

Draft Regulations

Draft Regulation

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

New residential buildings — Guarantee plan — Amendments

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 the guarantee plan for new residential buildings, the text of which appears below, may be approved by the Government, with or without amendment, on the expiry of 45 days following this publication.

The purpose of the amendments proposed in the draft Regulation is to make corrective adjustments to certain provisions that in the past have posed application difficulties, to extend the time for applying for mediation or arbitration to 30 days, to render stakeholders more accountable in how the regulation is applied by providing for civil penalties should managers or contractors fail in their obligations regarding information on the guarantee or its implementation, to provide for transmission of information on acceptance of the common portions to each known beneficiary, to govern the publicity of guarantee plans to ensure that a clear distinction is made between the compulsory guarantee plan and any other guarantee plan, to clarify certain time limits to be respected by the manager, to specify the information that must be contained in any decision rendered by the manager so that the beneficiary is made aware of available remedies in timely fashion, and to allow the manager to require new information from accredited contractors.

As regards poor workmanship, it is specified that the contractor's obligations under the guarantee plan are to be linked to the contractor's obligations under the Construction Code.

The amounts that may be the subject of claims are indexed according to the New Housing Price Index (NHPI) or the Consumer Price Indices (CPI), according to the nature of the amount to be adjusted.

The draft Regulation has no negative impact on the public or enterprises, including small and medium-sized businesses.

Further information may be obtained by contacting Guy Pelletier, Régie du bâtiment du Québec, 545, boulevard Crémazie Est, 7^e étage, Montréal (Québec) H2M 2V2; telephone: (514) 864-2491; fax: (514) 873-1939.

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 Daniel Gilbert, Chairman and Chief Executive Officer, Régie du bâtiment du Québec, 545, boulevard Crémazie Est, 3^e étage, Montréal (Québec) H2M 2V2.

LAURENT LESSARD,
Minister of Labour

Regulation to amend the Regulation respecting the guarantee plan for new residential buildings*

Building Act
(R.S.Q., c. B-1.1, s. 185, pars. 19.4, 19.6 and 38 and s. 192)

1. The Regulation respecting the guarantee plan for new residential buildings is amended by replacing the second paragraph of section 10 by the following:

“Failure to comply with accepted practice or with a standard in force applicable to the building, in particular the standards contained in the Construction Code made under the Building Act, constitutes poor workmanship except where it is so minor that the acceptable minimum level of performance required by the standard is achieved.”

2. Section 13 is amended

(1) by replacing “\$30 000” in paragraph 1 by “\$39,000”;

* The Regulation respecting the guarantee plan for new residential buildings approved by Order in Council 841-98 dated 17 June 1998 (1998, *G.O.* 2, 2510) was last amended by the regulation approved by Order in Council 920-2001 dated 31 July 2001 (2001, *G.O.* 2, 4781). For previous amendments, refer to the *Tableau des modifications et Index sommaire*, Québec Official Publisher, 2004, updated to 1 September 2004.

(2) by replacing “\$5 000” in the portion of paragraph 2 before subparagraph *a* by “\$5,500” and by replacing “\$75” in subparagraph *b* of paragraph 2 by “\$85”, “\$100” by “\$110”, “\$125” by “\$140” and “\$150” by “\$170”;

(3) by replacing “\$200 000” in paragraph 3 by “\$260,000”.

3. Section 14 is amended

(1) by replacing “\$30 000” in paragraph 1 by “\$39,000”;

(2) by replacing “\$5 000” in the portion of paragraph 2 before subparagraph *a* by “\$5,500” and by replacing “\$75” in subparagraph *b* of paragraph 2 by “\$85”, “\$100” by “\$110”, “\$125” by “\$140” and “\$150” by “\$170”;

(3) by replacing “\$100 000” in subparagraph *b* of paragraph 3 by “\$130,000” and “\$1 500 000” by “\$1,900,000”.

4. Section 17 is amended by replacing “The beneficiary may be assisted by a person of his choice.” in the first paragraph by “For the purposes of the inspection, the beneficiary shall act in a prudent and diligent manner without any need of expert assistance. The beneficiary may, however, be assisted by a person of the beneficiary’s choice.”.

