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# NATIONAL ASSEMBLY

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FIRST SESSION

THIRTY-FIFTH LEGISLATURE

## Bill 99

(1995, chapter 58)

### **An Act to amend the Building Act**

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**Introduced 19 June 1995**  
**Passage in principle 1 December 1995**  
**Passage 8 December 1995**  
**Assented to 11 December 1995**

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## EXPLANATORY NOTES

*The object of this bill is to amend the Building Act to supplement the financial guarantee provisions which apply to the acquisition of buildings by consumers or to any construction work carried out for consumers.*

*The bill provides in particular that a contractor who has joined a guaranty plan is required to repair construction defects covered by the plan and that if the contractor fails to do so, the manager of the plan is to make those repairs. In such a case, subrogation operates in favour of the manager. The bill also establishes the additional qualifications required of the manager of a guaranty plan and the rules applicable to the sums constituting the reserves held by such a manager. It also establishes the criteria to be met by an arbitration body in order to be recognized by the Régie du bâtiment du Québec.*

*Lastly, the bill provides that the first regulation of the Régie du bâtiment concerning financial guarantees applicable to the new residential building sector will not be subject to section 17 of the Regulations Act, will come into force on the date determined by the Government and its application will require to be assessed not later than four years after its coming into force.*

## Bill 99

### An Act to amend the Building Act

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

**1.** Section 77 of the Building Act (R.S.Q., chapter B-1.1) is amended by replacing the words “natural person, a non-profit organization or a cooperative” in the fourth and fifth lines of the first paragraph by the word “person”.

**2.** Section 78 of the said Act is amended by replacing the words “natural person, a non-profit organization or a cooperative” in the fourth and fifth lines of the first paragraph by the word “person”.

**3.** Section 79 of the said Act is amended by inserting the words “to a person” after the word “give” in the first line and by striking out the words “the natural person, the cooperative or the non-profit organization” in the third line.

**4.** The said Act is amended by inserting, after section 79, the following sections:

**“79.1** Every contractor required to join a guaranty plan under section 77 or 78 is bound to repair any defect in construction resulting from the failure to carry out or from the carrying out of construction work covered by the plan. The contractor must also, where applicable, complete the carrying out of the work or pay the compensation prescribed by regulation of the Board.

Should the contractor fail to repair such defects and, where applicable, to complete the work or pay the compensation, the manager of the plan shall make the repairs and, where applicable, complete the work or pay the compensation.

“**79.2** Subrogation operates in favour of the manager of a guaranty plan who remedies the contractor’s failure to perform his obligations under the plan.”

**5.** Section 81 of the said Act is replaced by the following sections :

“**81.** A guaranty plan must be managed by a legal person whose sole object is to manage the financial guarantees provided for in this chapter; such person must be authorized by the Board in accordance with a regulation of the Board, and have an establishment in Québec.

“**81.1** The reserves held in currency or in the form of investments by the manager of a guaranty plan to guarantee the performance of its obligations are unseizable and unassignable.”

**6.** Section 82 of the said Act is amended by replacing the words “a guarantee contract to a natural person, a non-profit organization or a cooperative other than those” in the first and second lines by the words “to a person a guarantee contract other than a contract”.

**7.** The said Act is amended by inserting, after section 83, the following section :

“**83.1** Only a body that meets the following criteria may be authorized by the Board to conduct the arbitration of disputes arising out of guaranty plans :

- (1) it is devoted exclusively to dispute arbitration;
- (2) it has established a panel of arbitrators whose integrity has been established and who satisfy the conditions determined by regulation of the Board;
- (3) it applies an arbitration procedure that includes the arbitration rules prescribed by regulation of the Board;
- (4) it has established a tariff of arbitration costs that has been approved by the Board and that pertains to arbitration expenses, including expenses incurred by such body and the cost of its services, arbitrators’ fees and provisions for expenses;
- (5) it satisfies any other condition prescribed by regulation of the Board.

The body shall publish an annual compilation of the decisions of its arbitrators.”

**8.** Section 185 of the said Act is amended by striking out subparagraph *f* of paragraph 19.5.

**9.** The first regulation made by the Régie du bâtiment du Québec for the implementation of section 77 of the Building Act pertaining to financial guarantees applicable to the new residential building sector is not subject to the coming into force requirement set out in section 17 of the Regulations Act (R.S.Q., chapter R-18.1).

The regulation comes into force on the date or dates determined by the Government. However, for the purposes of section 85 of the Building Act, the regulation is deemed to come into force on the day of its publication in the *Gazette officielle du Québec*.

**10.** Not later than 4 years after the coming into force of the regulation referred to in section 9, the Régie du bâtiment du Québec shall assess the application of the regulation and, after consultation with the persons concerned, shall report to the Minister, not later than 6 months after that date, on the advisability of maintaining the application of the regulation or of amending it.

**11.** This Act comes into force on 11 December 1995.

