

Draft Regulation

An Act respecting the Société québécoise de développement de la main-d'oeuvre (R.S.Q., c. S-22.001)

Fees payable for certain services offered by the Société québécoise de développement de la main-d'oeuvre

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the Regulation to amend the Regulation respecting fees payable for certain services offered by the Société québécoise de développement de la main-d'oeuvre, the text of which appears below, may be submitted to the Government for approval, with or without amendment, upon the expiry of 45 days following this publication.

Any interested person having comments to make on the matter is asked to send them in writing, before the expiry of the 45-day period, to the Chairman and Chief Executive Officer of the Société québécoise de développement de la main-d'oeuvre, 425, rue Saint-Amable, 6^e étage, Québec (Québec), G1R 5T7.

DIANE BELLEMARE,
Chairman and Chief Executive Officer

Regulation to amend the Regulation respecting fees payable for certain services offered by the Société québécoise de développement de la main-d'oeuvre

An Act respecting the Société québécoise de développement de la main-d'oeuvre (R.S.Q., c. S-22.001, s. 24)

1. The Regulation respecting fees payable for certain services offered by the Société québécoise de développement de la main-d'oeuvre, made by Order in Council 1238-93 dated 1 September 1993, is amended by inserting the following section after section 6:

“**6.1** The amounts of the fees payable provided for in this Regulation shall be indexed on 1 April of each year on the basis of the rate of increase in the general Consumer Price Index for Canada for the 12-month period ending on 31 December of the year preceding the indexing, as determined by Statistics Canada.

The amounts indexed in the prescribed manner shall be reduced to the nearest dollar where they contain a fraction of a dollar less than \$0.50; they shall be in-

creased to the nearest dollar where they contain a fraction of a dollar equal to or greater than \$0.50.

The Minister of State for Concerted Action and Minister of Employment shall inform the public, through Part I of the *Gazette officielle du Québec* and, where the Minister considers it appropriate, by any other means, of the indexing calculated under this section.”

2. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

9513

Draft Regulation

Building Act
(R.S.Q., c. B-1.1)

Guarantee plan for new residential buildings

Notice is hereby given, according to sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the “Regulation respecting the guarantee plan for new residential buildings”, the text of which appears below, may be approved by the Government upon the expiry of 45 days following this publication.

The purpose of the Regulation is to establish a compulsory guarantee plan for all contractors working in the new residential buildings sector as defined therein.

For that purpose, it sets forth parameters with regard to the following:

- identification of the buildings covered by the guarantee;
- coverage of the guarantee;
- exclusions from the guarantee;
- limits of the guarantee.

The Draft Regulation also provides for a procedure for implementing the guarantee, and for recourse to arbitration where a buyer or contractor contests a decision of the manager of a plan.

The qualifications required of any person authorized to manage a guarantee plan, as well as the conditions a contractor must meet in order to join a guarantee plan, are also determined in the Draft Regulation.

Further information may be obtained by contacting Mr. Pierre D. Tarte, Guarantee Plan Coordinator, Régie du bâtiment du Québec, 545, boulevard Crémazie Est,

6^e étage, Montréal (Québec), H2M 2V2 (tel.: 514-864-2500; fax: 514-873-3418).

Any interested person having comments to make on the subject is asked to send them in writing, before the expiry of the 45-day period, to Mr. Jean-Claude Riendeau, Chairman, Régie du bâtiment du Québec, 545, boulevard Crémazie est, 6^e étage, Montréal (Québec), H2M 2V2.

LOUISE HAREL,
Minister of Employment

Regulation respecting the guarantee plan for new residential buildings

Building Act
(R.S.Q., c. B-1.1, s. 185, pars. 19.3 to 19.6 and 38, and s. 192; 1995, c. 58)

CHAPTER I INTERPRETATION AND APPLICATION

DIVISION I INTERPRETATION

1. In this Regulation, unless the context indicates otherwise, “accountant” means a member of a professional order of accountants specified in Schedule I to the Professional Code (R.S.Q., c. C-26) who is authorized, under the Act constituting that order, to practise the professional accounting activity required by the application of a provision of this Regulation; (*comptable*)

“actuary” means a Fellow of the Canadian Institute of Actuaries; (*actuaire*)

“approved plan” means a guarantee plan meeting the standards and criteria established by this Regulation and approved by the Board; (*plan approuvé*)

“beneficiary” means a natural or legal person, a partnership, a non-profit organization or a cooperative that enters into a contract with a contractor for the sale or construction of a new residential building and, in the case of the common portions of a building held in divided co-ownership, the syndicate of co-owners; (*bénéficiaire*)

“building” means the building itself, including the installations and equipment necessary for its use, specifically, the artesian well, connections with municipal or government services, the septic tank and its absorption field and the agricultural drain; (*bâtiment*)

“contractor” means a person holding a general contractor’s licence authorizing him to carry out or have carried out, in whole or in part, for a beneficiary, construction work on a new residential building governed by this Regulation; (*entrepreneur*)

“manager” means a person authorized by the Régie du bâtiment du Québec to manage a guarantee plan, or a provisional manager designated by the Board under section 83 of the Building Act (R.S.Q., c. B-1.1). (*administrateur*)

DIVISION II APPLICATION

2. This Regulation applies to guarantee plans guaranteeing the performance of the contractor’s legal and contractual obligations provided for in Chapter II and resulting from a contract entered into with a beneficiary for the sale or construction of

(1) the following new buildings intended mainly for residential purposes and not held in divided co-ownership by the beneficiary of the guarantee:

(a) a detached, semi-detached or row-type single-family dwelling;

(b) a multifamily building, from a duplex to a quintuplex;

(c) a multifamily building comprising more than 5 dwelling units and held by a non-profit organization or a cooperative;

(2) the following new buildings intended mainly for residential purposes and held in divided co-ownership by the beneficiary of the guarantee:

(a) a detached, semi-detached or row-type single-family dwelling;

(b) a multifamily building, from a duplex up, of a building height of less than 4 stories; and

(3) the buildings specified in subparagraphs 1 or 2 and acquired by the contractor from a syndic, municipality or mortgage lender.

For the purposes of this Regulation, the terms “storey”, “building height” and “first storey” have the meaning given to them in the Regulation respecting the professional qualification of building contractors and owners-builders, made by Order in Council 876-92 dated 10 June 1992.

The intended use of a building is established on the date of conclusion of the contract and is presumed valid for the term of the guarantee. The guarantee applies to the entire building.

3. No guarantee plan may be offered unless it meets the standards and criteria established by this Regulation and is approved by the Board.

4. No change may be made to an approved plan unless the change meets the standards and criteria established by this Regulation.

5. Any provision of a guarantee plan which is irreconcilable with this Regulation is invalid.

CHAPTER II MINIMUM GUARANTEE

DIVISION I GUARANTEE AND REQUIRED MEMBERSHIP

6. Any person wishing to become a contractor for the new residential buildings referred to in section 2 shall, in accordance with Division I of Chapter IV, join a plan guaranteeing the performance of the legal and contractual obligations provided for in section 7 and resulting from a contract entered into with a beneficiary.

DIVISION II CONTENT OF THE GUARANTEE

7. The guarantee plan shall guarantee the performance of the contractor's legal and contractual obligations to the extent and in the manner prescribed by this Division.

