

Condominium Management Services Act, 2015

S.O. 2015, CHAPTER 28 SCHEDULE 2

Consolidation Period: From December 14, 2017 to the [e-Laws currency date](#).

Last amendment: 2017, c. 33, Sched. 5, s. 1.

Legislative History: 2015, c. 28, Sched. 2, s. 79; 2017, c. 20, Sched. 8, s. 147; 2017, c. 33, Sched. 5, s. 1.

CONTENTS

PART I INTERPRETATION

[1.](#) Interpretation

PART II ADMINISTRATION DELEGATION

[2.](#) Designation of administrative authority
[3.](#) Administrative agreement
[4.](#) Policy directions
[5.](#) Compliance by administrative authority
[6.](#) Review
[7.](#) Conflict
[8.](#) Revocation of designation
[9.](#) Condition precedent for exercise of certain powers

ADMINISTRATIVE AUTHORITY

[10.](#) Criteria and directives re board members
[11.](#) Board appointments
[12.](#) Change in number of directors
[13.](#) Appointment of chair
[14.](#) Public access to corporate by-laws
[15.](#) Employees
[16.](#) Not Crown agency
[17.](#) No personal liability, Crown employee
[18.](#) No Crown liability
[19.](#) Indemnification of the Crown
[20.](#) No personal liability, board members and others
[21.](#) Not public money
[22.](#) Audit
[23.](#) Reports

POWERS AND DUTIES OF ADMINISTRATIVE AUTHORITY

[24.](#) Additional powers
[25.](#) Change to objects or purposes
[26.](#) Right to use French
[27.](#) Advisory councils, advisory process
[28.](#) Duty to inform Minister
[29.](#) Advice of administrative authority
[30.](#) Forms and fees

MISCELLANEOUS

[31.](#) Director
[32.](#) Registrar
[33.](#) Offences, administrative authority

PART III LICENSING

[34.](#) Prohibition, condominium management services
[35.](#) Exemptions
[36.](#) Notification of licence required
[37.](#) Application for licence
[38.](#) Conditions of licence

39.	Refusal without hearing
40.	Refusal with a hearing
41.	Notice re: refusal, suspension, etc.
42.	Continuation pending renewal
43.	Immediate suspension
44.	Further application

PART IV

REGULATION OF LICENSEES

45.	Notice of changes to registrar
46.	Notice to registrar re corporations
47.	Notice of issue or transfer of shares
48.	Contract required
49.	Principal condominium manager
50.	Financial statements
51.	Restrictions on employees
52.	Disclosure of interest
53.	Prohibition re: proxy instruments
54.	Duty re records
55.	False information
56.	No counselling contraventions

PART V

COMPLAINTS, DISCIPLINE, INSPECTIONS, INVESTIGATIONS AND ENFORCEMENT

COMPLAINTS AND DISCIPLINE

57.	Complaints
58.	Discipline proceedings

INSPECTIONS AND INVESTIGATIONS

59.	Inspectors
60.	Inspections without warrant
61.	Appointment of investigators
62.	Investigations with warrant
63.	Seizure of things not specified
64.	Searches in exigent circumstances

ORDERS

65.	Freeze order
66.	Freeze orders, non-licensees
67.	Compliance orders

OFFENCES

68.	Offence
69.	Orders for compensation, restitution
70.	Default in payment of fines
71.	Liens and charges

PART VI

GENERAL

72.	Confidentiality
73.	Service
74.	Fees
75.	Certificate as evidence
76.	Information concerning licensees

PART VII

REGULATIONS

77.	Minister's regulations
78.	Lieutenant Governor in Council regulations

PART I INTERPRETATION

Interpretation

1 (1) In this Act,

“administrative agreement” means the agreement described in subsection 3 (1); (“accord d’application”)

“administrative authority” means the corporation that the Lieutenant Governor in Council has designated as such under subsection 2 (1); (“organisme d’application”)

“client” means a condominium corporation to which a condominium management provider or a condominium manager provides condominium management services; (“client”)

“common expenses” has the same meaning as in the *Condominium Act, 1998*; (“dépenses communes”)

“condominium corporation” means a “corporation” as defined in the *Condominium Act, 1998*; (“association condominiale”)

“condominium management provider” means a corporation, partnership, sole proprietor, association or other organization or entity that, on behalf of others and for compensation or reward or the expectation of such, provides condominium management services or holds himself, herself or itself out as such; (“fournisseur de services de gestion de condominiums”)

“condominium management services” means any of the following services provided to or on behalf of a condominium corporation:

1. Collecting or holding contributions to the common expenses or other amounts levied by, or payable to, the corporation.
2. Exercising delegated powers and duties of the corporation or its board of directors, including,
 - i. making payments to third parties on behalf of the corporation,
 - ii. negotiating or entering into contracts on behalf of the corporation, or
 - iii. supervising employees or contractors hired or engaged by the corporation,

but does not include an activity excluded by the regulations; (“services de gestion de condominiums”)

“condominium manager” means an individual who has the prescribed qualifications to be licensed as a condominium manager under this Act and who provides condominium management services to,

- (a) a client on behalf of a condominium management provider, or
- (b) a client directly, if authorized by a regulation made for the purposes of subsection 51 (3); (“gestionnaire de condominiums”)

“delegated provisions” means the provisions of this Act and the regulations for which the administration is delegated to the administrative authority under subsection 2 (2); (“dispositions déléguées”)

“employ” means to employ, appoint, authorize or otherwise arrange to have another person act on one’s behalf, including as an independent contractor; (“employer”)

“equity share” means, in respect of a corporation, a share of a class or series of shares of a corporation that carries a voting right either under all circumstances or under circumstances that have occurred and are continuing; (“action participante”)

“inspector” means the registrar or an inspector appointed under subsection 59 (2); (“inspecteur”)

“investigator” means an investigator appointed under subsection 61 (1); (“enquêteur”)

“licensee” means a condominium management provider or condominium manager who is licensed under this Act; (“titulaire de permis”, see also “agréé”)

“Minister” means the Minister of Government and Consumer Services or whatever other member of the Executive Council to whom the responsibility for the administration of this Act is assigned under the *Executive Council Act*; (“ministre”)

“officer” includes,

- (a) the chair and any vice-chair of the board of directors, the president and any vice-president, the secretary and assistant secretary, the treasurer and assistant treasurer and the general manager and assistant general manager of a corporation,
- (b) a partner or general manager and assistant general manager of a partnership, and
- (c) any other individual designated as an officer by by-law or resolution of an organization or any other individual who performs functions normally performed by an individual occupying such office; (“dirigeant”)

“owner” has the same meaning as in the *Condominium Act, 1998*; (“propriétaire”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“principal condominium manager” means the principal condominium manager designated under section 49; (“gestionnaire principal”)

“purchaser of a unit” has the same meaning as in the *Condominium Act, 1998*; (“acquéreur d’une partie privative”)

“regulations” means regulations made under this Act; (“règlements”)

“Tribunal” means the Licence Appeal Tribunal established under the *Licence Appeal Tribunal Act, 1999* or whatever other tribunal is prescribed; (“Tribunal”)

“unit” has the same meaning as in the *Condominium Act, 1998*. (“partie privative”)

Associated persons

- (2) For purposes of this Act, one person is associated with another person in any of the following circumstances:
1. One person is a corporation of which the other person is an officer or director.
 2. One person is a partnership of which the other person is a partner.
 3. Both persons are partners of the same partnership.
 4. One person is a corporation that is controlled directly or indirectly by the other person.
 5. Both persons are corporations and one corporation is controlled directly or indirectly by the same person who controls directly or indirectly the other corporation.
 6. Both persons are members of the same voting trust relating to shares of a corporation.
 7. Both persons are associated within the meaning of paragraphs 1 to 6 with the same person.

