

Draft Regulations

Draft Regulation

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

Guarantee plan for new residential buildings — Amendment

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, appearing below, may be approved by the Government with or without amendment on the expiry of 45 days following this publication.

The amendments proposed in the draft Regulation are to correct problematic situations identified in the evaluation of the program and in common practice, and to review the basic parameters of the guarantee plan in response to special problems (i.e. cases of pyrrhotite in the Trois-Rivières region).

The most significant changes are related to the amendments made to the Building Act last December and are intended for the management of the manager of a guarantee plan that must, from now on, be a non-profit organization, penalties that may be imposed to the manager in case of failure of the manager to fulfil the manager's obligations and the creation and terms of application of the guarantee fund to ensure payment of claims in extraordinary situations. There is also the tariff of managers for costs incurred by the Board for the purposes of the Act and the Regulation, which include an amount of \$10.00 per certificate for the purpose of subsidizing bodies intended to protect consumers under the application of the Regulation.

The amounts that may be the subject of claims are adjusted 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 procedures are harmonized and simplified: periods of denunciation in accordance with the Civil Code of Québec, obligation of contractors to carry out the corrective work within a reasonable time and clarification of the rules of acceptance of the building.

Lastly, the guarantees required from contractors in favour of managers are increased and adjusted according to the risk they represent.

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 Claude Thibeault, Régie du bâtiment du Québec, 545, boulevard Crémazie Est, 9^e étage, Montréal (Québec) H2M 2V2; telephone: 514 864-1713; fax: 514 873-0094.

Any person wishing to comment on the draft Regulation may submit written comments within the 45-day period to Michel Beaudoin, President and Chief Executive Officer, Régie du bâtiment du Québec, 545, boulevard Crémazie Est, 3^e étage, Montréal (Québec) H2M 2V2.

LISE THÉRIAULT,
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, 19.5, 19.5.1, 19.5.2, 19.6 and 38, and s. 192)

1. The Regulation respecting the guarantee plan for new residential buildings (c. B-1.1, r. 8) is amended in section 2

(1) by striking out subparagraph *c* of subparagraph 1 of the first paragraph;

(2) by replacing “of combustible construction” in subparagraph *b* of subparagraph 2 of the first paragraph by “comprising no more than 4 private portions stacked one above the other” and by striking out subparagraph *c*;

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

“The guarantee plans are compulsory where the sale or construction contract entered into between the client and the contractor covers at least the following three elements: the foundation, the structure and the shell of the building. The shell of the building includes doors and windows as well as outside walls and the roof but not their sheathing.

Despite the foregoing, this Regulation does not apply where the contractor's client is a non-profit organization or a housing cooperative or bureau constituted under the Act respecting the Société d'habitation du Québec (R.S.Q., c. S-8) and the client receives for the purchase or construction of a new building financial assistance under a housing program implemented by the Société d'habitation du Québec under its constituting act, unless expressly provided to the contrary in the contract."

2. Section 9 is amended

(1) by replacing subparagraph *b* of paragraph 1 by the following:

"(b) completion of the work, where the beneficiary holds the ownership titles provided that no unjustified profit for the latter results therefrom;";

(2) by replacing subparagraph *b* of paragraph 2 by the following:

"(b) completion of the work provided that no unjustified profit for the latter results therefrom;";

3. Section 10 is amended

(1) by adding the following after "following acceptance" at the end of paragraph 1:

". For the implementation of the guarantee of completion of the work related to the building, the beneficiary sends the claim in writing to the contractor and sends a copy to the manager within a reasonable time after the date of the end of the work agreed upon at the inspection prior to acceptance;";

(2) by adding the following after "following acceptance" at the end of paragraph 2:

". For the implementation of the guarantee for repairs to apparent defects or poor workmanship of the building, the beneficiary sends the claim in writing to the contractor and sends a copy to the manager within a reasonable time after the date of the end of the work agreed upon at the inspection prior to acceptance;";

(3) by striking out "not to exceed 6 months" after "time" in paragraphs 3, 4 and 5;

(4) by adding the following after paragraph 5:

"(6) the relocation, moving and storage of the beneficiary's property, where applicable, during corrective work;

(7) the restoration of the building and repairs to damages caused by the corrective work."