§1. Guarantee for Buildings Not Held in Divided Co-ownership

I. Coverage of the Guarantee

8. For the purposes of this subdivision,

“acceptance of the building” means the act whereby the beneficiary declares that he accepts the building which is ready to be used for its intended purpose and on which some work is to be completed or corrected, where applicable. From the time of that acceptance, the beneficiary may take possession of the building; (*réception du bâtiment*)

“completion of the work” means completion of the work related to the building and provided for in the original contract entered into between the beneficiary and the contractor, and completion of the additional work agreed to in writing between the parties; (*parachèvement des travaux*)

“end of the work” means the date on which all the contractor's work agreed upon in writing with the beneficiary and related to the building is completed and the building is ready to be used for its intended purpose. (*fin des travaux*)

9. The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations before the acceptance of the building, shall cover,

(1) in the case of a contract of sale,

(a) either the partial payments by the beneficiary; or

(b) completion of the work, where the beneficiary holds the ownership titles and where an agreement to that effect is entered into with the manager;

(2) in the case of a contract of enterprise,

(a) either the partial payments by the beneficiary, provided that no unjustified profit for the latter results therefrom; or

(b) completion of the work; and

(3) the relocation, moving and storage of the beneficiary's property where,

(a) the beneficiary is unable to declare acceptance of the building on the date agreed upon with the contractor, unless the partial payments are reimbursed; or

(b) the beneficiary is unable to declare acceptance of the building on the date agreed upon with the contractor so that the manager may complete the building.

10. The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations after acceptance of the building, shall cover

(1) completion of the work related to the building, for which notice is given in writing at the time of acceptance;

(2) repairs to apparent defects or poor workmanship as described in article 2111 of the Civil Code of Québec, of which notice is given in writing at the time of acceptance;

(3) repairs to non-apparent poor workmanship existing at the time of acceptance or discovered within 1 year after acceptance as provided for in articles 2113 and 2120 of the Civil Code of Québec, and of which notice is given to the contractor and to the manager in writing within a reasonable time not to exceed 6 months following the discovery of the poor workmanship;

(4) repairs to latent defects within the meaning of article 1726 or 2103 of the Civil Code of Québec which are discovered within 2 years following acceptance of the building and of which notice is given to the contractor and to the manager in writing within a reasonable time not to exceed 6 months following the discovery of the latent defects within the meaning of article 1739 of the Civil Code of Québec; and

(5) repairs to faulty design, construction or production of the work, or the unfavourable nature of the ground within the meaning of article 2118 of the Civil Code of Québec, which appears within 5 years following the end of the work and of which notice is given to the contractor and to the manager in writing within a reasonable time not to exceed 6 months after the discovery or occurrence of the defect or, in the case of gradual defects or vices, after their first manifestation.

Failure to comply with accepted practice or with a standard applicable to the building constitutes poor workmanship, unless such failure does not affect the quality, safety or use of the building.

11. Where the manager intervenes to complete or correct work related to a building, the beneficiary shall have any sum still owing kept by his financial institution or pay such sum into a trust account with an advocate, a notary or the manager of the plan for the final payment of the work that will be carried out by the manager to complete or correct the work provided for in the original contract or the additional work provided for in any written agreement entered into with the contractor.

II. Exclusions from the Guarantee

12. The guarantee excludes

(1) repairs to defects in the materials and equipment supplied and installed by the beneficiary;

(2) repairs made necessary by normal behaviour of materials, such as cracks or shrinkage;

(3) repairs made necessary by a fault of the beneficiary, such as inadequate maintenance or misuse of the building, as well as by alterations, deletions or additions made by the beneficiary;

(4) deterioration brought about by normal wear and tear;

(5) repairs made necessary following an event of force majeure, such as an earthquake, a flood or exceptional climatic conditions;

(6) repairs to damage resulting from the contractor's extra-contractual civil liability;

(7) repairs to damage resulting from contaminated soil, and replacement of the soil itself;

(8) the obligation to supply the building with natural gas or electricity;

(9) parking areas or storage rooms located outside the building containing the dwelling units, and any works located outside the building such as swimming pools, earthwork, sidewalks, driveways or surface water drainage systems;

(10) promises of a vendor concerning costs for use or energy consumption of appliances, systems or equipment included in the construction of a building, and

(11) claims from the persons who contributed to the construction of the building.

However, the exclusions as provided for in subparagraphs 2, 5 and 7 do not apply if the contractor failed to comply with accepted practice or with a standard in force applicable to the building.

III. Limits of the Guarantee

13. The guarantee of a plan for a detached, semi-detached or row-type single-family dwelling is limited per address to,

(1) for partial payments, \$30 000;

(2) for coverage for relocation, moving and storage, on the presentation of vouchers, and provided that no unjustified profit for the beneficiary results therefrom, \$5 000 as follows:

(a) reimbursement of reasonable actual costs incurred for moving and storage;

(b) reimbursement of reasonable actual costs incurred for relocation, including meals and accommodation, without exceeding, on a daily basis:

— for 1 person:	\$75;
— for 2 persons:	\$100;
— for 3 persons:	\$125;
— for 4 persons or more:	\$150;

(3) for completion and repair of defects and poor workmanship, the amount entered in the contract of enterprise or contract of sale, without ever exceeding \$200 000; and

(4) for coverage for the obligation to supply water, both in quantity and quality, in the event that repairs are impossible, the amount of the damages suffered by the beneficiary, without ever exceeding the lesser of the two amounts mentioned in paragraph 3; coverage applies in the case of a contract of enterprise, provided that the obligation is included in the contract entered into between the beneficiary and the contractor.

14. The guarantee of a plan for a multifamily building is limited to,

(1) for partial payments, \$30 000 per building;

(2) for coverage for relocation, moving and storage, on the presentation of vouchers, and provided that no unjustified profit for the beneficiary results therefrom, \$5 000 per building, as follows:

(a) reimbursement of reasonable actual costs incurred for moving and storage;

(b) reimbursement of reasonable actual costs incurred for relocation, including meals and accommodation, without exceeding, on a daily basis:

— for 1 person:	\$75;
— for 2 persons:	\$100;
— for 3 persons:	\$125;
— for 4 persons or more:	\$150;

(3) for completion and repair of defects and poor workmanship, the lesser of

(a) the amount entered in the contract of enterprise or contract of sale; or

(b) an amount equal to \$100 000 multiplied by the number of dwelling units contained in the building, without ever exceeding \$1 500 000; and

(4) for coverage for the obligation to supply water, both in quantity and quality, in the event that repairs are impossible, the amount of the damages suffered by the beneficiary, without ever exceeding the lesser of the two amounts mentioned in paragraph 3; coverage applies in the case of a contract of enterprise, provided that the obligation is included in the contract entered into between the beneficiary and the contractor.

15. The guarantee of a plan applies only to a building that has no beneficiary at the end of the work, provided that acceptance of the building occurs within 24 months after the end of the work.

However, that guarantee is limited to the guarantee pertaining to

(1) apparent defects and poor workmanship;

(2) existing non-apparent poor workmanship within the meaning of articles 2113 and 2120 of the Civil Code of Québec, for which the guarantee is calculated from the time of acceptance;

(3) latent defects within the meaning of article 1726 or 2103 of the Civil Code of Québec, for which the guarantee is calculated from the time of acceptance; and

(4) faulty design, construction or production of the work, or the unfavourable nature of the ground within the meaning of article 2118 of the Civil Code of Québec, for which the guarantee is limited to the remaining term of the guarantee.

16. The guarantee of a plan is transferable to a subsequent purchaser who is a beneficiary within the meaning of the guarantee, for the remaining term of the guarantee, even if that beneficiary acquired the building from a syndic, a municipality or a hypothecary lender.

IV. Implementation of the Guarantee

17. Each building covered by a guarantee shall be inspected before it is accepted. The contractor and the beneficiary shall carry out the inspection together, using a pre-established list of items to be checked. Such list shall be supplied by the manager and shall be adapted to the class of building concerned. The beneficiary may be assisted by a person of his choice.

The inspection shall be deferred where acceptance of the building takes place after the end of the work.