PART II ADMINISTRATION

DELEGATION

Designation of administrative authority

2 (1) The Lieutenant Governor in Council may, by regulation designate a not-for-profit corporation without share capital incorporated under the laws of Ontario as the administrative authority for the purposes of this Act.

Delegation of administration

(2) If the Lieutenant Governor in Council designates a corporation as the administrative authority, the administration of all provisions of this Act and the regulations, except for this Part and Part VII, is delegated to the authority and the authority shall carry out the administration of the delegated provisions.

Administrative agreement

3 (1) The Lieutenant Governor in Council shall not designate a corporation under subsection 2 (1) as the administrative authority until the Minister and the corporation have entered into an agreement to be known as the administrative agreement.

Contents

(2) The administrative agreement shall include, at a minimum, terms related to the following matters with respect to the administrative authority:

1. The governance of the authority.
2. All matters that the Minister considers necessary for the authority to carry out the administration of the delegated provisions.
3. The maintenance by the authority of adequate insurance against liability arising out of the carrying out of its powers and duties under this Act or the regulations.

Compliance with operating principle

(3) The administrative agreement shall require the administrative authority to comply with the principle of promoting the protection of the public interest.

Amendment by Minister

(4) Subject to section 9, the Minister may unilaterally amend the administrative agreement, after giving the administrative authority the notice that the Minister considers reasonable in the circumstances.

Policy directions

4 (1) Subject to section 9, the Minister may issue policy directions to the administrative authority related to its powers and duties under this Act or the regulations, after giving the authority the notice that the Minister considers reasonable in the circumstances.

Part of the administrative agreement

(2) The policy directions are deemed to form part of the administrative agreement.

Compliance

(3) The administrative authority shall comply with the policy directions and shall implement measures to do so.

Compliance by administrative authority

5 In carrying out its powers and duties under this Act or the regulations, the administrative authority shall comply with the administrative agreement, this Act, the regulations and other applicable law.

Review

6 (1) The Minister may,

- (a) require that policy, legislative or regulatory reviews related to the powers and duties of the administrative authority under this Act, the regulations or the administrative agreement be carried out,
 - (i) by or on behalf of the authority, or
 - (ii) by a person or entity specified by the Minister; or
- (b) require that reviews of the administrative authority, of its operations, or of both, including, without limitation, performance, governance, accountability and financial reviews, be carried out,
 - (i) by or on behalf of the authority, or
 - (ii) by a person or entity specified by the Minister.

Access to records

(2) If a review is carried out by a person or entity specified by the Minister, the administrative authority shall give the person or entity specified by the Minister and the employees of the person or entity access to all records and other information required to conduct the review.

Conflict

7 In the event of conflict, this Act and the regulations prevail over,

- (a) the administrative agreement;
- (b) the *Corporations Act*, the *Corporations Information Act* or a regulation made under either of those Acts;

Note: On the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force, clause 7 (b) of the Act is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”. (See: 2015, c. 28, Sched. 2, s. 79 (1); 2017, c. 20, Sched. 8, s. 147)

- (c) the administrative authority’s constating documents, by-laws and resolutions.

Section Amendments with date in force (d/m/y)

2015, c. 28, Sched. 2, s. 79 (1) - not in force

Revocation of designation

8 (1) The Lieutenant Governor in Council may, by regulation, revoke the designation of the administrative authority if the Lieutenant Governor in Council considers it advisable to do so in the public interest.

Revocation for non-compliance

- (2) The Lieutenant Governor in Council may, by regulation, revoke the designation of the administrative authority if,
 - (a) the authority has failed to comply with this Act, the regulations, other applicable law or the administrative agreement;
 - (b) the Minister has allowed the authority the opportunity of remedying its default within a specified time period that the Minister considers reasonable in the circumstances; and
 - (c) the authority has not remedied its default to the Minister’s satisfaction within the specified time period mentioned in clause (b) and the Minister has so advised the Lieutenant Governor in Council.

Same, no restriction on subs. (1)

- (3) Nothing in subsection (2) restricts the ability of the Lieutenant Governor in Council to act under subsection (1).

Revocation on request

(4) The Lieutenant Governor in Council may, by regulation, revoke the designation of the administrative authority on the terms that the Lieutenant Governor in Council considers advisable in the public interest if the authority requests the revocation.

Transition

(5) If the Lieutenant Governor in Council revokes the designation of the administrative authority under this section, the Lieutenant Governor in Council may, by regulation, provide for any transitional matter necessary for the effective implementation of the revocation.

Condition precedent for exercise of certain powers

9 The Minister may exercise a power under subsection 3 (4), 4 (1) or 25 (1) only if the Minister is of the opinion that it is advisable to exercise the power in the public interest because at least one of the following conditions is satisfied:

1. The exercise of the power is necessary to prevent serious harm to the interests of the public, condominium corporations, owners or purchasers, mortgagees or occupiers of units.
2. An event of force majeure has occurred.
3. The administrative authority is insolvent.
4. The number of members of the board of directors of the administrative authority is insufficient for a quorum.

ADMINISTRATIVE AUTHORITY

Criteria and directives re board members

10 (1) The Minister may, by order,

- (a) establish competency criteria for members of the board of directors of the administrative authority; and
- (b) make rules about the nomination of members, the appointment or election process, the length of their terms and whether they may be reappointed or re-elected.

Competency criteria

(2) A person is qualified to be appointed or elected to the board of directors only if he or she meets any competency criteria established under clause (1) (a).

Conflict

(3) In the event of conflict, an order made under subsection (1) prevails over a by-law or resolution of the administrative authority.

Board appointments

11 (1) The Minister may appoint one or more members to the board of directors of the administrative authority for a term specified in the appointment.

Majority

(2) The number of members appointed by the Minister shall not form a majority of the board of directors.

Composition

(3) The members appointed by the Minister may include,

- (a) representatives of the public, consumer groups, government organizations, condominium corporations, owners or those owners or occupiers who occupy units for residential purposes; and
- (b) representatives of other interests as the Minister determines.

Change in number of directors

12 The Minister may, by order, increase or decrease the number of members of the board of directors of the administrative authority.

Appointment of chair

13 The Minister may appoint a chair from among the members of the board of directors of the administrative authority.

Public access to corporate by-laws

14 (1) The administrative authority shall make its corporate by-laws available for public inspection,

- (a) within the time and manner specified in the administrative agreement; or
- (b) within 10 days after the by-laws are made by the board of directors, if no time is specified in the administrative agreement.

