

Draft Regulations

Draft Regulation

Building Act
(chapter B-1.1)

Act to amend the Act respecting elections and referendums in municipalities, the Municipal Ethics and Good Conduct Act and various legislative provisions (2021, chapter 31)

Obligation to inspect residential buildings

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (chapter R-18.1), that the Regulation respecting the regulation of the obligation to inspect residential buildings, appearing below, may be approved by the Government, with or without amendment, on the expiry of 45 days following this publication.

The draft Regulation regulates the obligation of a person who acquires a building to have it inspected before purchase by a residential building inspector who holds a certificate referred to in section 86.8 of the Building Act (chapter B-1.1), enacted by section 10 of the Act mainly to regulate building inspections and divided co-ownership, to replace the name and improve the rules of operation of the Régie du logement and to amend the Act respecting the Société d'habitation du Québec and various legislative provisions concerning municipal affairs (2019, chapter 28).

It provides that, unless exempted, any person who wishes to purchase a used residential building whose year of construction was 25 years ago or more, or the private portion of such a building must make a written promise to purchase conditional on a mandatory inspection, carried out by an inspector certified by the Régie du bâtiment du Québec in accordance with the terms and conditions set out in the draft Regulation respecting the regulation of residential building inspections, published in the *Gazette officielle du Québec* on the same date.

The draft Regulation also provides that it is possible, after the promise to purchase is accepted and within the prescribed period, to waive the inspection in writing by completing the form provided for in the Regulation.

The draft Regulation provides that, should the promisor fail to send to the seller, within the period provided for, a document confirming that the inspection has been carried out or an inspection waiver form, the

seller may inform the promisor in writing that the seller is unilaterally terminating the contract entered into by accepting the promise to purchase.

Lastly, the draft Regulation lists the documents that must be sent to the officiating notary.

The draft Regulation has no significant financial impact on enterprises.

Further information on the draft Regulation may be obtained by contacting Ian Taillefer, Executive Assistant, Bureau du président-directeur général, Régie du bâtiment du Québec, 800, place D'Youville, 16^e étage, Québec (Québec) G1R 5S3; telephone: 418 473-5013; email: ian.taillefer@rbq.gouv.qc.ca.

Any person wishing to comment on the draft Regulation is requested to submit written comments within the 45-day period to Caroline Hardy, Acting Secretary General and Director of Institutional Affairs, Régie du bâtiment du Québec, 800, place D'Youville, 16^e étage, Québec (Québec) G1R 5S3; email: projet.reglement.commentaires@rbq.gouv.qc.ca.

ANDRÉE LAFOREST
Minister of Municipal Affairs and Housing

Regulation respecting the regulation of the obligation to inspect residential buildings

Building Act
(chapter B-1.1, s. 185, pars. 0.1, 19.9.1 and 38, and s. 192)

Act to amend the Act respecting elections and referendums in municipalities, the Municipal Ethics and Good Conduct Act and various legislative provisions (2021, chapter 31, s. 44)

DIVISION I PRELIMINARY

1. In this Regulation, unless the context indicates otherwise, the term “residential building” has the meaning assigned by the draft of BNQ Standard 3009-500, Practices for Inspecting a Residential Building, published by the Bureau de normalisation du Québec.

In addition,

“certified residential building inspector” means an inspector certified by the Régie du bâtiment du Québec in accordance with the terms and conditions set out in the draft Regulation respecting the regulation of residential building inspections published in Part 2 of the *Gazette officielle du Québec* of 23 February 2022; (*inspecteur en bâtiment d’habitation certifié*)

“used residential building” means a residential building that has been inhabited. (*bâtiment d’habitation usagé*)

DIVISION II

MANDATORY INSPECTION CLAUSE IN THE PROMISE TO PURCHASE

2. A promisor who intends to purchase a used residential building whose year of construction was 25 years ago or more, or the private portion of a used residential building must make a written promise to purchase that includes a clause to the effect that the promise is conditional on the residential building or private portion being inspected by a certified residential building inspector.