18. Any claim made under the guarantee plan is subject to the following procedure:

(1) within the guarantee period of 1, 2 or 5 years, as the case may be, the beneficiary shall give notice to the contractor in writing of the construction defect found and send a copy of that notice to the manager in order to suspend the prescription;

(2) at least 15 days after notice by the beneficiary has been sent, the beneficiary shall notify the manager in writing if he is dissatisfied with the contractor's intervention or if the contractor has failed to intervene; he shall pay to the manager fees in the amount of \$100 for opening the file. Those fees are reimbursed to him if the decision rendered is in his favour, in whole or in part, or if an agreement is entered into between the parties concerned;

(3) within 15 days after receipt of the notice prescribed in paragraph 2, the manager shall ask the contractor to intervene and to inform him, within 15 days, of the measures he intends to take to remedy the situation concerning which the beneficiary has given notice;

(4) within 15 days after the expiry of the period granted to the contractor under paragraph 3, the manager shall carry out an inspection on the premises;

(5) within 20 days following the inspection, the manager shall produce a detailed written report stating whether or not the matter has been settled and shall send a copy thereof by registered mail to the parties concerned;

(6) where the claim has not been settled, the manager shall decide on the claim and, where applicable, shall order the contractor to correct the work within the period he indicates which has been agreed upon with the beneficiary;

(7) where the contractor fails to correct the work and the manager's decision is not contested in arbitration by one of the parties, the manager shall take charge of the corrections within the period agreed upon with the beneficiary, in particular, where applicable, by preparing a corrective specification, by calling for tenders, by choosing contractors and by supervising the work.

V. Remedy

19. A beneficiary or contractor who is dissatisfied with a decision of the manager shall, in order for the guarantee to apply, submit the dispute to arbitration within 15 days following receipt by registered mail of the manager's decision.

20. The beneficiary, the contractor and the manager are bound by the arbitration decision as soon as it is rendered by the arbitrator.

The arbitrator's decision is final and not subject to appeal.

21. Arbitration fees are shared equally between the plaintiff and the manager.

22. Where applicable, the arbitrator shall decide on the amount of reasonable fees for a relevant expert's report to be reimbursed to the plaintiff by the manager, where the plaintiff wins the case in whole or in part.

23. The expenses incurred by the beneficiary, contractor and manager for the arbitration are borne by each one of them.

24. A manager who compensates a beneficiary under this subdivision is subrogated in his rights up to and including the sums he has paid.

§2. Guarantee for Buildings Held in Divided Co-ownership

I. Coverage of the Guarantee

25. For the purposes of this subdivision,

“acceptance of the common portions” means the act whereby a building professional chosen by the syndicate of co-owners declares the date of the end of the work on those portions. That acceptance takes place following receipt of a notice of the end of work sent by the contractor to each known beneficiary and to the syndicate of co-owners; (*réception des parties communes*)

“acceptance of the private portion” means the act whereby the beneficiary declares that he accepts the private portion which is ready to be used for its intended purpose and on which some work is to be completed or corrected, where applicable; (*réception de la partie privée*)

“common portions” means those that are part of the building and that are listed in the constituting act of co-ownership or, in the absence of specific provisions in that act, those listed in article 1044 of the Civil Code of Québec; (*parties communes*)

“completion of the work” means completion of the work related to the building and provided for in the original contract entered into between the beneficiary and the contractor, and completion of the additional work agreed to in writing between the parties; (*parachèvement des travaux*)

“end of the work on the common portions” means the date on which all the contractor's work agreed upon in writing with the beneficiary and pertaining to the common portions is completed and the building is ready to be used for its intended purpose; (*fin des travaux des parties communes*)

“end of the work on the private portions” means the date on which all the contractor's work agreed upon in writing with the beneficiary and pertaining to his private portion is completed or, at the latest, the date of the end of the work on the common portions. (*fin des travaux des parties privatives*)

26. The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations before acceptance of the private portion and the common portions, shall cover,

(1) in the case of a contract of sale,

(a) either the partial payments by the beneficiary; or

(b) completion of the work, where the beneficiary holds the ownership titles and where an agreement to that effect is entered into with the manager;

(2) in the case of a contract of enterprise,

(a) either the partial payments by the beneficiary, provided that no unjustified profit for the latter results therefrom; or

(b) completion of the work; and

(3) the relocation, moving and storage of the beneficiary's property where

(a) the beneficiary is unable to declare acceptance of the building on the date agreed upon with the contractor, unless the partial payments are reimbursed; or

(b) the beneficiary is unable to declare acceptance of the building on the date agreed upon with the contractor so that the manager may complete the building.

27. The guarantee of a plan, where the contractor fails to perform his legal or contractual obligations after acceptance of the private portion and the common portions, shall cover

(1) completion of the work, of which notice is given in writing at the time of acceptance of the private portion;

(2) repairs to apparent defects or poor workmanship as described in article 2111 of the Civil Code of Québec, of which notice is given in writing at the time of acceptance;

(3) repairs to non-apparent poor workmanship existing at the time of acceptance or discovered within 1 year after acceptance as provided for in articles 2113 and 2120 of the Civil Code of Québec, and of which notice is given to the contractor and to the manager in writing within a reasonable time not to exceed 6 months following the discovery of the poor workmanship;

(4) repairs to latent defects within the meaning of article 1726 or 2103 of the Civil Code of Québec which are discovered within 2 years following acceptance and of which notice is given to the contractor and to the manager in writing within a reasonable time not to exceed 6 months following the discovery of the latent defects within the meaning of article 1739 of the Civil Code of Québec; and

(5) repairs to faulty design, construction or production of the work, or the unfavourable nature of the ground within the meaning of article 2118 of the Civil Code of Québec, which appear within 5 years following the end of the work on the common portions and of which notice is given to the contractor and to the manager in writing within a reasonable time not to exceed 6 months after the discovery or occurrence of the defect or, in the case of gradual defects or vices, after their first manifestation.

Failure to comply with accepted practice or with a standard in force applicable to the building constitutes poor workmanship, unless such failure does not affect the quality, safety or use of the building.

28. Where the manager intervenes to complete or correct work related to a building, the beneficiary shall have any sum still owing kept by his financial institution or pay such sum into a trust account with an advocate, a notary or the manager of the plan for the final payment of the work that will be carried out by the manager to complete or correct the work provided for in the original contract or the additional work provided for in any written agreement entered into with the contractor.

II. Exclusions from the Guarantee

29. The guarantee excludes

(1) repairs to defects in the materials and equipment supplied and installed by the beneficiary of a private portion;

(2) repairs made necessary by normal behaviour of materials, such as cracks or shrinkage;

(3) repairs made necessary by a fault of the beneficiary such as inadequate maintenance or misuse of the building, as well as alterations, deletions or additions made by the beneficiary;

(4) deterioration brought about by normal wear and tear;

(5) repairs made necessary following an event of force majeure, such as an earthquake, a flood or exceptional climatic conditions;

(6) repairs to damage resulting from the contractor's extra-contractual civil liability;

(7) repairs to damage resulting from contaminated soil, including replacement of the soil itself;

(8) the obligation to supply the building with natural gas or electricity;

(9) parking areas or storage rooms located outside the building containing the dwelling units, and any works outside the building such as swimming pools, earthwork, sidewalks, driveways or surface water drainage systems;

(10) promises of a vendor concerning costs for use or energy consumption of appliances, systems or equipment included in the construction of a building; and

(11) claims from the persons who contributed to the construction of the building.

However, the exclusions as provided for in subparagraphs 2, 5 and 7 do not apply if the contractor failed to comply with accepted practice or with a standard in force applicable to the building.