5. The following is inserted after section 17:

“**17.1.** Any claim based on the guarantee referred to in section 9 is subject to the following procedure:

(1) not later than within 90 days following acceptance of the building, the beneficiary shall send to the contractor, by registered mail, a claim for reimbursement of expenses relating to relocation, moving and storage of the beneficiary’s property, along with vouchers. If the claim has not been settled within 15 days after the claim has been sent, the beneficiary shall notify the manager in writing who must decide the claim within 15 days following receipt of the notice;

(2) for the implementation of the advance payment guarantee or guarantee of completion before acceptance of the building, the beneficiary shall send the claim in writing to the contractor and a copy of the claim to the manager. The procedure described in paragraphs 2 to 6 of section 18 applies to the claim with the necessary modifications.

For the purposes of subparagraph 2 of the first paragraph, the beneficiary shall pay fees to the manager in the amount of \$100 which will be reimbursed to the beneficiary on the conditions prescribed for reimbursement of the fees referred to in paragraph 2 of section 18.”.

6. Section 18 is amended

(1) by replacing “made under the guarantee plan” in the portion before paragraph 1 by “based on the guarantee referred to in section 10”;

(2) by replacing paragraphs 5 to 7 by the following:

“(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 send a copy by registered mail to the parties concerned. If the claim has not been settled, the manager shall decide the claim and order, as applicable, the contractor to reimburse to the beneficiary the cost of necessary and urgent conservatory repairs, or to complete or correct the work within the period the manager indicates and agreed upon with the beneficiary;

(6) where the contractor fails to reimburse the beneficiary or to complete or correct the work and there is no recourse to mediation or the manager’s decision is not contested in arbitration by one of the parties, the manager shall, within 15 days after the expiry of the period agreed upon with the beneficiary under paragraph 5, make the reimbursement or take charge of completing or correcting the work, agree to a time period for doing so with the beneficiary and undertake, if applicable, the preparation of corrective specifications and a call for tenders, choose contractors and supervise the work.”.

7. Section 19 is amended by replacing “15” by “30”.

8. The following is inserted after section 19:

“**19.1.** Failure by the beneficiary to file a claim or implement the guarantee in timely fashion cannot be set up against the beneficiary if the contractor or manager fails to perform the obligations under sections 17, 17.1, 18, 66, 69.1, 132 to 137 and paragraphs 12, 13, 14 and 18 of Schedule II, unless the contractor or manager shows that such failure had no incidence on the failure to file a claim in timely fashion or that the time for filing the claim or implementing the guarantee has been expired for more than one year.”.

9. Section 25 is amended by inserting “with a copy sent to each known beneficiary and to the syndicate” in the definition of “acceptance of the common portions” after “on those portions”.

10. Section 27 is amended

(1) by striking out “of the private portion” in subparagraph 1 of the first paragraph;

(2) by replacing the second paragraph by the following:

“Failure to comply with accepted practice or with a standard in force applicable to the building, in particular the standards contained in the Construction Code made under the Building Act, constitutes poor workmanship except where it is so minor that the acceptable minimum level of performance required by the standard is achieved.”.

11. Section 29 is amended by striking out “of a private portion” in subparagraph 1 of the first paragraph.

12. Section 30 is amended

(1) by replacing “\$30 000” in paragraph 1 by “\$39,000”;

(2) by replacing “\$5 000” in the portion of paragraph 2 before subparagraph *a* by “\$5,500” and by replacing “\$75” in subparagraph *b* of paragraph 2 by “\$85”, “\$100” by “\$110”, “\$125” by “\$140” and “\$150” by “\$170”;

(3) by replacing “\$200 000” in paragraph 3 by “\$260,000” and “\$2 000 000” by “\$2,600,000”;

(4) by replacing “\$100 000” in subparagraph *b* of paragraph 4 by “\$130,000” and “\$2 000 000” by “\$2,600,000”.

13. Section 33 is amended by replacing “The beneficiary may be assisted by a person of his choice.” in the first paragraph by “For the purposes of the inspection, the beneficiary shall act in a prudent and diligent manner without any need of expert assistance. The beneficiary may, however, be assisted by a person of the beneficiary’s choice.”.

14. The following is inserted after section 33:

“**33.1.** Any claim based on the guarantee referred to in section 26 is subject to the following procedure:

(1) not later than within 90 days following acceptance of the building, the beneficiary shall send to the contractor, by registered mail, a claim for reimbursement of expenses relating to relocation, moving and storage of the beneficiary’s property, along with vouchers. If the claim has not been settled within 15 days after the claim has been sent, the beneficiary shall notify the manager in writing who must decide the claim within 15 days following receipt of the notice;

(2) for the implementation of the advance payment guarantee or guarantee of completion before acceptance of the building, the beneficiary shall send the claim in writing to the contractor and a copy of the claim to the manager. The procedure described in paragraphs 2 to 6 of section 34 applies to the claim with the necessary modifications.