Access to compensation information

(2) The administrative authority shall make available to the public the prescribed information relating to the compensation for members of its board of directors or officers or employees of the authority and relating to any other payments that it makes or is required to make to them, and shall do so in the prescribed manner.

Processes and procedures

(3) The administrative authority shall follow the prescribed processes and procedures with respect to providing access to the public to records of the authority and with respect to managing personal information contained in those records.

Employees

15 (1) Subject to the administrative agreement, the administrative authority may employ or retain the services of any qualified person to carry out any of its powers and duties under this Act or the regulations.

Not Crown employees

(2) The following persons are not employees of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained under subsection (1).
2. Members, officers and agents of the administrative authority.
3. Members of the board of directors of the administrative authority, including those appointed by the Minister.

Not Crown agency

16 (1) Despite the *Crown Agency Act*, the administrative authority is not an agent of the Crown for any purpose and shall not hold itself out as such.

Same

(2) The following persons are not agents of the Crown and shall not hold themselves out as such:

1. Persons who are employed or whose services are retained by the administrative authority.
2. Members, officers and agents of the administrative authority.
3. Members of the board of directors of the administrative authority, including those appointed by the Minister.

No personal liability, Crown employee

17 (1) No action or other proceeding shall be instituted against an employee of the Crown for an act done in good faith in the execution or intended execution of a duty under this Act or the regulations or for an alleged neglect or default in the execution in good faith of the duty.

Tort by Crown employee

(2) Despite subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, subsection (1) does not relieve the Crown of liability in respect of a tort committed by an employee of the Crown to which it would otherwise be subject.

No Crown liability

18 (1) No cause of action arises against the Crown as a direct or indirect result of any act or omission that a person who is not an employee or agent of the Crown takes or makes in the execution or intended execution of any of the person's powers or duties under this Act or the regulations.

No proceeding

(2) No action or other proceeding for damages, including but not limited to a proceeding for a remedy in contract, restitution, tort or trust, shall be instituted against the Crown in connection with any cause of action described in subsection (1).

Indemnification of the Crown

19 The administrative authority shall indemnify the Crown, in accordance with the administrative agreement, in respect of damages and costs incurred by the Crown for any act or omission of the authority or its members, officers, directors, employees or agents in the execution or intended execution of their powers and duties under this Act, the regulations or the administrative agreement.

No personal liability, board members and others

20 (1) No action or other proceeding shall be instituted against a person mentioned in subsection (2), for an act done in good faith in the execution or intended execution of any of the person's powers or duties under this Act or the regulations or for an alleged neglect or default in the execution in good faith of that power or duty.

Same

(2) Subsection (1) applies to,

- (a) members of the board of directors of the administrative authority;
- (b) persons who perform functions under this Act or the regulations as employees, agents or officers of the administrative authority or as persons whose services it retains;
- (c) members of committees of the administrative authority who perform functions under this Act or the regulations; and
- (d) individuals who perform functions under this Act or the regulations.

Liability of administrative authority

(3) Subsection (1) does not relieve the administrative authority of liability to which it would otherwise be subject.

Not public money

21 (1) The money that the administrative authority collects in carrying out its powers and duties under this Act or the regulations is not public money within the meaning of the *Financial Administration Act*.

Same

(2) The administrative authority may use the money described in subsection (1) to carry out activities in accordance with its objects, subject to subsection 24 (2) and any restrictions in this Part.

Audit

22 (1) The Auditor General appointed under the *Auditor General Act* may conduct an audit of the administrative authority, other than an audit required under the *Corporations Act*.

Note: On the day subsection 4 (1) of the *Not-for-Profit Corporations Act, 2010* comes into force, subsection 22 (1) of the Act is amended by striking out “the *Corporations Act*” and substituting “the *Not-for-Profit Corporations Act, 2010*”. (See: 2015, c. 28, Sched. 2, s. 79 (2); 2017, c. 20, Sched. 8, s. 147)

Access to records and information

(2) If the Auditor General conducts an audit under subsection (1), the administrative authority shall give the Auditor General and employees of the Auditor General access to all records and other information required to conduct the audit.

Section Amendments with date in force (d/m/y)

2015, c. 28, Sched. 2, s. 79 (2) - not in force

Reports

23 (1) The board of directors of the administrative authority shall report to the Minister on its activities and financial affairs as they relate to this Act and the administrative agreement.

Form and contents

(2) The report shall be in a form acceptable to the Minister and shall provide the information that the Minister requires.

Time for reports

(3) The board of directors of the administrative authority shall prepare the report for each year and at the other times that the Minister specifies.

Tabling

(4) The Minister shall submit each report prepared under this section to the Lieutenant Governor in Council and shall,

- (a) lay the report before the Assembly if it is in session; or
- (b) deposit the report with the Clerk of the Assembly if the Assembly is not in session.

Disclosure by board

(5) The board of the administrative authority,

- (a) may give a copy of the report to other persons before the Minister complies with subsection (4); and
- (b) shall publish the report on its website when the Minister has complied with subsection (4).

POWERS AND DUTIES OF ADMINISTRATIVE AUTHORITY

Additional powers

24 (1) The administrative authority may carry out other activities in accordance with its objects or purposes, subject to subsection (2).

Commercial activities

(2) The administrative authority shall not engage in commercial activity through a person or entity that is related to the authority.

Change to objects or purposes

25 (1) Subject to section 9, the Minister may require that the administrative authority make a specified change to its objects or purposes.

Minister's approval required

(2) The administrative authority shall not make any changes to its objects or purposes unless the Minister's written approval is obtained in advance.

Right to use French

26 (1) A person has the right to communicate in French with, and to receive available services in French from, the administrative authority.

Definition

(2) In subsection (1),

“service” means any service or procedure that is provided to the public by the administrative authority in carrying out its powers and duties under this Act or the regulations and includes,

- (a) responding to inquiries from members of the public, and
- (b) any other communications for the purpose of providing the service or procedure.

Board's duty

(3) The board of directors of the administrative authority shall take all reasonable measures and make all reasonable plans to ensure that persons may exercise the right to use French given by this section.

Limitation

(4) The right to use French given by this section is subject to the limits that are reasonable in the circumstances.

Advisory councils, advisory process

27 The Minister may require the administrative authority to,

- (a) establish one or more advisory councils;
- (b) include, as members of an advisory council, representatives of owners, representatives of occupiers of units, other representatives of the condominium sector and other persons as the Minister determines; or
- (c) undertake an advisory process in which it seeks advice from one or both of the public and persons with experience or knowledge relating to this Act.

Duty to inform Minister

28 The administrative authority shall promptly inform and advise the Minister with respect to,

- (a) any material fact that could affect the authority's ability to perform its duties under this Act or the regulations; or
- (b) any urgent or critical matter that is likely to require action by the Minister to ensure that the administration of the delegated provisions is carried out properly.

Advice of administrative authority

29 (1) The administrative authority shall advise or report to the Minister on any matter that the Minister refers to it and that relates to this Act or the administration of the delegated provisions.