III. Limits of the Guarantee

30. The guarantee of a plan for a building held in divided co-ownership is limited to,

(1) for partial payments, \$30 000 per fraction provided for in the declaration of co-ownership;

(2) for coverage for relocation, moving and storage, on presentation of vouchers and provided that no unjustified profit for the beneficiary results therefrom, \$5 000 per fraction provided for in the declaration of co-ownership, as follows:

(a) reimbursement of reasonable actual costs incurred for moving and storage;

(b) reimbursement of reasonable actual costs incurred for relocation, including meals and accommodation, without exceeding, on a daily basis:

— for 1 person:	\$75;
— for 2 persons:	\$100;
— for 3 persons:	\$125;
— for 4 persons or more:	\$150;

(3) for completion and repair of defects and poor workmanship to a detached, semi-detached or row-type single-family dwelling, the amount entered in the contract of enterprise or in the contract of sale, without ever exceeding \$200 000;

(4) for completion and repair of defects and poor workmanship to a multifamily building, the lesser of

(a) the total amount of the purchase price of the fractions contained in the building or the total amount entered in the contract of enterprise;

(b) an amount equal to \$100 000 multiplied by the number of private portions contained in the building, without exceeding \$2 000 000 per building; or

(5) for coverage for the obligation to supply water, both in quantity and quality, in the event that repairs are impossible, the amount of the damages suffered by the beneficiary, without ever exceeding the lesser of the two amounts mentioned in paragraph 3; coverage applies in the case of a contract of enterprise, provided that the obligation is included in the contract entered into between the beneficiary and the contractor.

31. The guarantee of a plan applies only to a private portion that has no beneficiary at the end of the work, provided that acceptance of the private portion occurs within 24 months after the end of the work.

However, that guarantee is limited to the guarantee pertaining to

(1) apparent defects and poor workmanship;

(2) existing non-apparent poor workmanship within the meaning of articles 2113 and 2120 of the Civil Code of Québec, for which the guarantee is calculated from the end of the work on the common portions;

(3) latent defects within the meaning of article 1726 or 2103 of the Civil Code of Québec, for which the guarantee is calculated from the time of acceptance of the private portion but shall never exceed 2 years following the end of the work on the common portions; and

(4) faulty design, construction or production of the work, or the unfavourable nature of the ground within the meaning of article 2118 of the Civil Code of Québec, for which the guarantee is limited to the remaining term of the guarantee.

32. The guarantee of a plan is transferable to a subsequent purchaser who is a beneficiary within the meaning of the guarantee, for the remaining term of the guarantee, even if that beneficiary acquired the private unit from a syndic, a municipality or a hypothecary lender.

IV. Implementation of the Guarantee

33. Each private portion covered by the guarantee shall be inspected before it is accepted. The contractor and the beneficiary shall carry out the inspection together, using a pre-established list of items to be checked. Such list shall be supplied by the manager. The beneficiary may be assisted by a person of his choice.

The inspection shall be deferred where acceptance of the private portion takes place after the end of the work on the common portions.

The common portions covered by the guarantee shall be inspected before they are accepted. The contractor, the building professional chosen by the syndicate of co-owners and the latter shall carry out the inspection using a pre-established list of items to be checked. Such list shall be supplied by the manager.

34. Any claim made under the guarantee plan is subject to the following procedure:

(1) within the guarantee period of 1, 2 or 5 years, as the case may be, the beneficiary shall give notice to the contractor in writing of the construction defect found and send a copy of that notice to the manager in order to suspend the prescription;

(2) at least 15 days after notice by the beneficiary has been sent, the beneficiary shall notify the manager in writing if he is unsatisfied with the contractor's intervention or if the contractor has failed to intervene; he shall pay to the manager fees in the amount of \$100 for opening the file. Those fees shall be reimbursed to him if the decision to be rendered is in his favour, in whole or in part, or if an agreement is entered into between the parties concerned;

(3) within 15 days after receipt of the notice prescribed in paragraph 2, the manager shall ask the contractor to intervene and to inform him, within 15 days, of the measures he intends to take to remedy the situation of which the beneficiary has given notice;

(4) within 15 days after the expiry of the period granted to the contractor in paragraph 3, the manager shall carry out an inspection on the premises;

(5) within 20 days following the inspection, the manager shall produce a detailed written report stating whether or not the matter has been settled and shall send a copy thereof by registered mail to the parties concerned;

(6) where the claim has not been settled, the manager shall decide on the claim and, where applicable, shall order the contractor to correct the work within the period he indicates which has been agreed upon with the beneficiary;

(7) where the contractor fails to correct the work and the manager's decision is not contested in arbitration by one of the parties, the manager shall take charge of the corrections within the period agreed upon with the ben-

eficiary, in particular, where applicable, by preparing a corrective specification, by calling for tenders, by choosing contractors and by supervising the work.

V. Remedy

35. A beneficiary or contractor who is dissatisfied with a decision of the manager shall, in order for the guarantee to apply, submit the dispute to arbitration within 15 days following receipt by registered mail of the manager's decision.

36. The beneficiary, contractor and manager are bound by the decision as soon as it is rendered by the arbitrator.

The arbitrator's decision is final and not subject to appeal.

37. The arbitration fees are shared equally between the plaintiff and the manager.

38. Where applicable, the arbitrator shall decide on the amount of reasonable fees for a relevant expert's report to be reimbursed to the plaintiff by the manager, where the plaintiff wins the case in whole or in part.

39. The expenses incurred by the beneficiary, contractor and manager are borne by each one of them.

40. A manager who compensates a beneficiary under this subdivision is subrogated in his rights up to and including the sums he has paid.

CHAPTER III MANAGER OF THE GUARANTEE PLAN

DIVISION I QUALIFICATIONS REQUIRED OF THE MANAGER

41. Only a person having the status of legal person whose sole purpose is to manage financial guarantees within the meaning of Chapter V of the Building Act may obtain authorization from the Board to manage an approved plan.

42. Authorization from the Board is granted to a legal person meeting the following conditions:

(1) none of its directors or officers lends his name to another person;

(2) where applicable, it has been discharged if it was declared bankrupt less than 3 years ago;

(3) it has not been issued a winding-up order;

(4) neither it nor any of its directors or officers has, in the 5 years preceding the application, been convicted of an indictable offence triable only on indictment and connected with the business of manager, unless it or he has obtained a pardon;

(5) none of its directors or officers has been a director or an officer of a partnership or legal person which has, in the 5 years preceding the application, been convicted of an indictable offence triable only on indictment and connected with the business of manager, unless it or he has obtained a pardon;

(6) none of its directors or officers was a director or an officer of a partnership or legal person in the 12 months preceding the latter's bankruptcy occurring less than 3 years ago;

(7) none of its directors or officers has been a director or an officer of a manager whose authorization by the Board was withdrawn less than 3 years ago under section 83 of the Building Act;

(8) its organization structure provides that its directors, officers and key staff called on to participate in decision-making are recruited from among persons who, because of their activities, could make a special contribution to the management of the guarantee plan, and that at least 3 of those persons are from the field of consumer affairs, from financial institutions and from government;

(9) its internal by-laws concerning conflict of interest in particular and applying to persons acting within its organization structure are equivalent to the rules set out in articles 1310 and following of the Civil Code of Québec. Those rules stipulate, among other things, that no contractor may have access, at any time, to nominative information of a fiscal nature or to other information contained in the file of a peer; and

(10) its fiscal year is the calendar year.

