ii) providing that the *Arbitration Act, 1991* applies with respect to the procedures, and providing modifications to that Act for this purpose,
 - (iii) respecting the selection of an arbitrator,
 - (iv) deeming there to be an arbitration agreement between the prescribed parties, and
 - (v) deeming the arbitration agreement to include specified terms;
- (m) prescribing the manner of determining the date mentioned in subsection 17.1 (2);
 - (n) prescribing the anniversary mentioned in subsection 17.1 (2);
 - (o) prescribing circumstances for the purposes of subsection 17.4 (2.2);
 - (p) prescribing requirements for the purposes of subsection 17.5 (2);
 - (q) governing inspections, including requiring the inspection of homes in the prescribed circumstances and in the prescribed manner;
 - (r) governing the Corporation’s reporting to the Minister respecting inspections;
 - (s) governing the procedures for resolution of disputes between any of a claimant, the Corporation, a vendor, a builder and an owner-builder, including prescribing circumstances when a person is not entitled to refer a dispute to adjudication under Part II.1 of the *Construction Act*;
 - (t) defining any word or expression used in this Act that is not expressly defined in this Act or in a by-law made under section 23;
 - (u) exempting any person or entity or class of persons or entities from any provision of this Act or the regulations and attaching conditions to an exemption;

- (v) providing for further exemptions from or alterations to the application of the *Corporations Act* or the regulations made under it to the Corporation;
- (w) 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 (5), or
 - (ii) the repeal of all or any part of this Act and its replacement in full or in part by another Act.

(2) Clause 22.1 (v) of the Act, as enacted by subsection (1), is amended by striking out “*Corporations Act*” and substituting “*Not-for-Profit Corporations Act, 2010*”.

29 (1) Subsection 23 (1) of the Act is amended by adding the following clauses:

- (b.1) subject to the approval of the Minister, prescribing requirements for vendors for the purposes of clause 10.1 (d);
- (b.2) subject to the approval of the Minister, prescribing requirements for builders for the purposes of clause 10.2 (1) (b);
- (b.3) subject to the approval of the Minister, prescribing requirements for builders for the purposes of clause 10.2 (3) (e);

(2) Clause 23 (1) (g) of the Act is amended by adding “subject to a regulation described in clause 22.1 (s)” at the beginning.

(3) Clause 23 (1) (m.1) of the Act is amended by adding “subject to a regulation described in clause 22.1 (q)” at the beginning.

30 (1) Subject to subsection (2), the Act is repealed on a day to be named by proclamation of the Lieutenant Governor.

(2) A proclamation under subsection (1) may provide for the repeal of different provisions of the Act on different dates.

Strengthening Protection for Ontario Consumers Act, 2017

31 (1) Subsection 71 (1) of Schedule 2 to the *Strengthening Protection for Ontario Consumers Act, 2017* is amended by striking out “the day this section comes into force” at the end and substituting “the day this subsection comes into force”.

(2) Subsection 71 (2) of Schedule 2 to the Act is amended by striking out “the day this section comes into force” and substituting “the day this subsection comes into force”.

(3) Subsection 71 (3) of Schedule 2 to the Act is amended by striking out “this section comes into force” and substituting “this subsection comes into force”.

(4) Subsection 71 (4) of Schedule 2 to the Act is amended by striking out “the day this section comes into force” and substituting “the day this subsection comes into force”.

(5) Subsection 71 (5) of Schedule 2 to the Act is amended by striking out “the day this section comes into force” and substituting “the day this subsection comes into force”.

(6) Subsection 71 (6) of Schedule 2 to the Act is repealed and the following substituted:

Money

(6) Even if subsections 2 (2) and (3) and section 4 of the *Ontario New Home Warranties Plan Act* are repealed, those provisions continue to apply to the Corporation within the meaning of that Act.

(7) Subsection 71 (7) of Schedule 2 to the Act is repealed.

(8) Section 73 and subsection 80 (2) of Schedule 2 to the Act are repealed.

(9) Section 7 of Schedule 4 to the Act is repealed.

Commencement

32 (1) Subject to subsections (2) and (3), this Schedule comes into force on a day to be named by proclamation of the Lieutenant Governor.

(2) Section 12 and subsections 27 (2) and 28 (2) come into force on the later of the day the *Rebuilding Consumer Confidence Act, 2019* receives Royal Assent and the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force.

(3) Subsections 28 (1) and 29 (2) and (3), section 30, subsections 31 (7) to (9) and this section come into force on the day the *Rebuilding Consumer Confidence Act, 2019* receives Royal Assent.