The promisor must, for that purpose, include in the promise to purchase the inspection clause provided for in Schedule I and may not waive the mandatory inclusion of that clause in the promise to purchase, in any way whatsoever.

DIVISION III

EXEMPTIONS

3. Subject to section 4, this Regulation does not apply when, at the time of the promise to purchase,

(1) the transfer of the used residential building or private portion of a used residential building is the subject of an exemption of the payment of transfer duties, pursuant to Chapter III of the Act respecting duties on transfers of immovables (chapter D-15.1);

(2) the real estate transaction is a repurchase between co-owners;

(3) the value of the used residential building is less than \$50,000, excluding the value of the land, according to the property assessment roll in force;

(4) the property assessment roll in force states that the used residential building is predominantly used as a hunting and fishing camp, forest camp or outfitter;

(5) the used residential building is not entered on the property assessment roll;

(6) the statement by the seller referred to in the Regulation respecting contracts and forms (chapter C-73.2, r. 2.1) or an affidavit by the seller, given to the promisor, indicates that the used residential building

(a) is not served by a public highway within the meaning of section 4 of the Highway Safety Code (chapter C-24.2) or private road open to public vehicular traffic, or does not legally have a right of access to a public highway or private road open to public vehicular traffic; or

(b) is not supplied with running water at all times and is not heated;

(7) the used residential building is the subject of a final judgment ordering its demolition;

(8) the promisor is a certified residential building inspector;

(9) the promisor is an employee of a public body within the meaning of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) and the promisor’s principal duty is to inspect buildings under the powers of supervision, inspection, review or investigation assigned to the public body by law;

(10) the promisor is an employee of a manager of a private guarantee plan for residential buildings or an employee of a manager of a guarantee plan authorized by the Régie du bâtiment du Québec in accordance with the Regulation respecting the guarantee plan for new residential buildings (chapter B-1.1, r. 8) and the promisor’s principal duty is to inspect buildings for the manager; or

(11) the promisor chooses to rely on the inspection report for the used residential building or private portion of a used residential building signed not more than 6 months beforehand by a holder of a residential building inspector certificate issued by the Régie du bâtiment du Québec in accordance with the terms and conditions set out in the draft Regulation respecting the regulation of residential building inspections published in Part 2 of the *Gazette officielle du Québec* of 23 February 2022, and provided by the seller.

4. In a situation provided for in section 3, the promisor must include, in the promise to purchase, the inspection exemption clause provided for in Schedule II. The promisor must also send to the officiating notary, as soon as an officiating notary is mandated, a copy of the promise to purchase, and any document showing that one of the situations applies.

DIVISION IV INSPECTION, WAIVER AND CONFIRMATION OF INSPECTION

5. The promisor must, after accepting the promise to purchase by the seller, have the used residential building whose year of construction was 25 years ago or more, or private portion of a used residential building inspected by a certified residential building inspector.

The promisor must then send to the seller, within 20 days of accepting the promise to purchase, a document signed by the inspector in which the inspector confirms having carried out the inspection and having given the inspection report to the promisor.

6. Despite section 5, the promisor may, after accepting the promise to purchase, but not later than 20 days of accepting the promise to purchase, waive the inspection condition set out in section 2.

To do so, the promisor must complete and sign the inspection waiver form provided for in Schedule III.

The promisor must send the waiver form to the seller, not later than 20 days of accepting the promise to purchase.

7. Should the promisor fail to send to the seller the document referred to in the second paragraph of section 5 confirming that the inspection has been carried out, within the period provided for in that section, or send the waiver form referred to in the second paragraph of section 6 within that period, the seller may, within 10 days of the expiry of that same period, inform the promisor in writing that the seller is unilaterally terminating the contract entered into by accepting the promise to purchase.

8. The promisor must send to the officiating notary a copy of the document referred to in the second paragraph of section 5 confirming that the inspection has been carried out or a copy of the waiver form referred to in the second paragraph of section 6.

Should the promisor fail to send any of those documents to the officiating notary, the seller may do so.