DIVISION II **CONDITIONS TO BE FULFILLED** **BY THE MANAGER**

§1. Documents and Information

43. A legal person applying for authorization to manage an approved plan shall supply the Board with

(1) its name, address and principal establishment and, where applicable, a copy of the registration of the declaration of corporate name as well as the name, address of domicile, date of birth, social insurance number and

telephone number of all its directors and officers and of the person responsible for its operations in Québec, where applicable;

(2) information concerning its legal structure, a certified true copy of its deed of incorporation and any amendments thereto;

(3) any judgment delivered against it or any of its directors or officers, in the 5 years preceding the application, for an indictable offence triable only on indictment and connected with the business of manager, unless it or he has obtained a pardon;

(4) 2 copies of its guarantee plan and of its guarantee contract;

(5) the security prescribed in section 58, a certificate of insurance coverage required under section 62 or any other equivalent guarantee, and a certified true copy of the text of any insurance or equivalent guarantee prescribed in section 47, in the second paragraph of section 48 and in section 63;

(6) the inspection program and the pre-established list of items to be checked, provided for in sections 68 and 69;

(7) for the first 3 years of operation, a business plan as defined in the dictionary of accounting and financial management entitled *Dictionnaire de la comptabilité et de la gestion financière*, by L. Ménard *et al.*, Canadian Institute of Chartered Accountants, *Ordre des experts comptables-France, Institut des Réviseurs d'Entreprise-Bélgique*, 1994;

(8) a copy of its internal by-laws; and

(9) financial forecasts prepared in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards, including an actuary's opinion on the assumptions used in their preparation.

It shall also supply the Board with a statement signed by an officer generally or specifically authorized for that purpose certifying

(1) that the officer is filing the application for authorization on behalf of the legal person;

(2) that neither the legal person nor any of its directors or officers is in any of the situations specified in paragraph 2, 3, 4, 5, 6 or 7 of section 42, where applicable; and

(3) that the legal person undertakes to pay, before the beginning of its operations, the contribution indicated in section 47.

§2. *Management*

44. Except in the case of a legal person constituted for the sole purpose of managing an approved plan, the manager shall manage the approved plan separately from his other business and, in particular, keep separate accounts and bank transactions.

45. For that purpose, the manager shall post separately and identifiably, in the financial statements of the approved plan, the portion of his general or other expenses allotted to the approved plan.

46. Subject to section 49, any sum received by the manager in consideration of a guarantee contract and the income generated by those sums shall be deposited in separate bank accounts or be invested in bonds or other debt securities issued or guaranteed by Québec, Canada or a province of Canada, the United States of America or any of its member states, the International Bank for Reconstruction and Development, a municipality or a school board in Canada or a fabrique in Québec, or in deposit accounts or deposit certificates of a financial institution for a term not to exceed 5 years.

§3. *Solvency*

47. The manager shall, before the beginning of his operations, pay a contribution of \$1 500 000. If he undertakes to obtain and to keep in force additional insurance or any other equivalent guarantee of at least \$1 000 000 over and above the reserve account, the contribution that he shall pay is \$500 000.

48. The manager shall maintain an excess amount of assets over liabilities at least equal or superior to the contribution prescribed in section 47 or to the aggregate of

(1) the amount obtained by multiplying the provision for outstanding claims provided for in section 56 by 15 %; and

(2) the amount obtained by multiplying the reserve provided for in section 54 and the additional sum provided for in section 57 by 15 %.

The percentage of 15 % referred to in subparagraphs 1 and 2 of the first paragraph shall be reduced to 5 % if the manager holds additional insurance or any other equivalent guarantee of at least \$1 000 000 over and above the reserve account or of 10 % of that account,

covering the obligations that he assumes for the duration of the coverage provided by the guarantee certificate already obtained.

The amount by which assets exceed liabilities may be used only for the purposes of the approved plan.

49. The manager shall keep, at all times, in a separate trust account called "reserve account", sums or investments sufficient to guarantee the obligations resulting from the approved plan.

50. For that purpose, the manager shall immediately deposit in the reserve account, according to the classes of buildings concerned, the amounts indicated in the table appearing in Schedule I. Those amounts shall in no case be less than 60 % of any sum received in consideration of a guarantee certificate issued under the approved plan.

51. The reserve account may be used by the manager only for one of the following purposes:

(1) to pay a claim originating from a guarantee certificate issued under the approved plan for which a sum was deposited in that account under section 50;

(2) to reimburse the sums due to the contractor following the cancellation of a guarantee certificate for which a sum was deposited in that account under section 50;

(3) to pay the external claims settlement costs related to a claim originating from a guarantee certificate for which a sum was deposited in that account under section 50; or

(4) to pay the internal claims settlement costs directly related to a claim originating from a guarantee certificate for which a sum was deposited in that account under section 50.

However, where, at the end of each fiscal year, the reserve account exceeds the actuarial reserve referred to in section 56, the excess amount may be used by the manager for other purposes than those specified in the first paragraph.

52. Where the reserve account is entrusted to a depository in the form of a deposit, the term and other conditions are determined in accordance with the agreement between the manager and the depository. The term agreed upon may not, however, exceed 5 years.

53. Where the depository of the reserve account is a trust company, the manager may also choose the investments to be made with those funds. In that case, the

funds may be invested only by the trust company and only in bonds or other debt securities issued or guaranteed by Québec, Canada or a province of Canada, the United States of America or any of its member states, the International Bank for Reconstruction and Development, a municipality or a school board in Canada or a fabrique in Québec, or in deposit accounts or deposit certificates of a financial institution for a term not to exceed 5 years.

All income from the reserve account shall be paid at least annually.

54. The minimum reserve to be kept at the end of each of the manager's fiscal years in the reserve account shall never be less than the following percentages of the reserve provided for in section 50, based on the time elapsed since the issue of the guarantee certificate:

Time elapsed since the issue of guarantee certificate	Percentage
(1) less than 1 year	95 %
(2) 1 year or more but less than 2 years	85 %
(3) 2 years or more but less than 3 years	75 %
(4) 3 years or more but less than 4 years	65 %
(5) 4 years or more but less than 5 years	50 %
(6) 5 years or more but less than 6 years	25 %
(7) 6 years or more	0 %.

55. The reserve account, including the assets held in respect of the provisions referred to in section 56, are non-transferable and non-seizable.

56. The manager and his actuary shall ensure that they establish an actuarial reserve consisting of the minimum reserve referred to in section 54, of an additional reserve over and above that minimum reserve where the actuary is of the opinion that the minimum reserve does not constitute a good and sufficient provision to guarantee the obligations resulting from the guarantee certificate issued by the manager, and of a good and sufficient provision for outstanding claims, which are claims submitted and not settled and claims incurred but not reported.

57. The manager shall, where applicable, deposit in the reserve account an additional sum equal to the difference between the actuarial reserve and the amount of the reserve account.

§4. Security

58. The manager shall furnish security in the amount of \$ 50 000.

59. The security may, among other things, be in cash or in bonds or other debt securities issued or guaranteed by Québec, Canada or a province of Canada, the United States of America or any of its member states, a municipality or a school board in Québec.

60. The security shall be kept by the Board, either to compensate the beneficiaries of the approved plan where the manager or his insurer fails to perform the obligations resulting from the plan, or to reinsure the obligations of the plan where the interest of the beneficiaries so requires.

However, interest on the security shall remain payable to the manager or shall be credited to the manager.

61. The manager may withdraw or replace the bonds and other debt securities making up his security, provided that the security remains in compliance with this Regulation.

§5. Insurance

62. The manager shall obtain and keep in force insurance or any other equivalent guarantee to cover the obligations he assumes during the entire duration of coverage of the guarantee certificates, and shall send confirmation thereof to the Board.

63. The manager shall file with the Board a true copy of the text of any insurance or equivalent guarantee invoked to reduce in any way the amount of the contribution established in accordance with this Regulation. The insurance or the equivalent guarantee shall be acceptable to the Board.

