

Summary of Draft Regulations proposed under the New Home Construction Licensing Act, 2017

Table of Contents

Summary of Draft Regulations Proposed	3
Part 1. Code of Ethics.....	5
General Obligations	5
Licensee to ensure compliance.....	5
Honesty and Integrity	5
No Discrimination	5
Protection of the public	5
Conscientious and Competent Service, etc.	5
Financial Responsibility.....	5
Unprofessional Conduct, etc.....	5
Intimidation, coercion, etc.....	5
Duty to comply with the law.....	6
Duty to report charges and findings of guilt.....	6
Misrepresentation	6
Information provided to regulatory authority.....	6
Forms and documents	6
Business Records.....	6
Obstruction of complaints	6
Disclosure, marketing and false advertising.....	6
Fees and compensation	7
Confidentiality.....	7
Illegal construction or sale of new homes	7
Part 2. Discipline Committee and Appeals Committee.....	8

Composition of Committees	8
Composition and appointment of committees	8
Chairs and vice-chairs	9
Oath or affirmation of office.....	9
Procedure of Discipline Committee	9
Limitation	9
Panel.....	9
Parties	10
Notice of hearing	10
Disclosure of evidence	10
Disclosure from closed hearing	11
Notice of decision to complainant.....	11
Notice of appeal rights.....	11
Appeals	11
Commencement of appeals.....	12
Panel.....	12
Parties before appeals committee.....	13
Proceedings before appeals committee.....	13
Part 3. Amendment to the General Regulation to add provisions regarding the public registry (Ontario Builder Directory)	14

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Introduction

The New Home Construction Licensing Act, 2017 (“NHCLA”) was passed in December 2017 by the Government of Ontario, as a schedule to the Strengthening Protection for Ontario Consumers Act, 2017 (“SPOCA”). The legislation was intended to modernize the administration of new home warranties and other protections, as well as the regulation of new home builders and vendors in Ontario. It separates the existing functions of the Tarion Warranty Corporation (“Tarion”) into two administrative authorities: a warranty authority and a regulatory authority.

This document provides a plain language guide that summarizes the proposed regulation to be made under the NHCLA:

- Code of Ethics
- Discipline Committee and Appeals Committee

The plain language guide also summarizes the amendment to the general regulation to be made under the NHCLA:

- Amendment to O. Reg. 626/20 (General) to prescribe certain conditions on a licence that the registrar must post on the Home Construction Regulatory Authority’s (“HCRA”) builder directory.

The proposed regulations will provide a framework that would address complaints to better protect consumers and hold licensees accountable for their actions.

The ministry reviewed multiple codes of ethics from other administrative authority legislation as precedents including;

- The Condominium Management Services Act, 2015
- The Motor Vehicle Dealers Act, 2002
- Real Estate and Business Brokers Act, 2002
- Funeral, Burial and Cremation Services Act, 2002

The ministry also reviewed code of ethics from other sources including;

- Local associations of the Ontario Home Builders’ Association (OHBA) such as the Building Industry and Land Development Association (BILD)

- Canada Home Builders' Association (CHBA)
- Other provinces in Canada
- Regulatory colleges (including health regulatory colleges, Ontario College of Trades, College of Early Childhood Educators, etc...)

Notice

The Code of Ethics, Discipline Committee and Appeals Committee are summaries of the content of a draft Minister's regulation proposed under the New Home Construction Licensing Act, 2017.

The Amendment to the General Regulation is a summary of an amendment to a Lieutenant Governor in Council regulation under the New Home Construction and Licensing Act, 2017.

This summary is intended to facilitate dialogue about the proposed regulations. Should the decision be made to proceed with the proposals, the comments received during this consultation will be considered during the preparation of the final regulations.

Part 1. Code of Ethics

The NHCLA allows for the establishment of a code of ethics that promotes professionalism, reliability and quality of services by licensees.

General Obligations

Builders and vendors of new homes (licensees) must comply with the NHCLA and its regulations.

Licensee to ensure compliance

It is the responsibility of the licensee to ensure that its employees, directors, officers, principals, agents and independent contractors carry out their duties in compliance with the NHCLA and its regulations.

Honesty and Integrity

In carrying on business, a licensee must treat every person that they deal with honestly and with integrity.