4. Section 12 is amended by adding " , except the negative slope of the land" at the end.

5. Section 13 is amended

(1) by replacing "\$39,000" in paragraph 1 by "\$50,000";

(2) by replacing "\$5,500" in paragraph 2 by "\$6,000" and "\$85" by "\$95", "\$110" by "\$125", "\$140" by "\$160" and "\$170" by "\$190" in subparagraph *b* of paragraph 2;

(3) by replacing "\$260,000" in paragraph 3 by "\$300,000".

6. Section 14 is amended

(1) by replacing "\$39,000" in paragraph 1 by "\$50,000";

(2) by replacing "\$5,500" in paragraph 2 by "\$6,000" and "\$85" by "\$95", "\$110" by "\$125", "\$140" by "\$160" and "\$170" by "\$190" in subparagraph *b* of paragraph 2;

(3) by replacing "\$130,000" in subparagraph *b* of paragraph 3 by "\$200,000" and by striking out "without ever exceeding \$1,900,000".

7. Section 17 is amended by replacing the second and third paragraphs by the following:

"During the inspection, the beneficiary and the contractor identify the work that remains to be completed and the apparent defects and poor workmanship to be corrected. The beneficiary and the contractor agree during that inspection on a period that may not exceed 6 months for the performance of the completion and corrective work.

Where there is no known beneficiary at the end of the work, the inspection must be deferred."

8. Section 17.1 is amended by replacing subparagraph 1 of the first paragraph by the following:

"(1) not later than within 6 months following acceptance of the building, the beneficiary must send to the contractor in writing a claim for reimbursement of expenses relating to relocation, moving and storage of the beneficiary's property, along with vouchers, and send a copy to the manager. If the claim has not been settled within 15 days after the claim has been sent, the beneficiary notifies the manager in writing who must decide the claim within 30 days following receipt of the notice;".

9. Section 18 is amended

(1) by striking out “within the guarantee period of 1, 3 or 5 years, as the case may be,” in paragraph 1;

(2) by replacing “20” in paragraph 5 by “30” and by inserting “If the 30-day period cannot be complied with for exceptional reasons, the manager must so inform the beneficiary, the contractor and the Régie du bâtiment in writing; the manager must also provide reasons for the delay and indicate when the decision will be rendered.” after “concerned.”;

(3) by adding the following at the end of paragraph 6:

“Within 30 days following the expiry of the time period agreed upon with the beneficiary under paragraph 5, the manager must communicate the schedule for the corrective work to the beneficiary in writing.”.

10. Section 19.1 is amended by adding the following paragraph:

“Non-compliance with a period cannot be set up against the beneficiary if the circumstances make it possible to establish that the beneficiary was made to exceed the period following representations by the contractor or the manager.”.

11. Section 22 is amended by adding the following paragraph:

“The arbitrator must decide, if applicable, the amount of reasonable fees for a relevant expert’s report that the manager or contractor must reimburse to the beneficiary even when the beneficiary is not the plaintiff.”.

12. Section 25 is amended by adding “when it is formed and no longer under the control of the contractor and the declaration is made taking into account the plans and specifications mentioned in article 1070 of the Civil Code.” at the end of the definition of “acceptance of the common portions”.

13. Section 25.1 is amended by replacing paragraph 3 by the following:

“(3) the notice of the end of work sent to the syndicate by the contractor, at the time the syndicate was no longer controlled by the contractor, informed the syndicate of the end of the work and obligations with respect to acceptance;”.

14. The following is inserted after section 25.1:

“**25.2.** Acceptance of the common portions may be made by the syndicate still controlled by the contractor where

(1) a notice of the end of the work has been sent to each beneficiary known at the time of the end of the work and to subsequent purchasers of private portions thereafter, informing them of the syndicate’s obligations regarding acceptance of the common portions;

(2) a second notice has been sent by the contractor to the syndicate and each known beneficiary, at least 6 months after the end of the work, informing them that the syndicate controlled by the contractor would accept the common portions after a 30-day period unless the known beneficiaries agree among themselves on the selection of a building professional for acceptance of the common portions and that notice to that effect be given to the contractor;

(3) the 30-day period has elapsed, the syndicate is still controlled by the contractor and the known beneficiaries did not inform the contractor of the fact that they availed themselves of the right to choose the professional to proceed with acceptance; and

(4) the building professional chosen for acceptance of the common portions has in no way participated in the design or the construction work of the building.”.