Same

(2) The administrative authority may suggest to the Minister amendments to Ontario legislation that it considers would,

- (a) further the purpose of this Act; or
- (b) assist the authority in carrying out its powers and duties under this Act or the regulations.

Forms and fees

30 (1) The administrative authority may,

- (a) establish forms related to the administration of the delegated provisions;
- (b) in accordance with processes and criteria established by the administrative authority and approved by the Minister, set and collect fees, costs or other charges related to the administration of the delegated provisions; and
- (c) make rules governing the payment of the fees, costs and charges described in clause (b).

Setting fees

(2) In setting the fees, costs and charges described in clause (1) (b), the administrative authority may specify their amounts or the method for determining the amounts.

Publication of fee schedule

- (3) The administrative authority,
- (a) shall publish the fees, costs and charges, the processes and criteria and the rules on its website and in any other way described in the administrative agreement; and
 - (b) may publish them in any other format that the administrative authority considers advisable.

MISCELLANEOUS

Director

31 (1) Subject to subsection (2), the following person or body shall appoint a director for the purposes of this Act and may appoint a maximum of two deputy directors:

- 1. The board of the administrative authority.
- 2. The Minister, if there is no administrative authority.

Director cannot be registrar

(2) A person appointed as the registrar or a deputy registrar under subsection 32 (1) shall not be appointed as the director or a deputy director under subsection (1).

Deputy director, duties

(3) A deputy director shall perform the duties that the director assigns and shall act as director in the director's absence.

If more than one deputy director

(4) If more than one deputy director is appointed, only one deputy director may act as the director under subsection (3) at any one time.

Registrar

32 (1) Subject to subsection (2), the following person or body shall appoint a registrar for the purposes of this Act and may appoint a maximum of two deputy registrars:

- 1. The board of the administrative authority.
- 2. The Minister, if there is no administrative authority.

Registrar cannot be director

(2) A person appointed as the director or a deputy director under subsection 31 (1) shall not be appointed as the registrar or a deputy registrar under subsection (1).

Powers and duties of registrar

(3) The registrar shall exercise the powers and perform the duties imposed on him or her under this Act.

Same, deputy registrar

(4) A deputy registrar shall perform the duties that the registrar assigns and shall act as the registrar in the registrar's absence.

If more than one deputy registrar

(5) If more than one deputy registrar is appointed, only one deputy registrar may act as the registrar under subsection (4) at any one time.

Offences, administrative authority

33 (1) If the administrative authority knowingly contravenes this Act or the regulations, the authority is guilty of an offence and on conviction is liable to a fine of not more than \$100,000 for each day or part of a day on which the offence occurs or continues.

Individuals

(2) A director, officer, employee or agent of the administrative authority who knowingly contravenes this Act or the regulations is guilty of an offence.

Directors and officers

- (3) A director or officer of the administrative authority is guilty of an offence if the person,
- (a) knowingly causes, authorizes, permits or participates in the commission by the authority of an offence mentioned in subsection (1); or
 - (b) fails to take reasonable care to prevent the authority from committing an offence mentioned in subsection (1).

Penalty

(4) A person who is convicted of an offence under subsection (2) or (3) is liable to a fine of not more than \$25,000 for each day or part of a day on which the offence occurs or continues.

PART III LICENSING

Prohibition, condominium management services

34 (1) No person shall provide condominium management services unless licensed as a condominium management provider or as a condominium manager.

Unlicensed persons

- (2) A person who is not licensed as a condominium management provider or condominium manager shall not,
- (a) directly or indirectly hold himself, herself or itself out as being a condominium management provider or condominium manager, respectively; or
 - (b) perform any of the functions of a condominium management provider or condominium manager.

Licence a requirement to bring action

(3) Except as otherwise prescribed, no action, application, arbitration or other legal proceeding shall be commenced for remuneration for services in connection with providing condominium management services unless, at the time of providing the services, the person bringing the proceeding was licensed or exempt from licensing under this Act and the proceeding may be stayed upon motion.

Exception

- (4) Subsection (3) does not affect,
- (a) any right of an employee, within the meaning of the *Employment Standards Act, 2000* or a successor Act to it, to commence an action, application, arbitration or other legal proceeding for the recovery of wages or the enforcement of other rights provided under an employment contract, the common law or other legislation; or
 - (b) any right to commence an action, application, arbitration or other legal proceeding for the recovery of wages or the enforcement of other rights provided under a collective agreement.

Change in partnership

(5) A change in the membership of a licensed partnership shall be deemed to create a new partnership for the purpose of the licence.

Exemptions

35 Despite section 34, a licence shall not be required in respect of the provision of condominium management services by the persons or in the circumstances that are prescribed.

Notification of licence required

36 Subject to section 42, no condominium management provider or condominium manager shall provide condominium management services until notified in writing by the registrar that the provider or the manager, as the case may be, is licensed.

Application for licence

37 (1) An applicant that meets the prescribed requirements is entitled to a licence or a renewal of a licence by the registrar unless,

- (a) the applicant is not a corporation and,
 - (i) having regard to the applicant's financial position or the financial position of an interested person in respect of the applicant, the applicant cannot reasonably be expected to be financially responsible in engaging in the activities of a licensee,
 - (ii) the past or present conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not perform the activities of a licensee in accordance with law and with integrity and honesty, or
 - (iii) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence or for a renewal of a licence;
- (b) the applicant is a corporation and,

- (i) having regard to its financial position or the financial position of an interested person in respect of the corporation, the applicant cannot reasonably be expected to be financially responsible in engaging in the activities of a licensee,
- (ii) having regard to the financial position of its officers or directors or an interested person in respect of its officers or directors, the applicant cannot reasonably be expected to be financially responsible in engaging in the activities of a licensee,
- (iii) the past or present conduct of its officers or directors or of an interested person in respect of its officers or directors or of an interested person in respect of the corporation affords reasonable grounds for belief that it will not perform the activities of a licensee in accordance with the law and with integrity and honesty, or
- (iv) an officer or director of the corporation makes a false statement or provides a false statement in an application for a licence or for a renewal of a licence;
- (c) the applicant or an interested person in respect of the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations, other than the code of ethics established under section 77;
- (d) the applicant is in breach of a condition of the licence; or
- (e) the applicant fails to comply with a request made by the registrar under subsection (3).

Interested person

- (2) For the purposes of this section, a person shall be deemed to be an interested person in respect of another person if the person is associated with the other person or if, in the opinion of the registrar,
- (a) the person has or may have a beneficial interest in the other person's activities;
 - (b) the person exercises or may exercise control either directly or indirectly over the other person; or
 - (c) the person has provided or may have provided financing either directly or indirectly to the other person's activities.

Request for information

- (3) The registrar may request an applicant for a licence or a renewal of a licence to provide to the registrar, in the form and within the time period specified by the registrar,
- (a) information specified by the registrar that is relevant to the decision to be made by the registrar as to whether or not to grant the licence or renewal; and
 - (b) verification, by affidavit or otherwise, of any information described in clause (a) that the applicant is providing or has provided to the registrar.