No Discrimination

While conducting business, a licensee must treat all persons without discrimination, harassment or bullying and provide reasonable accommodation for persons with disabilities.

Protection of the public

The health and safety of all persons must be protected, and it is the licensee's responsibility to ensure this when carrying on business.

Conscientious and Competent Service, etc.

A licensee must provide conscientious, courteous and responsive service and exemplify reasonable knowledge, skill, judgement and competence when carrying on business.

Financial Responsibility

A licensee must be financially responsible when carrying on business.

Unprofessional Conduct, etc.

A licensee must not engage in any act or omission that could reasonably be regarded as disgraceful, dishonourable, unprofessional or unbecoming a licensee or likely to bring the sector into disrepute.

Intimidation, coercion, etc.

A licensee must not intimidate or coerce any person or subject any person to undue pressure.

Duty to comply with the law

It is an obligation of the licensee to comply with the laws of every jurisdiction in which the licensee carries on business.

Duty to report charges and findings of guilt

A licensee must promptly report to the registrar in writing upon becoming aware that any of the following persons have been charged with or found guilty of an offence:

1. The licensee
2. A director, officer, principal or partner of the licensee.

This section applies to charges and findings of guilt in respect of types of offences that a licensee is required to disclose as part of an application for a licence or renewal of a licence, regardless of when the charge or finding of guilt happened.

Misrepresentation

When carrying on business, a licensee shall not engage in or be a party to misrepresentation.

Information provided to regulatory authority

All of the information provided to the regulatory authority must be accurate. The information or documents must not be false, misleading or deceptive.

Forms and documents

A licensee must ensure that it uses all forms and documents that are required by law in the course of carrying out business.

Business Records

In addition to what is required under the NHCLA and its regulations, a licensee must make and keep all records that the licensee reasonably requires to conduct business.

Obstruction of complaints

A licensee would be prohibited from obstructing or attempting to obstruct any person from making a complaint to the registrar.

A licensee would be prohibited from obstructing or attempting to obstruct the registrar from inquiring about a complaint.

Disclosure, marketing and false advertising

A licensee must be clear and truthful when describing the features, benefits and prices connected with a new home and when explaining the products, services, programs and prices connected with that new home.

A licensee must ensure that all representations, including advertising, made by or on behalf of the licensee in connection with the new home are not false, misleading, deceptive or illegal.

Fees and compensation

A licensee must not indicate to any person, either directly or indirectly, that remuneration or other costs are fixed or approved by the regulatory authority, the warranty authority or any government authority. However, this does not apply with respect to the fees, costs or other charges set by: the regulatory authority under section 29 of the NHCLA; the warranty authority under the Ontario New Homes Warranties Plan Act (“ONHWPA”) or its regulations or under its bylaws; or any government authority.

Confidentiality

A licensee must not disclose any confidential information to a third party without prior written consent of the person to whom the information relates, except as authorized or required by law.

Illegal construction or sale of new homes

A licensee must not participate in or facilitate the construction or sale of a new home by a builder or vendor who is not licensed.

A licensee must not participate in or facilitate a vendor’s sale of a new home, or a vendor’s offer to sell a new home, where the vendor has not received confirmation that the home qualifies for enrolment in the Plan as required by clause 10.1 (e) of the ONHWPA.

A licensee must not participate in or facilitate a builder’s construction of a new home, or a builder’s entering into a contract with an owner of land for the construction of a new home on the land, where the builder has not received confirmation that the home has been enrolled in the Plan as required by clause 10.2 (3) (f) of the ONHWPA.

Part 2. Discipline Committee and Appeals Committee

This regulation identifies the composition, appointment and procedures of the discipline committee and appeals committee which will be established to hear and determine if a licensee has failed to comply with the code of ethics.

Composition of Committees

Composition and appointment of committees

The discipline committee and appeals committee must consist of at least 5 members. At least one of the members must never have been:

- a) a licensee;
- b) a registrant under ONHWPA;
- c) a shareholder, officer, director, employee or principal of a person described in (a) or (b);
- d) an interested person in respect of a person described in (a) or (b);
- e) an officer, director or employee of a trade association that represents licensees or the interests of licensees;
- f) a member of the board of the regulatory authority; or
- g) a member of the board of the warranty authority.