For the purposes of subparagraph 2 of the first paragraph, the beneficiary shall pay fees to the manager in the amount of \$100 which will be reimbursed to the beneficiary on the conditions prescribed for reimbursement of the fees referred to in paragraph 2 of section 34.”.

15. Section 34 is amended

(1) by replacing “made under the guarantee plan” in the portion before paragraph 1 by “based on the guarantee referred to in section 27”;

(2) by replacing paragraphs 5 to 7 by the following:

“(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 send a copy by registered mail to the parties concerned. If the claim has not been settled, the manager shall decide the claim and order, as applicable, the contractor to reimburse to the beneficiary the cost of necessary and urgent conservatory repairs, or to complete or correct the work within the period the manager indicates and agreed upon with the beneficiary;

(6) where the contractor fails to reimburse the beneficiary or to complete or correct the work and there is no recourse to mediation or the manager’s decision is not contested in arbitration by one of the parties, the manager shall, within 15 days after the expiry of the period agreed upon with the beneficiary under paragraph 5, make the reimbursement or take charge of completing or correcting the work, agree to a time period for doing so with the beneficiary and undertake, if applicable, the preparation of corrective specifications and a call for tenders, choose contractors and supervise the work.”.

16. Section 35 is amended by replacing “15” wherever it appears by “30”.

17. The following is inserted after section 35:

“**35.1.** Failure by the beneficiary to file a claim or implement the guarantee in timely fashion cannot be set up against the beneficiary if the contractor or manager fails to perform the obligations under sections 33, 33.1, 34, 66, 69.1, 132 to 137 and paragraphs 12, 13, 14 and 18 of Schedule II, unless the contractor or manager shows

that such failure had no incidence on the failure to file a claim in timely fashion or that the time for filing the claim or implementing the guarantee has been expired for more than one year.”.

18. Section 42 is amended by replacing paragraph 8 by the following:

“(8) its organizational structure provides that its officers and key personnel participating in policy decision-making and application of the guarantee plan are recruited from among persons who, because of their activities, are capable of contributing in a particular manner to the administration of a guarantee plan, and that at least 3 of those persons have experience in the financial institutions sector, in government and in the consumer affairs sector and are recruited from among persons proposed by the most representative consumer associations. The representatives are to be chosen from a list drawn up by the Board. The term of the representatives from the financial institutions sector, the government and the consumer affairs sector is of not less than one year and may be renewed;”.

19. Section 66 is replaced by the following:

“**66.** Any decision by the manager to refuse or cancel a contractor’s membership in the approved plan or concerning a claim made by a beneficiary shall be in writing and give reasons therefor.

The decision must contain the following:

(1) in the case of a decision on a claim made by a beneficiary, mention that it is the decision of the manager, the names of the beneficiary and the contractor, the address of the building concerned, the date of each inspection, if any, the date of the final decision, the remedies and time limits prescribed by the regulation and the names and addresses of the arbitration bodies authorized by the Board as well as those of the Ministère du Travail so that the list of accredited mediators may be obtained;

(2) in the case of a decision refusing or cancelling a contractor’s membership in the approved plan, the date of the decision and the remedies and time limits prescribed by the regulation and the names and addresses of the arbitration bodies authorized by the Board.”.

20. Section 69 is replaced by the following:

“**69.** The manager shall supply each contractor with a list of items to be checked for each class of building, approved by the Board for the purposes of the inspection prior to acceptance.”.

21. The following is inserted after section 69:

“**69.1.** Upon receipt of a building registration application from the beneficiary, the manager shall send to the beneficiary the explanatory document prepared by the Board on the application of this Regulation.”.

22. The following is inserted after section 77:

“**77.1.** The publicity for a guarantee plan must clearly distinguish between the compulsory guarantee plan and any other guarantee plan and mention that the compulsory plan is approved by the Régie du bâtiment du Québec and that it ensures financial protection in respect of part of the contractor’s legal and contractual obligations.”.

23. The following is inserted after the second paragraph of section 85:

“The manager may require interim financial statements where the manager has reason to believe that the solvency of the undertaking is jeopardized.”.