Conditions of licence

38 (1) A licence is subject to the conditions to which the applicant or licensee consents, that the registrar applies under section 40, that the Tribunal orders or that are prescribed.

Licence not transferable

- (2) A licence is not transferable.

Refusal without hearing

39 (1) If an applicant for a licence or a renewal of a licence does not meet the prescribed requirements, the registrar shall refuse to grant or renew the licence.

No hearing

- (2) Section 41 does not apply to a refusal under subsection (1) to grant or renew a licence.

Notice of refusal

(3) The registrar shall give the applicant written notice of a refusal under subsection (1), setting out the reasons for the refusal, and subsection 73 (3) does not apply to the notice.

Refusal with a hearing

40 (1) Subject to section 41, the registrar may refuse to license an applicant or may suspend or revoke a licence or refuse to renew a licence if, in his or her opinion, the applicant or licensee is not entitled to a licence under section 37.

Conditions

- (2) Subject to section 41, the registrar may,
- (a) approve the licence or the renewal of a licence on the conditions that the registrar considers appropriate; and

- (b) at any time, apply to a licence the conditions that the registrar considers appropriate.

Notice re: refusal, suspension, etc.

41 (1) The registrar shall notify an applicant or licensee in writing if he or she proposes to,

- (a) refuse under subsection 40 (1) to grant or renew a licence;
- (b) suspend or revoke a licence; or
- (c) apply conditions to a licence or renewal to which the applicant or licensee has not consented.

Content of notice

(2) The notice of proposal shall set out the reasons for the proposed action and shall state that the applicant or licensee is entitled to a hearing by the Tribunal if the applicant or licensee mails or delivers, within 15 days after service of the notice, a written request for a hearing to the registrar and to the Tribunal.

Service of notice

(3) The notice of proposal shall be served on the applicant or licensee in accordance with section 73.

Service of hearing request

(4) A request for a hearing under subsection (2) is sufficiently served if delivered personally or sent by registered mail to the registrar and to the Tribunal.

Same

(5) If service is made by registered mail, it shall be deemed to be made on the third day after the day of mailing.

Other methods

(6) Despite subsection (4), the Tribunal may order any other method of service.

If no request for hearing

(7) If the applicant or licensee does not request a hearing in accordance with subsection (2), the registrar may carry out the proposal.

Hearing

(8) If the applicant or licensee requests a hearing in accordance with subsection (2), the Tribunal shall hold the hearing and may, by order, direct the registrar to carry out the registrar's proposal or substitute its opinion for that of the registrar and the Tribunal may attach conditions to its order or to a licence.

Parties

(9) The registrar, the applicant or licensee and the other persons that the Tribunal specifies are parties to the proceedings under this section.

Immediate effect

(10) Even if a licensee appeals an order of the Tribunal under section 11 of the *Licence Appeal Tribunal Act, 1999*, the order takes effect immediately, unless the order provides otherwise, but the Divisional Court may grant a stay until the disposition of the appeal.

Voluntary cancellation

(11) The registrar may cancel a licence upon the request in writing of the licensee and this section does not apply to the cancellation.

Continuation pending renewal

42 If, within the time prescribed or, if no time is prescribed, before the expiry of the licensee's licence, the licensee has applied for a renewal of a licence and paid the required fee, the licence shall be deemed to continue until,

- (a) the renewal is granted;
- (b) the registrar gives the licensee written notice of the registrar's refusal under section 39 to grant the renewal;
- (c) the time for requesting a hearing under section 41 has expired if the licensee receives a notice of a proposal under that section and does not request such a hearing; or
- (d) the Tribunal makes its order if the licensee receives a notice of a proposal under section 41 and does request such a hearing.

Immediate suspension

43 (1) If the registrar proposes to suspend or revoke a licence under section 40 and if the registrar considers it in the public interest to do so, the registrar may by order temporarily suspend the licence.

Immediate effect

(2) An order under subsection (1) takes effect immediately.

Expiry of order

(3) If the licensee requests a hearing under section 41, the order expires 15 days after the Tribunal receives the written request for a hearing, but the Tribunal may extend the time of expiration until the hearing is concluded, if a hearing is commenced within the 15-day period.

Same

(4) Despite subsection (3), if it is satisfied that the conduct of the licensee has delayed the commencement of the hearing, the Tribunal may extend the time of the expiration for the order,

- (a) until the hearing commences; and
- (b) once the hearing commences, until the hearing is concluded.

Further application

44 Once a decision of the registrar to refuse a person a licence or a renewal of a licence or to revoke a licence of a person has become final, the person may reapply for a licence only if,

- (a) the time prescribed to reapply has passed since the refusal or revocation; and
- (b) the person satisfies the registrar that new or other evidence is available or that material circumstances have changed.

PART IV REGULATION OF LICENSEES

Notice of changes to registrar

45 (1) Every licensed condominium management provider shall, within five days after the event, notify the registrar in writing of,

- (a) any change in address for service; and
- (b) the date of commencement or termination of the employment of every condominium manager that the provider employs and, in the case of the termination of employment of a condominium manager, the reason for the termination.

Same, condominium manager

(2) Every licensed condominium manager shall, within five days after the event, notify the registrar in writing of,

- (a) any change in address for service;
- (b) the commencement or termination of his or her employment by a condominium management provider and the date of the commencement or termination, as the case may be; and
- (c) the commencement or termination of his or her employment by a condominium corporation and the date of the commencement or termination, as the case may be.

Change in officers or directors

(3) A licensed condominium management provider that is a corporation or a partnership shall not change its officers or directors except with the prior consent of the registrar and shall, after receiving that consent, notify the registrar in writing of the change within five days after making it.

Timing

(4) The registrar shall be deemed to have received a notice under this section on the day on which he or she actually received it or, if the notice is sent by mail, on the day of mailing.

Notice to registrar re corporations

46 (1) When it is licensed and on each renewal of its licence, a condominium management provider that is a corporation shall disclose to the registrar the identity of,

- (a) each person that beneficially owns or controls 10 per cent or more of the equity shares issued and outstanding at the time of the licence or the renewal of the licence, as the case may be; and
- (b) persons that are associated with each other and that together beneficially own or control 10 per cent or more of the equity shares issued and outstanding at the time of the licence or the renewal of the licence, as the case may be.

Calculating number of shares

(2) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purposes of this section, the total number shall be calculated as the total number of all shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equal to the total number of votes carried.

Notice of issue or transfer of shares

47 (1) In addition to the disclosure required under section 46, every licensed condominium management provider that is a corporation shall notify the registrar in writing within 30 days after the issue or transfer of any equity shares of the corporation, if the issue or transfer results in,

- (a) any person, or any persons that are associated with each other, acquiring or accumulating beneficial ownership or control of 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation; or
- (b) an increase in the percentage of issued and outstanding equity shares of the corporation beneficially owned or controlled by any person, or any persons who are associated with each other, where the person or the associated persons already beneficially owned or controlled 10 per cent or more of the total number of all issued and outstanding equity shares of the corporation before the issue or transfer.