A person may be appointed as both a member of the discipline committee and appeals committee.

The board of the regulatory authority cannot appoint a member of its board as a member of the discipline committee or the appeals committee.

An appointment to the discipline committee or appeals committee expires at the end of either the day specified in the appointment (if specified) or the day before the third anniversary of the day the appointment took effect.

A member of the discipline committee or appeals committee is eligible for reappointment after the end of their term.

If there is cause, the board of the regulatory authority may at any time terminate the appointment of a member, chair or vice-chair of the discipline or appeals committee.

If the term of the appointment of a member of the discipline committee or appeals committee expires before the hearing is completed or a final order is issued, the term of that member's appointment is deemed to continue only for the purposes of completing the hearing and participating in the issuing of the final order. This does not apply if an appointment is terminated for cause.

Chairs and vice-chairs

For each of the discipline committee and appeals committee, the board of the regulatory authority will appoint one chair and at least one vice-chair from amongst the members of the committee.

For each of the discipline committee and appeals committee, the board of the regulatory authority may also appoint additional vice-chairs from amongst the members of the committee.

The vice-chair of a committee may act as chair if the chair makes a request or if the chair is absent or unable to act. Where there are multiple vice-chairs, the chair may specify which vice-chair should act on their behalf, or if no vice-chair has been specified by the chair, the vice-chair who has the greater experience as vice-chair would act on the chair's behalf.

Oath or affirmation of office

Every individual that is appointed as a member, vice chair or chair of the discipline committee or appeals committee must take and sign an oath or affirmation prior to beginning their duties.

Procedure of Discipline Committee

Limitation

The registrar of the regulatory authority must not refer a complaint to the discipline committee if two years have passed since the registrar first knew about the facts on which the complaint is based.

Panel

A complainant can file a complaint with the regulatory authority ("HCRA"), and the matter is reviewed by the registrar. The registrar can refer the matter to a discipline committee, in whole or in part, to determine if a licensee has failed to comply with the code of ethics.

However, an inspection conducted by an inspector of the regulatory authority could identify a potential breach in the code of ethics. The inspector would notify the registrar of the results of the inspection and the registrar could then refer the matter to a discipline committee.

When a matter is referred to the discipline committee, the chair of the committee must assign a panel to hear and make a determination on the matter.

Subject to subsection 4.2.1 (1) of the Statutory Powers Procedure Act (which permits the chair of the discipline committee to decide if a proceeding should be heard by a panel of one), the panel must be composed of at least three members of the discipline committee.

If the panel is composed of three or more members of the discipline committee, at least two of the members of the panel must be licensees or officers or directors of a licensee. At least one of the members must never have been:

- i. a licensee;
- ii. a registrant under ONHWPA,
- iii. a shareholder, officer, director, employee or principal of a person described in (i) or (ii);
- iv. an interested person in respect of a person described in (i) or (ii);
- v. an officer, director or employee of a trade association that represents licensees or the interests of licensees;
- vi. a member of the board of the regulatory authority; or
- vii. a member of the board of the warranty authority.

If a builder is the subject of a proceeding, then at least one of panel members must be a builder.

If a vendor is the subject of a proceeding, then at least one of the panel members must be a vendor.

Parties

The parties to a proceeding before the discipline committee are the licensee who is the subject of the proceeding, the regulatory authority and anyone else added as a party by the discipline committee.

Notice of hearing

The discipline committee must give the parties to a proceeding at least 45 days notice of a hearing by the committee.

Disclosure of evidence

A party who intends to provide evidence at a hearing of the discipline committee must disclose the following to every other party

- i. In the case of written or documentary evidence: a copy of the evidence.
- ii. In the case of oral evidence of a witness: the identity of the witness and a written statement containing the substance of the witness' anticipated oral evidence.
- iii. In the case of oral evidence of an expert: the identity of the expert and a copy of a written report signed by the expert containing the substance of the expert's anticipated oral evidence.
- iv. In the case of evidence that is not oral: written or documentary evidence, a written description of the evidence.

Where the evidence referred to above is tendered by the regulatory authority, the regulatory authority must disclose the evidence to every other party no later than 30 days before the date the hearing begins.