15. Section 26 is amended

(1) by replacing subparagraph *b* of paragraph 1 by the following:

“(b) completion of the work, where the beneficiary holds the ownership titles, provided that no unjustified profit for the latter results therefrom;”;

(2) by replacing subparagraph *b* of paragraph 2 by the following:

“(b) completion of the work, provided that no unjustified profit for the latter results therefrom;”.

16. Section 27 is amended

(1) by adding the following after subparagraph *b* of paragraph 1:

“For the implementation of the guarantee of completion of the work of the building, the beneficiary sends the claim in writing to the contractor and sends a copy to the manager within a reasonable time after the date of the end of the work agreed upon at the time of acceptance;”;

(2) by adding the following at the end of paragraph 2:

“For the implementation of the guarantee for repairs to apparent defects or poor workmanship of the building, the beneficiary sends the claim in writing to the contractor and sends a copy to the manager within a reasonable time after the date of the end of the work agreed upon at the time of acceptance;”;

(3) by striking out “not to exceed 6 months” in paragraphs 3, 4 and 5 after “reasonable time”;

(4) by adding the following after paragraph 5:

“(6) the relocation, moving and storage of the beneficiary’s property, where applicable, during corrective work;

(7) the restoration of the building and repairs to damages caused by corrective work.”.

17. Section 29 is amended by adding “, except the negative slope of the land” at the end of subparagraph 9 of the first paragraph.

18. Section 30 is amended

(1) by replacing “\$39,000” in paragraph 1 by “\$50,000”;

(2) by replacing “\$5,500” in paragraph 2 by “\$6,000” and “\$85” by “\$95”, “\$110” by “\$125”, “\$140” by “\$160” and “\$170” by “\$190” in subparagraph *b* of paragraph 2;

(3) by replacing “\$260,000” in paragraph 3 by “\$300,000” and “\$2,600,000” by “\$3,000,000”;

(4) by replacing “\$130,000” in paragraph 4 by “\$200,000” and “\$2,600,000” by “\$3,000,000”.

19. Section 33 is amended

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

“If there is no known beneficiary at the end of the work of a private portion, the inspection of the private portion may be deferred.”;

(2) by adding the following after the last paragraph:

“During the inspection, the beneficiary and the contractor identify the work that remains to be completed and the apparent defects and poor workmanship to be corrected. The beneficiary and the contractor agree during that inspection on a period that may not exceed 6 months for the performance of the completion and corrective work.”.

20. Section 33.1 is amended by replacing subparagraph 1 of the first paragraph by the following:

“(1) not later than within 6 months following acceptance of the building, the beneficiary must send to the contractor, in writing, a claim for reimbursement of expenses relating to relocation, moving and storage of the beneficiary’s property, along with vouchers, and send a copy to the manager. If the claim has not been settled within 15 days after the claim has been sent, the beneficiary notifies the manager in writing who must decide the claim within 30 days following receipt of the notice;”.

21. Section 34 is amended

(1) by striking out “within the guarantee period of 1, 3 or 5 years, as the case may be,” in paragraph 1;

(2) by replacing “20” in paragraph 5 by “30” and by inserting “If the 30-day period cannot be complied with for exceptional reasons, the manager must so inform the beneficiary, the contractor and the Régie du bâtiment in writing; the manager must also provide the reasons for the delay and indicate when the decision will be rendered.” after “concerned.”;

(3) by adding the following after paragraph 6:

“Within 30 days following the expiry of the period agreed upon with the beneficiary under paragraph 5, the manager must communicate the schedule for the corrective work to the beneficiary in writing.”.