DIVISION V TRANSITIONAL AND FINAL

9. Where a written promise to purchase is sent to the seller before the date of coming into force provided for in section 10, the obligation to inspect a used residential building or private portion of a used residential building, provided for in this Regulation, does not apply.

10. This Regulation comes into force on 1 October 2025.

SCHEDULE I (section 2)

INSPECTION CLAUSE

Building inspection

This promise to purchase is conditional on the residential building or the private portion, as the case may be, being inspected by a residential building inspector certified by the Régie du bâtiment du Québec in accordance with the terms and conditions set out in the draft Regulation respecting the regulation of residential building inspections published in Part 2 of the *Gazette officielle du Québec* of 23 February 2022.

SCHEDULE II (section 4)

INSPECTION EXEMPTION CLAUSE

The promisor declares that the used residential building or private portion of a used residential building covered by the promise to purchase is not subject to the obligation to inspect before purchase because

— the transfer of the residential building or private portion is the subject of an exemption of the payment of the transfer duties, pursuant to Chapter III of the Act respecting duties on transfers of immovables (chapter D-15.1);

— the real estate transaction is a repurchase between co-owners;

— the value of the residential building is less than \$50,000, excluding the value of the land, according to the property assessment roll in force;

— the property assessment roll in force states that the residential building is predominantly used as a hunting and fishing camp, forest camp or outfitter;

— the residential building is not entered on the property assessment roll;

— the statement by the seller referred to by the Regulation respecting contracts and forms (chapter C-73.2, r. 2.1) or an affidavit by the seller, given to the promisor, indicates that the residential building

(a) is not served by a public highway within the meaning of section 4 of the Highway Safety Code (chapter C-24.2) or private road open to public vehicular traffic, or does not legally have a right of access to a public highway or private road open to public vehicular traffic; or

(b) is not supplied with running water at all times and is not heated;

— the residential building is the subject of a final judgment ordering its demolition;

— the promisor holds a residential building inspector certificate issued by the Régie du bâtiment du Québec in accordance with the terms and conditions set out in the draft Regulation respecting the regulation of residential building inspections published in Part 2 of the *Gazette officielle du Québec* of 23 February 2022;

— the promisor is an employee of a public body within the meaning of the Act respecting Access to documents held by public bodies and the Protection of personal information (chapter A-2.1) and the promisor's principal duty is to inspect buildings under the powers of supervision, inspection, review or investigation assigned to the public body by law;

— the promisor is an employee of a manager of a private guarantee plan for residential buildings or an employee of a manager of a guarantee plan authorized by the Régie du bâtiment du Québec in accordance with the Regulation respecting the guarantee plan for new residential buildings (chapter B-1.1, r. 8) and the promisor's principal duty is to inspect buildings for the manager; or

— the promisor chooses to rely on the inspection report for the residential building or private portion signed not more than 6 months beforehand by a holder of a residential building inspector certificate issued by the Régie du bâtiment du Québec in accordance with the terms and conditions set out in the draft Regulation respecting the regulation of residential building inspections published in Part 2 of the *Gazette officielle du Québec* of 23 February 2022, and provided by the seller.

SCHEDULE III (section 6)

INSPECTION WAIVER

I, the undersigned, (name of promisor), domiciled at (address of promisor's domicile), declare the following:

1. On (date on which the promise to purchase was signed), I signed a promise to purchase:

— a used residential building whose year of construction was 25 years ago or more;

or

— the private portion of a used residential building whose year of construction was 25 years ago or more.

Address of the building or the private portion:

Lot number:

Description of the building or private portion:

Name and address of the seller:

2. On (date on which the promise to purchase was accepted), the seller accepted the promise to purchase referred to in paragraph 1.

3. Despite the consequences and risks inherent in the purchase of that building or private portion without prior inspection by a building inspector certified by the Régie du bâtiment du Québec in accordance with the terms and conditions set out in the draft Regulation respecting the regulation of residential building inspections published in Part 2 of the *Gazette officielle du Québec* of 23 February 2022, I waive its inspection.

4. I confirm having read the terms of this waiver and having understood the scope.

And I have signed, in (name of the town or city), on (indicate the date)

Signature of promisor

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