§6. Annual Report

64. The manager shall, no later than 4 months after the end of each fiscal year, supply the Board with an annual report of the approved plan stating its situation.

The annual report shall include financial statements for the plan's latest fiscal year, financial statements that shall be prepared in accordance with generally accepted accounting principles and audited in accordance with generally accepted auditing standards.

The annual report shall also be accompanied by experience data sent on a form supplied by the Board.

The annual report shall also include the actuary's report and the changes made during the fiscal year to the guarantee plan and to the guarantee contract.

The actuarial reserve appearing in the financial statements shall be certified by an actuary to the effect that it constitutes a provision which is good and sufficient to guarantee the obligations resulting from the guarantee certificates issued by the manager. Otherwise, the financial statements shall indicate which amount should be deposited in the reserve account in order to constitute a provision which is good and sufficient, in accordance with the actuary's report certifying that it was calculated on the basis of adequate assumptions with regard to the manager's financial situation and the contracts he concludes.

Every 3 years, the annual report shall also include, for the following 3 years of operation, a business plan as defined in the Dictionnaire de la comptabilité et de la gestion financière by L. Ménard *et al.*, Canadian Institute of Chartered Accountants, Ordre des experts comptables-France, Institut des Réviseurs d'Entreprise-Bélgique, 1994.

65. Where the funds accumulated in the reserve account represent an amount less than that which is declared to constitute a good and sufficient provision by the actuary's certificate, the manager shall, before filing the financial statements of the approved plan, deposit in the reserve account a sum equal to the difference.

§7. Other Conditions

66. Any decision by the manager to refuse or cancel the contractor's membership in the approved plan shall be in writing and give reasons therefor.

67. The manager is subject to the arbitration procedure determined by this Regulation where the contractor contests a decision by the manager to refuse or cancel his membership in the approved plan, or where a person contests a decision of the manager concerning a claim.

He shall also, without delay, send to the arbitration body the file on the decision that is subject to arbitration.

68. The manager shall, to ensure implementation of the approved plan, establish an inspection program including the various construction steps of a building and taking into account, in particular, the experience of the contractors, the nature of the construction projects and the categories of the buildings concerned.

69. The manager shall supply each contractor with a pre-established list of items to be checked, adapted to the class of building concerned, for the purposes of inspection prior to acceptance.

70. The manager shall immediately send to the Board any information which could call into question the issue, validity or renewal of a contractor's licence.

71. The manager shall ensure that the contractors receive training with regard to the content of the approved plan and the contract resulting therefrom.

72. The manager shall draw up and keep updated a register indicating, for each contractor, the class of building covered by the guarantee, the address of the construction site and the arbitration awards concerning the contractor.

The register is public and may be consulted free of charge during the manager's business hours.

The manager shall issue to any person who so requests a copy or an excerpt of the register, in consideration of expenses not exceeding the cost of its reproduction and transmission.

73. The manager shall, with regard to the confidentiality of information communicated to him by such persons as contractors, bankers or consumers, comply with the Act respecting the protection of personal information in the private sector (R.S.Q., c. P-39.1).

On the beneficiary's request, the manager shall provide access to the file concerning the beneficiary's building which may include, among other things, reports concerning inspection, intervention, observed defects and remedies thereto, plans and specifications, experts' opinions used for the manager's report and other similar documents.

74. For the purposes of this Regulation, the manager shall, where the contractor is absent or fails to intervene, assume each and every obligation of the contractor within the scope of the approved plan.

CHAPTER IV STANDARDS AND CRITERIA OF GUARANTEE PLANS AND OF GUARANTEE CONTRACTS

75. In addition to the guarantee requirements set out in Chapter II, the guarantee plan shall include the standards and criteria prescribed in Divisions I and II of this Chapter.

76. No guarantee contract may be offered unless it complies with the rules established in Division III of this Chapter and is approved by the Board.

77. No change may be made to a guarantee contract unless the change complies with the rules established in Division III of this Chapter.

DIVISION I MEMBERSHIP OF THE CONTRACTOR

78. To join a guarantee plan and obtain a certificate of accreditation, a person shall

(1) complete an application for membership on the form supplied by the manager and return the form to the manager;

(2) satisfy the financial criteria prescribed in this Division;

(3) sign the membership agreement supplied by the manager and setting forth the obligations listed in Schedule II;

(4) hold security in the amount of \$30 000 against fraud, embezzlement or misappropriation of funds;

(5) submit complete financial statements audited or accompanied by a review engagement report and drawn up by an accountant. Those statements shall be dated and signed by a person in authority. In addition, financial statements shall be dated no later than 4 months after the end of the undertaking's fiscal year;

(6) produce a document certifying that the shareholders, directors and guarantors have been discharged from any personal bankruptcy and have not been involved in the bankruptcy of a construction firm for at least 3 years;

(7) produce the personal balance sheet of each director, shareholder, guarantor and partner, duly completed, dated and signed;

(8) declare all his obligations towards third parties and towards affiliates or other companies, such as a legal hypothec or security towards third parties;

(9) produce a certified true copy of the deed of incorporation of his undertaking;

(10) pay the membership fees required by the manager; and

(11) produce a document certifying that he has applied to the Board for a contractor's licence.

79. The manager shall be notified of the amalgamation, sale or assignment of a partnership or legal person, or of a change to its corporate name, name, board of directors or officers within 30 days of the event.

80. The manager shall issue a certificate of accreditation if the conditions prescribed in this Chapter are met.

81. The manager shall remain the owner of the certificate of accreditation.

The holder of a certificate shall not transfer it.

82. The holder of a valid certificate of accreditation shall display that certificate in a conspicuous place at his principal establishment in Québec.

83. The holder of a certificate of accreditation who ceases to be entitled thereto shall notify the manager thereof in writing within 30 days following the date on which his entitlement ends.

§1. General Membership Conditions for All Buildings

I. Type A Undertaking (An undertaking working, in whole or in part, in the construction of residential buildings for less than 4 years)

84. Such an undertaking shall

(1) hold security of a minimum value of \$50 000 in the form of

(a) personal security;

(b) a letter of guarantee from a bank;

(c) a hypothecary guarantee; or

(d) security of a third person;

(2) supply interim financial statements every 4 months;

(3) supply, on a monthly basis, the statement of accounts receivable and accounts payable;

(4) meet the following financial criteria, where it is possible to calculate them:

(a) working capital ratio 1.15;

(b) debt/equity ratio 75 %;

(c) net worth (10 % of sales) 10 %;

- (d) gross earnings 18 %;
- (e) net earnings 5 %.

All the above financial criteria shall be calculated using the average obtained over the last 3 years; and

(5) where an undertaking possesses affiliates or related companies, the manager may require a consolidated balance sheet or financial statements from each of those companies.

In this subdivision, the financial criteria shall have the meaning given to them in the Dictionnaire de la comptabilité et de la gestion financière by L. Ménard *et al.*, Canadian Institute of Chartered Accountants, Ordre des experts comptables-France, Institut des Réviseurs d'Entreprise-Belgique, 1994.

II. Type B Undertaking (An undertaking working, in whole or in part, in the construction of residential buildings for not less than 4 years)

85. Such an undertaking shall

(1) hold security of a minimum value of \$50 000 in the form of

- (a) personal security;
- (b) a letter of guarantee;
- (c) a hypothecary guarantee; or
- (d) security of a third person;

(2) meet the following financial criteria:

- (a) working capital ratio 1.15;
- (b) debt/equity ratio 75 %;
- (c) net worth (10 % of sales) 10 %;
- (d) gross earnings 18 %;
- (e) net earnings 5 %.