Same

(2) Despite subsection (1), if a licensee that is a corporation becomes aware of a transfer that otherwise falls into that subsection after the transfer has taken place, it shall notify the registrar in writing within 30 days after knowledge of the transfer comes to the attention of its officers or directors.

Calculating number of shares

(3) In calculating the total number of equity shares of the corporation beneficially owned or controlled for the purpose of this section, the total number shall be calculated as the total of all the shares beneficially owned or controlled, but each share that carries the right to more than one vote shall be calculated as the number of shares equal to the total number of votes it carries.

Note: On February 1, 2018, the day named by proclamation of the Lieutenant Governor, section 48 of this Act comes into force.

Contract required

48 (1) Every licensee that provides condominium management services to a client shall have a written contract governing the services and shall not provide such services except in accordance with the contract.

Contents

(2) The contract shall comply with the prescribed requirements.

Principal condominium manager

49 (1) Every licensed condominium management provider shall,

- (a) in accordance with this section, designate one of its licensed condominium managers as its principal condominium manager and notify the registrar of the identity of the manager; and
- (b) notify the registrar, within five days, if the principal condominium manager changes.

Sole proprietor

(2) A licensed condominium management provider that is a sole proprietorship shall,

- (a) ensure that the sole proprietor meets the prescribed requirements for being designated as the principal condominium manager; and
- (b) designate the sole proprietor as the principal condominium manager.

Not a sole proprietor

(3) A licensed condominium management provider that is not a sole proprietorship shall,

- (a) employ at least one licensed condominium manager; and
- (b) designate, as the principal condominium manager, one of its licensed condominium managers who meets the prescribed requirements for being so designated.

Duties

(4) A principal condominium manager shall ensure that the condominium management provider complies with this Act and the regulations.

Financial statements

50 (1) Every licensed condominium management provider shall, when required by the registrar, file a financial statement that shows the matters specified by the registrar and that is signed by its principal condominium manager and certified by a person licensed under the *Public Accounting Act, 2004*.

Confidential

(2) The information contained in a financial statement filed under subsection (1) is confidential and no person shall otherwise than in the ordinary course of the person's duties communicate the information or allow access to the financial statement.

Restrictions on employees

51 (1) No licensed condominium management provider shall employ an unlicensed person to perform a function for which licensing is required.

Duty of condominium management provider

(2) A licensed condominium management provider shall ensure that every condominium manager that the provider employs carries out his or her duties in compliance with this Act and the regulations.

Restriction on condominium managers

(3) Subject to the regulations, a licensed condominium manager shall not act as a condominium manager unless he or she is employed by a condominium management provider.

Note: On February 1, 2018, the day named by proclamation of the Lieutenant Governor, sections 52 to 71 of this Act come into force.

Disclosure of interest

52 A licensee who, directly or indirectly, has an interest in a contract or transaction to which the client is a party or a proposed contract or transaction to which the client will be a party, shall disclose in writing to the client the nature and extent of the interest, in accordance with the prescribed requirements and in the form determined by the registrar.

Prohibition re: proxy instruments

53 A licensee, or any person acting on behalf of a licensee, shall not solicit an instrument appointing a proxy for a meeting of owners where the subject matter of the meeting includes,

- (a) any matter directly related to the licensee;
- (b) the removal or the election of one or more of the directors of the client; or
- (c) any other prescribed matter.

Duty re records

54 (1) Subject to the regulations and subsection (2), every licensee that provides condominium management services to a client shall immediately transfer to the client all documents and records relating to the client upon termination of any contract for the condominium management services provided.

Copies

(2) Subject to the regulations, a licensee may make and retain a copy of a document or record mentioned in subsection (1) if the licensee requires the copy for purposes relating to the contract or such other purposes as are prescribed.

No pressuring

(3) No licensee shall retain anything that the licensee is required to transfer to a client under subsection (1) as a means of pressuring the client to fulfil contractual obligations to the licensee.

False information

55 (1) No licensee shall falsify, assist in falsifying or induce or counsel another person to falsify or assist in falsifying any information or document related to the licensee's providing of condominium management services.

Furnishing information

(2) No licensee shall furnish, or induce or counsel another person to furnish, any information or documents related to the licensee's providing of condominium management services if the information or documents are false or deceptive.

Same, assisting

(3) No licensee shall assist in furnishing, or induce or counsel another person to assist in furnishing, any information or documents related to the licensee's providing of condominium management services if the licensee knows that the information or documents are false or deceptive.

No counselling contraventions

56 No licensee shall counsel, advise or knowingly assist a person to contravene this Act, the *Condominium Act, 1998* or any other prescribed Act.

PART V COMPLAINTS, DISCIPLINE, INSPECTIONS, INVESTIGATIONS AND ENFORCEMENT

COMPLAINTS AND DISCIPLINE

Complaints

57 (1) If the registrar receives a complaint about a licensee, the registrar may request information in relation to the complaint from any licensee.

Request for information

(2) A request for information under subsection (1) shall indicate the nature of the complaint.

Duty to comply with request

(3) A licensee who receives a written request for information shall provide the information as soon as practicable.

Procedures

(4) In handling complaints, the registrar may do any of the following, as appropriate:

1. Attempt to mediate or resolve the complaint.
2. Give the licensee a written warning that if the licensee continues with the activity that led to the complaint, action may be taken against the licensee.
3. Require the principal condominium manager of the licensee to take further educational courses if the licensee is a condominium management provider.
4. Require the licensee to take further educational courses if the licensee is a condominium manager.
5. Refer the matter, in whole or in part, to the discipline committee.
6. Take an action under section 40, subject to section 41.
7. Take further action as is appropriate in accordance with this Act.

Discipline proceedings

58 (1) A discipline committee is established to hear and determine, in accordance with the prescribed procedures, if a licensee has failed to comply with the code of ethics established under section 77.

Appeals committee

(2) An appeals committee is established to consider, in accordance with the prescribed procedures, appeals from the discipline committee.

Appointment of members

(3) The board of the administrative authority or, if there is no administrative authority, the Minister shall appoint the members of the discipline committee and the members of the appeals committee and, in making the appointments, shall ensure that the prescribed requirements for the composition of each committee are met.

Result of a determination

(4) If the discipline committee makes a determination under subsection (1) that a licensee has failed to comply with the code of ethics, it may order any of the following as appropriate:

1. Require the principal condominium manager of the licensee to take further educational courses if the licensee is a condominium management provider.
2. Require the licensee to take further educational courses if the licensee is a condominium manager.
3. If the licensee is a condominium management provider, require the licensee, in accordance with the terms, if any, that the committee specifies, to fund educational courses for condominium managers employed by the licensee or to arrange and fund the courses.
4. If the licensee is a condominium manager, require the condominium management provider that employs the licensee, in accordance with the terms, if any, that the committee specifies, to fund educational courses for condominium managers that the provider employs or to arrange and fund the courses.

5. Impose the fine that the committee considers appropriate, to a maximum of \$25,000, or such lesser amount as is prescribed, to be paid by the licensee to the administrative authority or to the Minister of Finance if there is no administrative authority.
6. 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 that the committee designates.
7. Fix and impose costs that the licensee is required to pay to the administrative authority or to the Minister of Finance if there is no administrative authority.