22. Section 35.1 is amended by adding the following paragraph:

“Non-compliance with a period cannot be set up against the beneficiary if the circumstances make it possible to establish that the beneficiary was made to exceed the period following representations by the contractor or the manager.”.

23. Section 38 is amended by adding the following:

“The arbitrator must decide, if applicable, the amount of reasonable fees for a relevant expert’s report that the manager or contractor must reimburse to the beneficiary even when the beneficiary is not the plaintiff.”.

24. Section 41 is amended by inserting “non-profit” before “legal person”.

25. Section 42 is amended by inserting “non-profit” before “legal person” in the part preceding paragraph 1 and by striking out paragraphs 8 to 10.

26. The following is inserted after section 42:

“**42.1.** The board of directors of the non-profit legal person must be composed of 11 persons likely, because of their activities and competence, to contribute specifically to the management of a guarantee plan.

Among the 11 persons, 5 are appointed by the member or members of the non-profit legal person and come from the field of construction.

The other persons are appointed by the Board, 1 person who is a building professional and 1 person from the financial sector chosen from a list of at least 3 persons for each class provided by the non-profit legal person, 2 persons representing consumers in the residential sector, including 1 representing consumers in the co-ownership sector, 1 person from the government sector, and 1 person independent from contractors’ associations, that is with no commercial, financial, professional or philanthropic relation with those associations.

The building professional and the person from the government sector must not have been an officer or in the employment of a building undertaking in the last 3 years and no member of the board of directors may be a member of the board of directors or an officer of a contractors’ association.

The term of the members is at least 1 year and may be renewed.

The board of directors must establish a governance and ethics committee and an internal audit committee. The participants in the work of the committees are chosen from among the members of the board of directors.

42.2. The internal by-law adopted by the non-profit legal person must be approved by the Board and include provisions on conflict of interest equivalent to the provisions made by articles 1310 and following of the Civil Code, and the rules governing the term and functions of the governance and ethics committee and the internal audit committee. The rules stipulate, among other things, that no contractor may have access, at any time, to personal information of a fiscal nature or to other information contained in the file of a peer.

Its fiscal year is the calendar year.

42.3. The non-profit legal person must file with the Board, 1 year after its authorization by the Board, the code of ethics applicable to the members of its board of directors.

42.4. The non-profit legal person must submit to the Board any change in its internal by-law and meet at all times the conditions related to its authorization. It must also inform the Board of any change involving a change to the documents filed with the Board.”.

27. Section 43 is amended

(1) by adding “and its letters patent” after “register” in subparagraph 1 of the first paragraph and by striking out “, social insurance number”;

(2) by striking out “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” in subparagraph 5 of the first paragraph;

(3) by striking out “business” in subparagraph 7 of the first paragraph;

(4) by replacing “règles de régie interne” in subparagraph 8 of the first paragraph of the French text by “règlements intérieurs”.

28. Section 44 is replaced by the following:

“**44.** If the authorized manager offers the financial guarantees provided for in Chapter V of the Building Act other than the guarantee plan of this Regulation, the manager must then manage the approved plan separately from his other business and, in particular, keep separate accounts and bank transactions.”.

29. Section 45 is amended by adding the following paragraph:

“The manager must also clearly identify in the financial statements the costs of the services rendered or received from related persons.”.

30. Section 47 is amended by replacing the first paragraph by the following:

“The manager must, before the beginning of the manager’s operations, pay a contribution of \$1,500,000.”.

31. Section 48 is amended

(1) by striking out the second paragraph paragraph;

(2) by adding “The excess must be comprised of the funds deposited in a separate bank account or of investments in one of the form provided for in section 46.”.

32. Section 50 is replaced by the following:

“50. The amount collected by a guarantee manager for each guarantee certificate must be at least

(1) \$1,050 for each guarantee certificate corresponding to detached, semi-detached or row-type single-family dwelling held or not in divided co-ownership or for each guarantee certificate corresponding to a multifamily building, from a duplex to a quintuplex, not held in divided co-ownership;

(2) \$1,550 for each guarantee certificate of a multifamily building comprising no more than 4 private portions stacked one above the other held in divided co-ownership.