All the above financial criteria shall be calculated using the average obtained over the last 3 years; and

(3) where an undertaking possesses affiliates or related companies, the manager may require a consolidated balance sheet or financial statements from each of those companies.

§2. Additional Membership Conditions for Multifamily Buildings Not Held in Divided Co-ownership and Comprising More than 5 Dwelling Units

86. An undertaking planning to work on multifamily buildings not held in divided co-ownership and comprising more than 5 dwelling units shall also supply the manager with

- (1) a certificate of financing;
- (2) plans of architecture, structure, mechanics and electricity with a seal and approved by the municipality;
- (3) a complete ground analysis;
- (4) a follow-up and a certificate of conformity by recognized professionals;
- (5) a copy of the building permit issued by the municipality; and
- (6) a copy of the preliminary contracts.

§3. Additional Membership Conditions for Multifamily Buildings Held in Divided Co-ownership of a Building Height of Less than 4 Stories and Comprising More than 5 Private Units

87. An undertaking planning to work on multifamily buildings held in divided co-ownership of a building height of less than 4 stories and comprising more than 5 private units shall also supply the manager with

- (1) a certificate of financing;
- (2) plans of architecture, structure, mechanics and electricity with a seal and approved by the municipality;
- (3) a complete ground analysis;
- (4) a copy of the memorandum provided for in article 1787 and following of the Civil Code of Québec;
- (5) a copy of the building permit issued by the municipality; and
- (6) a copy of the preliminary contracts.

88. Where an undertaking fails to meet the requirements set forth in sections 84 to 87 or when it is impossible to calculate the financial criteria set forth in subparagraph 4 of the first paragraph of section 84, the manager may require any other condition for the same purposes.

§4. Term of Membership

89. Membership is valid for 1 year.

Notwithstanding the first paragraph, the term of membership of a person who already holds a licence issued under the Building Act corresponds to the remaining duration of the licence thus amended.

90. Membership takes effect only from the date on which the Board issues the appropriate licence to the contractor.

§5. Renewal of Membership

91. The contractor's membership is renewed if he sends to the manager, at least 30 days before the expiry date of his membership, an application for renewal demonstrating that he meets the conditions prescribed in this Regulation to obtain a certificate of accreditation and if he pays the fees required by the manager.

92. An application for renewal may be received after the period prescribed in section 91 but before the expiry date of the membership if the contractor demonstrates that he had a valid reason not to comply with that section.

§6. Cancellation of Membership

93. The manager may cancel a membership where the contractor is in any of the following situations:

(1) he no longer meets one of the conditions prescribed in this Regulation to obtain a certificate of accreditation;

(2) he is reticent or makes a false declaration;

(3) he fails to pay fees for membership, membership renewal or registration;

(4) his constructions fail to meet the quality criteria required by the manager;

(5) he fails to carry out the repairs required in accordance with the manager's requirements;

(6) the manager was required to make a payment following the contractor's failure to perform his obligations pertaining to reimbursement of partial payments, to completion of the work and to the guarantee against defects and poor workmanship, faulty design, construction or production of the work, or the unfavourable nature of the ground;

(7) he does not do business with contractors licensed by the Board;

(8) where the contractor is a legal person, one or more of its shareholders, directors or officers has or have been, at any time whatsoever, shareholders, directors or officers of another accredited or formerly accredited legal person having failed to perform the obligations required of it under a membership agreement; or

(9) he fails to send the documents required by the manager or to furnish the guarantees or security required by the manager under this Regulation.

94. The contractor's membership is invalid once the contractor no longer holds the appropriate contractor's licence issued by the Board.

95. On the death of a holder of a certificate of accreditation, the executor, heir or legatee, the liquidator of the succession or the deceased's legal representative may continue his activities for up to 90 days from the date of the death.

§7. Special Provisions

96. The rights of the beneficiary are not affected by the cessation of effect of the contractor's membership.

97. A beneficiary who has entered into a contract for the sale or construction of a building provided for in section 2 with a contractor who is a member of an approved plan but who does not hold the appropriate certificate of accreditation does not lose the benefit of the guarantee applicable to that building.

DIVISION II ARBITRATION

§1. Application for Arbitration

98. Any dispute pertaining to the manager's decision concerning a claim or the refusal or cancellation of the contractor's membership shall be dealt with exclusively by the arbitrator appointed under this Division.

The interested parties who apply for arbitration are,

(1) for a claim, the beneficiary or the contractor; and

(2) for membership, the contractor.

An application for arbitration concerning the cancellation of a contractor's membership shall not suspend the enforcement of the manager's decision, unless the arbitrator decides otherwise.

99. An application for arbitration shall be sent to an arbitration body authorized by the Board within 15 days following receipt by registered mail of the manager's decision. The body shall appoint an arbitrator from a list of persons drawn up by it beforehand and sent to the Board.

100. As soon as the arbitration body receives an application for arbitration, it shall notify the other interested parties and the manager.

101. As soon as that notice is received, the manager shall send to the arbitration body the file on the decision that is subject to arbitration.

102. As soon as the arbitrator is appointed, the arbitration body shall give the interested parties the explanatory document prescribed in paragraph 6 of section 120.

103. Before or during the arbitration proceedings, an interested party or the manager may request provisional measures, provided that they are binding only on the beneficiary, the contractor and the manager concerned.

§2. Arbitrators

104. Only natural persons with experience in guarantee plans or having the required professional training in matters related to the questions raised by the arbitration, such as in finance, accounting, construction techniques or law, may be accredited as arbitrators with the arbitration body.

105. If the arbitrator is unable to fulfil his mission or fails to perform his duties within the periods prescribed, an interested party or the manager may address the arbitration body for revocation of the arbitrator's mandate.

106. A decision on the recusation or revocation of an arbitrator is final and is not subject to appeal.

107. In the case of an arbitrator's recusation, revocation, death or incapacity to act, the arbitration body shall replace him by a new arbitrator who shall decide on the resumption or continuation of the hearing. The new arbitrator shall act within the periods prescribed in sections 109 and 114.

108. An arbitrator shall decide in accordance with the rules of law; he shall also appeal to fairness where circumstances warrant.

§3. Hearing

109. The hearing of an application for arbitration shall begin within 30 or 15 days of its receipt, depending on whether the application concerns a claim or membership.

110. The arbitrator shall give to the interested parties and to the manager or to their representatives at least 5 days' notice in writing of the date, time and place of the hearing and, where applicable, notice of the date on which he will inspect the property or visit the premises.

111. The following questions shall be referred to the ordinary courts:

(1) the imposition of a conservatory measure with regard to a third party;

(2) the issue of a mandate against a witness compelled to give evidence but refusing to appear;

(3) the case of an unwilling witness;

(4) the homologation of an arbitration award.

§4. Arbitration Award

112. An arbitration award, once it is made, is binding on the interested parties and on the manager.

An arbitration award is final and not subject to appeal.

113. An arbitration award shall not be put into compulsory execution unless it has been homologated in accordance with the procedure prescribed in articles 946 to 946.6 of the Code of Civil Procedure (R.S.Q., c. C-25).

114. An arbitration award in writing and giving reasons therefor shall be sent to the interested parties and to the manager within 30 or 15 days following the date of the end of the hearing, depending on whether the decision concerns a claim or membership.

The interested parties may agree to an additional period.

115. The plaintiff and the manager shall assume payment of arbitration fees in equal shares.

However, where the dispute concerns an application for membership, arbitration fees shall be assumed by the party losing the case.

Only the arbitration body may draw up an account of arbitration fees for payment thereof. That account shall be paid before the execution of the arbitration award begins.

116. The arbitrator shall, where applicable, decide on the amount of reasonable fees for a relevant expert's opinion to be reimbursed by the manager to the plaintiff where the latter wins the case in whole or in part.