Where the evidence referred to above is tendered by a party that is not the regulatory authority, the party must disclose the evidence to the regulatory authority and every other party no later than 15 days before the date the hearing begins.

A party who intends to provide written or documentary evidence, or other evidence that is not oral evidence, at a hearing to the discipline committee must give the other party a reasonable opportunity to examine the original evidence before the hearing.

Disclosure from closed hearing

If a hearing is closed to the public, the committee may order that the evidence and submissions that are made at the hearing also not be disclosed to any member of the public.

Notice of decision to complainant

If a proceeding before the discipline committee is as a result of a complaint, the committee must send the complainant a copy of its final order, including the reasons (if any), at the same time that the committee sends each party to the proceeding the same documentation as required by law.

If the discipline committee determines that a licensee failed to comply with the code of ethics, it may order a licensee to:

- Take further educational courses;
- Fund educational courses for persons that the licensee employs or to arrange and fund the courses;
- Impose a fine up to a maximum of \$25,000 to be paid to the regulatory authority;
- Suspend or postpone the taking of further educational courses, the funding or the funding and arranging of educational courses or the imposition of the fine for the period and upon the terms the committee designates; or
- Fix and impose costs that the licensee is required to pay to the regulatory authority.

Notice of appeal rights

When the discipline committee sends a copy of its final order to a party (or the party's representative) as required by law, it must also send a notice outlining the right to appeal to the appeals committee and the procedures applicable to an appeal.

Appeals

Commencement of appeals

A party can commence an appeal within 30 days after the discipline committee sends notice of the order being appealed. This is done by delivering the following documents to the appeals committee, the discipline committee and the parties to the appeal:

- A notice of appeal (that sets out the parties to the appeal, the order being appealed, the grounds for the appeal and the relief being sought).
- The required filing fee set by the regulatory authority.

When an appeal is commenced, the discipline committee must, at the earliest opportunity, forward the record of the disciplinary committee proceeding to the appeals committee.

Panel

When a matter is appealed to the appeals committee, generally, the chair of the committee must assign a panel to hear and determine the appeal.

Subject to subsection 4.2.1 (1) of the Statutory Powers Procedure Act (which permits the chair of the appeals committee to decide if a proceeding should be heard by a panel of one), the panel must be composed of at least three members of the appeals committee.

If the panel is composed of three or more members of the appeals committee, at least two of the members of the panel must be licensees or officers or directors of a licensee. At least one of the members must never have been:

- i. a licensee;
- ii. a registrant under ONHWPA,
- iii. a shareholder, officer, director, employee or principal of a person described in (i) or (ii);
- iv. an interested person in respect of a person described in (i) or (ii);
- v. an officer, director or employee of a trade association that represents licensees or the interests of licensees;
- vi. a member of the board of the regulatory authority; or
- vii. a member of the board of the warranty authority.

If a builder is the subject of a proceeding, then at least one of panel members must be a builder.

If a vendor is the subject of a proceeding, then at least one of the panel members must be a vendor. Subject to subsection 4.2.1 (1) of the Statutory Powers Procedure Act (which permits the chair of the appeals committee to decide if a proceeding should be heard by a panel of one), the panel must be composed of at least three members of the appeals committee.

A person who was a member of the discipline committee panel for the order being appealed is not permitted to serve on the appeals committee panel that hears and determines that appeal.

Parties before appeals committee

Parties to the appeal are the appellant, the other persons who were parties to the proceeding before the discipline committee and any other person added as a party by the appeals committee.

Proceedings before appeals committee

The rules applicable to the discipline committee about notice of hearing, disclosure of evidence, disclosure from closed hearings and notice of final orders also apply, with necessary modifications, to the appeals committee.

Part 3. Amendment to the General Regulation to add provisions regarding the public registry (Ontario Builder Directory)

The registrar must make information regarding conditions on licences available to the public on the regulatory authority's website, namely the following:

1. Conditions on a licence to which an applicant or licensee consents.
2. Conditions on a licence that the registrar applies. (This could include conditions that the registrar applies when approving an applicant's licence or when approving the renewal of a licence, or conditions that the registrar applies to a licence at any other time).
3. Conditions on a licence that the Licence Appeal Tribunal orders.