The manager must immediately deposit in the reserve account 60% of any sum collected in consideration of a guarantee certificate issued under the approved plan.

The manager must also collect for each guarantee certificate an amount of \$300 that is then paid directly into the guarantee fund administered by the Board. The amount of \$300 is not included in the calculation of the amount to be paid into the reserve account of this section or in the calculation of the excess required in section 48.

The investment income from the reserve account must be paid into the reserve account. Following a claim, the amounts recovered by the manager from the contractors, insurers or others must also be paid into the reserve account.”.

33. Section 56 is amended by adding the following paragraphs:

“The manager’s actuary may take into account the insurance, reinsurance or other guarantees held by the manager in the estimate of the good and sufficient provision of this section but must not take into account the guarantee fund in Chapter III.I of this Regulation. The actuary’s analyses and conclusions in that regard and the copies of the insurance, reinsurance or other guarantees held by the manager must be submitted in the report mentioned in section 64.

The actuarial reserve thus calculated may not cover uses other than those identified in the first paragraph.”.

34. Section 58 is replaced by the following:

“58. The manager must furnish and maintain security in the amount of \$100,000. If the security is used in whole or in part, it must be replenished within 30 days or the manager must furnish a new security to the Board.”.

35. Section 60 is amended by adding “, or to pay all or part of the cost of the provisional management of the manager whose authorization has been withdrawn by the Board” at the end of the first paragraph.

36. Section 62 is revoked.

37. Section 63 is revoked.

38. Section 64 is amended

(1) by adding the following at the end of the second paragraph:

“The financial statements must detail the entries referred to in sections 49 to 51 of this Regulation. The Board may issue guidelines relating to the presentation and content of the financial statements.”;

(2) by inserting “that must cover sections 47 to 57 regarding solvency” after “report” in the fourth paragraph;

(3) by replacing the last paragraph by the following:

“Each year, a dynamic testing of the adequacy of the capital that meets the standards of the Canadian Institute of Actuaries must be prepared by the actuary mandated by the dynamic testing of the adequacy of the capital must correspond to the end of the fiscal year provided for in the first paragraph of section 42.2.”.

39. The following is inserted after section 64:

“64.1. The manager must provide interim financial statements to the Board not later than 15 days after 31 March, 30 June, 30 September and 31 December.

The manager must also offer his or her collaboration to the Board and provide all the documents and information required by the Board to ensure compliance with the Act and the Regulation.”.

40. The following is inserted after the heading of subdivision 7 of Division II of Chapter III:

“65.1. The manager must, to ensure the application of the approved plan, comply with the following management policies prepared by the Board:

- (1) policy on inspection;
- (2) policy on tariffs and recognition of performance;
- (3) policy on ethics;
- (4) policy on information to beneficiaries;
- (5) policy on the processing of claims;
- (6) policy on the dissemination of information on contractor performance;
- (7) policy on the management of reserve accounts;
- (8) any other policy deemed necessary by the Board to ensure the proper application of this Regulation.

The policies are adopted by the board of directors of the Board.”.

41. Section 70 is amended by adding the following paragraph:

“The manager must inform the Board immediately when a contractor refuses to comply with a decision of the manager or an arbitration award.”.

42. The following is inserted after Chapter III:

“CHAPTER III.I GUARANTEE FUND

74.1. The guarantee fund established under section 81.0.1 of the Building Act, introduced by section 12 of chapter 35 of the Statutes of 2011, is managed by the Board and serves to insure that the guarantee beneficiaries may be compensated by the manager when

- (1) it is shown that exceptional or unforeseen major claims are the source of a claim to a manager by the beneficiaries of the guarantee plan, that the guarantee manager has acted with diligence and judgment in activities related to the management of the guarantee plan and that the exceptional and major claims could result in non-compliance of the financial criteria of the Regulation; or
- (2) the manager is no longer able to take on the obligations of the guarantee plan, owing to the manager’s financial position and a provisional manager has been appointed.

The fund also guarantees the payment of administration costs or provisional manager’s fees in case of insolvency of a manager of the guarantee plan.