24. The following is inserted after section 88:

“**88.1.** The manager may also require from the contractor that the contractor supply the following information, if the manager considers it appropriate considering the complaints received or the financial situation of the undertaking:

(1) detailed cost estimates for the construction of a building;

(2) any document evidencing a change to the contract; and

(3) when the work concerns multifamily buildings held in divided co-ownership having more than 5 private portions, a copy of the list of sale prices of the co-ownership units, a list of the units sold, the amount of the advance payments collected or to be collected and, where a supervisory mandate has been entrusted to a member of a professional order, a copy of such a mandate.”.

25. Section 98 is amended by replacing “15” by “30”.

26. Section 107 is amended by replacing “15” by “30”.

27. Schedule II is amended

(1) by replacing “the National Building Code of Canada, the Canadian Electrical Code and the Plumbing Code” in paragraph 3 by “the Construction Code made under the Building Act”;

(2) by replacing “to the beneficiary and to the building professional” in paragraph 13 by “to the building professional, the syndicate, each known beneficiary and any new purchaser at the time of conclusion of the contract.”.

28. This Regulation comes into force on the one hundred and eightieth day following the date of its publication in the *Gazette officielle du Québec*.

It applies to the buildings for which the preliminary contract or the contract of enterprise is signed between a beneficiary and an accredited contractor and the construction work begins on or after that date.

Sections 1, 4, 7, 10, 16, 19, 23, 24, 25, 26 and paragraph 1 of section 27 apply within 15 days after that publication as regards current guarantee contracts.

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Notice

An Act respecting collective agreement decrees (R.S.Q., c. D-2)

**Industrie des services automobiles
— Saguenay–Lac-Saint-Jean
— Keeping of a system of registration
of the Comité paritaire
— Amendments**

Notice is hereby given, under paragraph *g* of section 22 of the Act respecting collective agreement decrees (R.S.Q., c. D-2), that the Minister of Labour has received, from the Comité paritaire de l'industrie des services automobiles de la région Saguenay-Lac Saint-Jean, a petition for approval of the “Draft Regulation to amend the Regulation respecting the keeping of a system of registration of the Comité paritaire de l'industrie des services automobiles de la région Saguenay-Lac Saint-Jean,” and that, under sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation, the text of which appears below, may be made by the Government upon the expiry of 45 days following this publication.

The chief purpose of the draft Regulation is to change the name of the Comité paritaire de l'industrie de l'automobile de la région Saguenay-Lac Saint-Jean.

During the consultation period, the impact of the amendments sought will be clarified. According to the 2004 annual report of the Comité paritaire de l'industrie

des services automobiles de la région Saguenay-Lac Saint-Jean, the Decree governs 556 employers, 81 artisans and 2,447 employees.

Further information may be obtained by contacting Ms. Annie Harvey, Direction des politiques, de la construction et des décrets, Ministère du Travail, 200, chemin Sainte-Foy, 6^e étage, Québec (Québec) G1R 5S1; telephone: (418) 646-2446; fax: (418) 528-0559, e-mail: annie.harvey@travail.gouv.qc.ca

Any interested person with comments to make is asked to send them in writing, before the expiry of the 45-day period, to the Deputy Minister of Labour, 200, chemin Sainte-Foy, 6^e étage, Québec (Québec) G1R 5S1.

JEAN-PAUL BEAULIEU,
Deputy Minister of Labour

Regulation to amend the Regulation respecting the keeping of a system of registration of the Comité paritaire de l'industrie des services automobiles de la région Saguenay-Lac Saint-Jean *

An Act respecting collective agreement decrees (R.S.Q., c. D-2, s. 22, par. *g*)

1. Section 1 of the Regulation respecting the keeping of a system of registration of the Comité paritaire de l'industrie des services automobiles de la région Saguenay-Lac Saint-Jean is amended:

(1) by substituting, in the first paragraph, “Decree respecting the automotive services industry in Chapais, Chibougamau, Lac Saint-Jean and Saguenay” for “Decree respecting garage employees in the Saguenay-Lac-Saint-Jean region”; and

(2) by adding, after subparagraph 3 of the first paragraph, after the word “hours”, the words “paid or replaced by a day off with the increase applicable”.

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

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* The Regulation respecting the keeping of a system of registration of the Comité paritaire de l'industrie des services automobiles de la région Saguenay-Lac-Saint-Jean was approved by Order in Council No. 1745 dated 1 August 1984 (1984, *G.O.*, 3244).