Appeal

- (5) A party to the discipline proceeding may appeal the final order of the discipline committee to the appeals committee.

Power of the appeals committee

- (6) The appeals committee may, by order, overturn, affirm or modify the order of the discipline committee and may make an order under subsection (4).

Taking of educational course

- (7) A licensee that is required under subsection (4) to take an educational course shall do so,
- (a) within the time period specified in the order of the discipline committee, if the requirement is not the subject of an appeal;
 - (b) within the time period specified in the order of the appeals committee, if the requirement is the subject of an appeal; or
 - (c) at the first reasonable opportunity after the last order made in respect of the educational course, if no time period is specified in that order.

Arranging and funding educational courses

- (8) A condominium management provider that is required under subsection (4) to fund educational courses for condominium managers that it employs or to arrange and fund such courses shall do so,
- (a) within the time period specified in the order of the discipline committee, if the requirement is not the subject of an appeal;
 - (b) within the time period specified in the order of the appeals committee, if the requirement is the subject of an appeal; or
 - (c) at the first reasonable opportunity after the last order made in respect of the educational course, if no time period is specified in that order.

Payment of fine

- (9) The licensee shall pay any fine imposed under subsection (4) on or before,
- (a) the day specified in the order of the discipline committee, if the fine is not the subject of an appeal;
 - (b) the day specified in the order of the appeals committee, if the fine is the subject of an appeal; or
 - (c) the 60th day after the date of the last order made in respect of the fine, if no day is specified in that order.

Public access

- (10) The discipline committee and the appeals committee shall make their decisions available to the public in the manner and at the frequency, if any, that are prescribed.

INSPECTIONS AND INVESTIGATIONS

Inspectors

- 59** (1) The registrar is, by virtue of his or her office, an inspector.

Appointment

- (2) The registrar may appoint persons to be inspectors for the purposes of conducting inspections.

Certificate of appointment

- (3) The registrar shall issue to every inspector a certificate of appointment bearing the registrar's signature or a facsimile of it.

Proof of appointment

- (4) Every inspector who is conducting an inspection under this Act shall, upon request, produce the certificate of appointment as an inspector.

Inspections without warrant

60 (1) An inspector may, without a warrant or court order, conduct an inspection in accordance with this section for the purpose of,

- (a) ensuring compliance with this Act and the regulations;
- (b) dealing with a complaint under section 57; or
- (c) ensuring the licensee remains entitled to a licence.

Power to enter premises

(2) As part of an inspection, an inspector may, without a warrant or court order, enter and inspect, at any reasonable time, any of the following premises, other than any part of the premises used as a dwelling:

- 1. The business premises of a licensee.
- 2. A property, as defined in the *Condominium Act, 1998*, in respect of which a licensee provides condominium management services to the condominium corporation.

Powers on inspection

(3) While carrying out an inspection, an inspector,

- (a) is entitled to free access to all money, valuables, documents and records of the person being inspected that are relevant to the inspection;
- (b) may make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the inspection;
- (c) may require a person to produce any document or record relevant to the inspection and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the document or record;
- (d) may use any data storage, processing or retrieval device or system used to engage in activities of a licensee in order to produce information that is relevant to the inspection and that is in any form; and
- (e) may, upon giving a receipt for them, remove for examination and copy anything relevant to the inspection, including any data storage disk or other retrieval device in order to produce information, but shall promptly return to the person being inspected the thing that was removed.

No use of force

(4) An inspector shall not use force to enter and inspect premises under this section.

No obstruction

(5) No person shall obstruct an inspector conducting an inspection or withhold from the inspector or conceal, alter or destroy any money, documents or records that are relevant to the inspection.

Compliance

(6) If an inspector under clause (3) (c) requires a person to produce a document or record and to provide assistance, the person shall produce the document or record or provide the assistance, as the case may be.

Admissibility of copies

(7) A copy of a document or record certified by an inspector to be a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Appointment of investigators

61 (1) The director may appoint persons to be investigators for the purposes of conducting investigations.

Certificate of appointment

(2) The director shall issue to every investigator a certificate of appointment bearing the director's signature or a facsimile of it.

Proof of appointment

(3) Every investigator who is conducting an investigation under this Act shall, upon request, produce the certificate of appointment as an investigator.

Investigations with warrant

62 (1) Upon application made without notice by an investigator, a justice of the peace may issue a warrant, if satisfied on information under oath that there is reasonable ground for believing that,

- (a) a person has contravened or is contravening this Act or the regulations or has committed an offence under the law of any jurisdiction that is relevant to the person's fitness for a licence; and
- (b) there is,
 - (i) in any building, dwelling, receptacle or place anything relating to the contravention of this Act or the regulations or to the person's fitness for a licence, or
 - (ii) information or evidence relating to the contravention of this Act or the regulations or the person's fitness for a licence that may be obtained through the use of an investigative technique or procedure or the doing of anything described in the warrant.

Powers under warrant

- (2) Subject to any conditions contained in it, a warrant obtained under subsection (1) authorizes an investigator,
- (a) to enter or access the building, dwelling, receptacle or place specified in the warrant and examine and seize anything described in the warrant;
 - (b) to make reasonable inquiries of any person, orally or in writing, with respect to anything relevant to the investigation;
 - (c) to require a person to produce the information or evidence described in the warrant and to provide whatever assistance is reasonably necessary, including using any data storage, processing or retrieval device or system to produce, in any form, the information or evidence described in the warrant;
 - (d) to use any data storage, processing or retrieval device or system used to engage in the activities of a licensee in order to produce information or evidence described in the warrant, in any form; and
 - (e) to use any investigative technique or procedure or do anything described in the warrant.

Entry of dwelling

- (3) Despite subsection (2), an investigator shall not exercise the power under a warrant to enter a place, or part of a place, used as a dwelling, unless,
- (a) the justice of the peace is informed that the warrant is being sought to authorize entry into a dwelling; and
 - (b) the justice of the peace authorizes the entry into the dwelling.

Conditions on warrant

- (4) A warrant obtained under subsection (1) shall contain the conditions that the justice of the peace considers advisable to ensure that any search authorized by the warrant is reasonable in the circumstances.

Expiry of warrant

- (5) A warrant issued under this section shall name a date of expiry, which shall be no later than 30 days after the warrant is issued, but a justice of the peace may extend the date of expiry for an additional period of no more than 30 days, upon application without notice by an investigator.

Time of execution

- (6) An entry or access under a warrant issued under this section shall be made between 6 a.m. and 9 p.m., unless the warrant specifies otherwise.

Use of force

- (7) An investigator may call upon police officers for assistance in executing the warrant and the investigator may use whatever force is reasonably necessary to execute the warrant.

No obstruction

- (8) No person shall obstruct an investigator executing a warrant under this section or withhold from the investigator or conceal, alter or destroy anything relevant to the investigation being conducted pursuant to the warrant.

Expert help

- (9) The warrant may authorize persons who have special, expert or professional knowledge and other persons as necessary to accompany and assist the investigator in respect of the execution of the warrant.