74.2. The guarantee fund comprises

- (a) the amount of \$300 mentioned in section 50 and collected by the manager in consideration of a guarantee certificate;
- (b) the investment income accrued in the guarantee fund;
- (c) the amounts recovered under subrogation; and
- (d) any other sum paid into the guarantee fund.

74.3. The manager must send to the Board all the amounts collected under section 74.2 on the last day of each month. The manager also sends to the Board each month the detail of the certificates issued and collected (name of the contractor, type and address of the building, sale price of the building or co-ownership unit, detail of the amounts paid to the manager under section 50).

74.4. The Board manages the guarantee fund.

The sums constituting the fund are held in trust and deposited with the Caisse de dépôt et placement du Québec according to the terms determined between the Board and the Fund.

Authorized investments are those provided for in section 53.

74.5. The management fees of the guarantee fund are payable by the fund.

74.6. A claim to the fund is forwarded to the Board by the authorized manager or the provisional manager appointed by the Board.

The application of a manager must include the information allowing to establish the exceptional or unforeseeable major nature of the claims, the real or apprehended impact on the solvency of the manager and the justification of the amount requested in relation with the claims of beneficiaries.

74.7. The Board may request any document or proof required for the analysis of the request and to determine compliance with the conditions of section 74.1.

After analysis of the claim, the Board renders a decision on the amount that the guarantee fund must pay to the manager.

The Board may, to that end, require all necessary information and make all the verifications required to render an informed decision. The Board gives the manager the opportunity to be heard.

Payment is made to the reserve account of the manager. It may be made in whole or progressively and be the subject of additional conditions, including a rendering of accounts from the guarantee manager or the provisional manager on the use of the sums received as compensation and the efforts made for recovery from contractors or suppliers responsible for the exceptional or unforeseeable major claims. The Board may require reimbursement of the amounts paid to the manager.

74.8. Guarantee managers who have obtained compensation from the guarantee fund must attempt to recover the amounts from the contractors, suppliers or any other person having responsibility in relation to the major and exceptional claims.

The Board is subrogated by operation of law in the rights of the managers and beneficiaries for the amounts paid by the fund.

74.9. The guarantee fund is financed by the sums mentioned in section 74.2 until the guarantee fund reaches 100 million dollars.

Where the guarantee fund reaches the amount referred to in the previous paragraph, the Board informs the guarantee managers and the managers suspend the collection of the amount of \$300 per certificate provided for in section 50.”

43. Section 84 is amended by replacing “\$35,000” in subparagraph 1 of the first paragraph by “\$70,000 or \$100,000 if the undertaking holds subclass licence 1.1.2”.

44. Section 85 is amended by replacing “\$40,000” in subparagraph 1 of the first paragraph by “\$55,000 or \$70,000 if the undertaking holds subclass licence 1.1.2,”.

45. Subsection 2 of Division I of Chapter IV is revoked.

46. Section 89 is amended by striking out the second paragraph.

47. Section 97 is amended by adding the following paragraph:

“A beneficiary who has entered into a contract for the sale or construction of a building referred to in section 2 with a contractor who is a member of an approved plan and who has not registered the building does not lose the benefit of the guarantee applicable to that building.”

48. The following is inserted after section 117:

“**117.1.** Where the applicant is the contractor and the arbitration body requests a provision for costs, the provision must be paid within 30 days of the request for provision, failing which, the application for arbitration is considered abandoned by the contractor.”.

49. Section 124 is amended by inserting the following after the first paragraph:

“The arbitrator must also decide, if applicable, on the amount of reasonable fees for a relevant expert’s opinion that the manager or contractor must reimburse to the beneficiary even when the beneficiary is not the plaintiff.”.

50. Section 127 is amended by striking out “entirely” after “devoted”.

51. Section 131 is replaced by the following:

“**131.** The arbitration body must make available on its website the integral text of arbitration awards made by its arbitrators within a period not exceeding 30 days.”.

52. The following is inserted after section 140:

“DIVISION IV.1 TARIFF

140.1. For the purposes of the Act and the Regulation, managers pay to the Board fees in the amount of \$50.00 per certificate issued by a manager, which include an amount of \$10.00 per certificate for the purpose of subsidizing services or bodies intended to protect the beneficiaries of the guarantee plan. The fees must be paid to the Board on the last day of each month.