This section does not apply to a dispute concerning the contractor's membership.

117. Expenses incurred by the interested parties and by the manager for the arbitration shall be borne by each one of them.

118. The arbitration body shall keep the arbitration files for 2 years from the filing of the arbitration award or, in case of a legal challenge of that decision, until the final decision of a court of justice disposing thereof.

§5. Arbitration Body

119. Only a body devoted entirely to the arbitration of disputes may be authorized by the Board to organize the arbitration provided for in this Regulation.

120. Authorization of the Board is granted to a body meeting the following conditions, in addition to the conditions provided for by the Act:

(1) it has a mechanism for updating the list indicating each arbitrator's area of expertise and available to any interested person on request;

(2) it has a permanent program for training arbitrators on the content of the guarantee plan such as the guarantees themselves and related notions of civil law, the terms and conditions of contractors' membership in the plan and the arbitration procedure;

(3) it has a code of ethics applicable to arbitrators;

(4) it has an arbitration service accessible in each administrative region of Québec, with arbitrators living in each region, except in special circumstances;

(5) it has an accelerated arbitration procedure consisting of, in addition to the rules prescribed in this Division, provisions concerning

(a) the application for arbitration;

(b) the preparation of the file;

(c) the appointment, competence and powers of the arbitrator;

(d) the obligation of the arbitrator to inform the parties; and

(e) the order of the arbitration procedures, in particular the periods, the recusation and revocation of the arbitrator, the summoning of witnesses and the arbitration award; and

(6) it has an explanatory document concerning the arbitration procedure, in particular with regard to

(a) the right of the interested parties to be represented by a person of their choice;

(b) the rules of procedure and of evidence to be followed;

(c) the procedure for summoning witnesses and experts;

(d) the possibility of inspecting the property or visiting the premises;

(e) the recording of an agreement between the beneficiary, the contractor and the manager or of discontinuance in an arbitration award; and

(f) the procedure for homologating an arbitration award.

121. The arbitration body shall ensure that the interested parties have produced all the necessary documents in support of their application or defense and that the arbitrator has a complete file.

122. The arbitration body shall provide administrative support for the arbitrators' activities, with due respect for the autonomy and independence of each of its arbitrators.

123. The arbitration body shall publish annually a compilation of arbitration awards made under this Division.

DIVISION III RULES PERTAINING TO GUARANTEE CONTRACTS

124. In addition to the text of the guarantee prescribed in subdivision 1 or 2 of Division II of Chapter II, where applicable, the guarantee contract shall include

(1) the names and addresses of the beneficiary and the contractor;

(2) the number of the contract, its date, and the address of the place where it is signed by the contractor;

(3) a description of the building covered by the guarantee;

(4) the manager's name, address, and telephone and fax numbers;

(5) the contractor's accreditation number and licence number; and

(6) the compulsory nature of the guarantee.

125. The guarantee contract shall indicate that its content has been approved by the Régie du bâtiment du Québec and specify the number and date of the Board's decision.

126. The guarantee contract shall be drawn up clearly and legibly, at least in duplicate. It shall be typed or printed.

127. The contractor's signature shall be affixed on the last page of the copies of the guarantee contract following all the stipulations.

128. The signature affixed by the contractor is binding on the manager.

129. The contractor shall give a copy of the duly signed guarantee contract to the beneficiary and send a copy thereof to the manager.

130. The beneficiary is required to perform his obligations set forth in the contract entered into with the contractor only from the time he is in possession of a copy of the duly signed guarantee contract.

131. Any clause of a guarantee contract that is irrevocable with this Regulation is void.

132. The beneficiary may not, by special agreement, waive the rights granted to him by this Regulation.

CHAPTER V FINAL PROVISIONS

133. Only those buildings for which the preliminary contract or the contract of enterprise is signed between a beneficiary and an accredited contractor whose construction work begins from the date of coming into force of this Regulation are covered by the guarantee.

134. Once approved by the Government, this Regulation will come into force on the date or dates determined by the Government.

However, for the purposes of section 85 of the Building Act, this Regulation is deemed to come into force on the day of its publication in the *Gazette officielle du Québec*.

SCHEDULE I (s. 50)

INITIAL RESERVE

Buildings covered

Initial reserve, in dollars per guarantee certificate

Detached, semi-detached or row-type single-family dwelling, held or not held in divided co-ownership;

Multifamily building from a duplex to a quintuplex, not held in divided co-ownership;

475

Multifamily building comprising more than 5 dwelling units and held by a non-profit organization or a cooperative, not held in divided co-ownership.

Multifamily building of a building height of less than 4 stories, held in divided co-ownership.

700

SCHEDULE II (s. 78)

OBLIGATIONS OF THE CONTRACTOR

The contractor shall undertake

(1) to meet the membership criteria required by the manager under a regulation of the Régie du bâtiment du Québec respecting the guarantee plan for new residential buildings;

(2) to notify the manager that notice of intention or of a proposition has been filed in respect of an insolvent person under section 65.1 of the Bankruptcy and Insolvency Act (R.S.C. (1985) c. B-3);

(3) to comply with accepted practice or with a standard in force applicable to the building;

(4) without restricting his liability under the laws in force in Québec, to honour the guarantee required of him under the guarantee plan approved by the Board and, where applicable, to complete the work or to repair the defects and poor workmanship covered by the guarantee, once the manager is of the opinion that a claim is founded, except in the case of a dispute;

(5) to compensate the manager for any loss incurred or to reimburse any payment he has made following his failure to honour the guarantee required of him under the guarantee plan;

(6) to register with and pay immediately to the manager the premium specified for each class of building upon the occurrence of the first of the following events:

(a) the signing of the preliminary contract or the contract of enterprise;

(b) the issue of the building permit; or

(c) the beginning of construction work on the building covered;

(7) to perform each and every obligation required of him by the manager as part of the guarantee plan for any building covered, whether or not the building is registered with the manager;

(8) to give notice to the manager, on the form supplied by him, of each and every partial payment made to him for the purchase of any building covered, as soon as each payment is made;

(9) to submit to the manager, on the form supplied by him, a list of work on the building of which notice was given in writing at the time of acceptance of the building or of the private portion, as the case may be, and which must be completed;

(10) to supply, on the manager's request, plans for the design or completion of the architecture, structure, mechanics, plumbing and electricity, as well as the specifications for a building covered;

(11) to send, on the manager's request, continuous supervision reports and the certificate of conformity prepared by a building professional independent of the contractor, where applicable;

(12) to give notice of the end of the work on the common portions to each known beneficiary and to the syndicate of co-owners and to notify thereof the manager and any future purchaser of a private portion at the time of conclusion of the contract;

(13) to carry out an inspection prior to acceptance, with the beneficiary or with the building professional designated by the syndicate of co-owners and the latter, where applicable, using a pre-established list of items to be checked supplied by the manager, to give a duly completed copy thereof to the beneficiary and to the building professional and to send the findings thereof to the manager on request;

(14) to give notice to the manager of the end of the work where the beneficiary is unknown and to notify thereof the future purchaser at the time of conclusion of the contract;

(15) to produce, on the manager's request, the periodic reports and the certificates of conformity drawn up by an architect or engineer at the time of construction of any building for which supervision of construction work is required in accordance with the codes and standards in force;

(16) to comply with the inspection program set up by the manager, to provide access to the construction work site of each building covered to any duly appointed representative of the manager and to file the reports ensuing therefrom where applicable;

(17) to collaborate with any duly appointed representative of the manager;

(18) where applicable, to take all necessary measures to ensure the preservation of the building; and

(19) to pay the required fees for membership in the plan or for membership renewal, for each inspection required by the manager and for arbitration, where applicable.

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