140.2. The Board may order that the costs related to its intervention to put a stop to the non-compliance of the Act or regulation be reimbursed to the Board.

DIVISION IV.2 PENALTIES

140.3. The Board may, where the manager fails to comply with the requirements of paragraphs 4, 5 and 6 of section 18 and paragraphs 4, 5 and 6 of section 34 and in the case of non-execution of an arbitration award within a reasonable time, after prior notice to the manager and failure by the manager to provide reasons, impose a maximum financial penalty of \$25,000.

140.4. The Board may, where the manager fails to comply with the requirements of section 64, 64.1, 74.3 or 77.1, after prior notice to the manager, impose a maximum financial penalty of \$25,000.

140.5. The Board may, during an intervention required after the manager of a guarantee plan fails to comply with the management policies adopted by the board of directors of the Board, after prior notice to the manager, impose a maximum financial penalty of \$25,000.

140.6. The Board may, where the manager fails to comply with the requirements of sections 22 and 38, after prior notice to the manager and failure by the manager to provide reasons, impose a financial penalty equivalent to twice the amount set by the arbitrator.

140.7. The Board takes into account the frequency and seriousness of the failure of the manager to fulfil the manager's obligations to establish the amount of the administrative penalty.

140.8. The amounts of the administrative penalties are paid to the Board.”

53. Sections 141 to 144 are revoked.

54. Schedule 1 is revoked.

TRANSITIONAL

55. This Regulation comes into force on 1 January 2013. The Board may initiate the authorization process of a non-profit legal person to act as manager as soon as this Regulation is published under section 15 of the Regulations Act (R.S.Q., c. R-18.1) and as soon as it is authorized, the manager may start the accreditation process of contractors.

The indexation of the limits of the guarantee provided for in sections 5, 6 and 18 of the Regulation only applies to buildings whose construction work began after 1 January 2013, to the extent where the preliminary contract or contract of enterprise between a beneficiary and an accredited contractor is signed after that date.

56. Guarantee managers have 1 year from the date of coming into force of this Regulation to require from accredited contractors, on renewal of the accreditation, the new amounts of security provided for in sections 43 and 44.

57. A non-profit legal person filing its application for authorization within 30 days after the Regulation is published under section 15 of the Regulations Act may, to obtain the authorization, benefit from the following measures in respect of the application of criteria of solvency:

(1) the contribution required in section 30 of this Regulation may, during the first 8 years, be constituted of assets loaned by a third person and the amount of the loan or the balance of the loan does not have to be considered in the calculation of the liabilities of the guarantee manager; the loan must meet the following conditions:

(a) the loan may not be called in by the lender;

(b) the interest on the loan is payable annually and the interest rate on the loan is not more than 5%;

(c) in case of closure or discontinuance of activities by the manager, the loan and interest accrued, if applicable, will be repaid only if the other criteria of solvency of the manager provided for in the Regulation are met;

(2) the non-profit legal person may, until 1 January 2018, file with the Board a true copy of the text of any insurance or equivalent guarantee invoked to reduce by \$1,000,000 the amount of \$1,500,000 or invoked to reduce by \$1,000,000 the amount of the surplus required in the net assets provided for in section 48. The insurance or equivalent guarantee must be accepted by the Board.

58. To benefit from an authorization on 1 January 2013, an application for authorization must be filed within 30 days after the Regulation is published under section 15 of the Regulations Act.

2077

Draft Regulation

An Act respecting health services and social services (R.S.Q., c. S-4.2)

Conditions for obtaining a certificate of compliance and the operating standards for a private seniors' residence

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 respecting the conditions for obtaining a certificate of compliance and the operating standards for a private seniors' residence, appearing below, may be made by the Government on the expiry of 45 days following this publication.

The draft Regulation completes the subdivision of the Act respecting health services and social services with regard to the powers of a health and social services agency to certify private seniors' residences, by setting out rules for its application. It revokes the Regulation respecting the conditions for obtaining a certificate of