Compliance

- (10) If an investigator under clause (2) (c) requires a person to produce evidence or information or to provide assistance, the person shall produce the evidence or information or provide the assistance, as the case may be.

Return of seized items

- (11) An investigator who seizes anything under this section or section 63 may make a copy of it and shall return it within a reasonable time.

Admissibility of copies

(12) A copy of a document or record certified by an investigator as being a true copy of the original is admissible in evidence to the same extent as the original and has the same evidentiary value.

Seizure of things not specified

63 An investigator who is lawfully present in a place pursuant to a warrant or otherwise in the execution of the investigator's duties may, without a warrant, seize anything in plain view that the investigator believes on reasonable grounds will afford evidence relating to a contravention of this Act or the regulations.

Searches in exigent circumstances

64 (1) An investigator may exercise any of the powers described in subsection 62 (2) without a warrant if the conditions for obtaining the warrant exist but by reason of exigent circumstances it would be impracticable to obtain the warrant.

Dwellings

(2) Subsection (1) does not apply to a building or a part of a building that is being used as a dwelling.

Use of force

(3) The investigator may, in executing any authority given by this section, call upon police officers for assistance and use whatever force is reasonably necessary.

Applicability of s. 62

(4) Subsections 62 (8) to (12) apply, with necessary modifications, to a search under this section.

ORDERS

Freeze order

65 (1) If the conditions in subsection (2) are met, the director may in writing,

- (a) order any person having on deposit or controlling any assets or trust funds of a licensee or former licensee to hold those funds or assets;
- (b) order a licensee or former licensee to refrain from withdrawing any asset or trust fund from a person having it on deposit or controlling it; or
- (c) order a licensee or former licensee to hold any asset or trust fund of a client or other person in trust for the person entitled to it.

Conditions

(2) The director may make an order under subsection (1) if the director believes that it is advisable for the protection of the clients of a licensee or former licensee and,

- (a) a search warrant has been issued under this Act; or
- (b) criminal proceedings or proceedings in relation to a contravention under this Act or under any other Act are about to be or have been instituted against the licensee or former licensee in connection with or arising out of engaging in the activities of a licensee.

Limitation

(3) In the case of a financial institution described in subsection (4), the order under subsection (1) applies only to the offices and branches named in the order.

Financial institutions

(4) A financial institution mentioned in subsection (3) is,

- (a) a bank or authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada);
- (b) a corporation registered under the *Loan and Trust Corporations Act*; or
- (c) a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*.

Release of assets

(5) The director may consent to the release of any particular asset or trust fund from the order or may wholly revoke the order.

Exception

(6) Subsection (1) does not apply if the licensee or former licensee files with the director, in the manner and amount that the director determines,

- (a) a personal bond accompanied by collateral security;
- (b) a bond of an insurer licensed under the *Insurance Act* to write surety and fidelity insurance;
- (c) a bond of a guarantor accompanied by collateral security; or
- (d) another prescribed form of security.

Application to court

(7) An application may be made to the Superior Court of Justice for a determination in respect of the disposition of an asset or trust fund,

- (a) by a person in receipt of an order under subsection (1), if that person is in doubt as to whether the order applies to the asset or trust fund; or
- (b) by a person who claims an interest in the asset or trust fund that is subject to the order.

Notice

(8) If an order is made under this section, the director may register in the appropriate land registry office a notice that an order under subsection (1) has been issued and that the order may affect land belonging to the person mentioned in the notice, and the notice has the same effect as the registration of a certificate of pending litigation, except that the director may in writing revoke or modify the notice.

Cancellation or discharge application

(9) A licensee or former licensee in respect of which an order is made under subsection (1) or any person having an interest in land in respect of which a notice is registered under subsection (8) may apply to the Tribunal for cancellation in whole or in part of the order or for discharge in whole or in part of the registration.

Disposition by Tribunal

(10) The Tribunal shall dispose of the application after a hearing and may cancel the order or discharge the registration in whole or in part if the Tribunal finds that,

- (a) the order or registration is not required in whole or in part for the protection of clients of the applicant or of other persons having an interest in the land; or
- (b) the interests of other persons are unduly prejudiced by the order or registration.

Parties

(11) The applicant, the director and the other persons that the Tribunal specifies are parties to the proceedings before the Tribunal.

Court application

(12) If the director has made an order under subsection (1) or registered a notice under subsection (8), the director may apply to the Superior Court of Justice for directions or an order relating to the disposition of assets, trust funds or land affected by the order or notice.

Notice not required

(13) An application by the director under this section may be made without notice to any other person.

Freeze orders, non-licensees

66 (1) The director may make an order described in subsection (2) in respect of the money or assets of a person who is not licensed under this Act and who is alleged to have engaged in activities for which licensing is required under this Act at a time when the person was not licensed to do so if,

- (a) the director receives an affidavit in which it is alleged, and in which facts are set out supporting the allegation, that the person who is not licensed under this Act,
 - (i) is subject to criminal proceedings or proceedings in relation to a contravention under this Act or any other Act that are about to be or have been instituted against the person in connection with or arising out of activities for which licensing is required under this Act, or
 - (ii) owns a building, dwelling, receptacle or place, or carries on activities in a building, dwelling, receptacle or place, in respect of which a search warrant has been issued under section 62; and
- (b) the director, based on the affidavit mentioned in clause (a), finds reasonable grounds to believe that,
 - (i) in the course of activities for which licensing is required under this Act, the person who is the subject of the allegation mentioned in clause (a) has received money or assets from clients, and
 - (ii) the interests of those clients require protection.

Order

- (2) In the circumstances described in subsection (1), the director may, in writing,
- (a) order any person having on deposit or controlling any money or asset of the person who is the subject of the allegation mentioned in clause (1) (a) to hold the money or asset; or
 - (b) order the person who is the subject of the allegation mentioned in clause (1) (a),
 - (i) to refrain from withdrawing any money or asset from a person having it on deposit or controlling it, or
 - (ii) to hold any money or asset of a client or other person in trust for the person who is entitled to it.

Application

- (3) Subsections 65 (3) to (13) apply with necessary modifications to an order made under this section.

Compliance orders

67 (1) If it appears to the director that a person is not complying with this Act or the regulations or an order made under this Act, the director may apply to the Superior Court of Justice for an order directing that person to comply, and, upon the application, the court may make the order that the court thinks fit.

Same

- (2) Subsection (1) applies in addition to any other procedures that may be available to the director, whether or not the director has exercised his or her rights under the procedures.

Appeal

- (3) An appeal lies to the Divisional Court from an order made under subsection (1).

OFFENCES**Offence**

- 68** (1) A person or entity, other than the administrative authority, is guilty of an offence if the person or entity,
- (a) furnishes false information in any application under this Act or in any statement or return required under this Act;
 - (b) fails to comply with any order, direction or other requirement under this Act, other than an order made under section 58; or
 - (c) contravenes or fails to comply with any section of this Act or the regulations made under the Act, other than a code of ethics established under section 77.

Condominium management providers

- (2) An officer or director of a condominium management provider who fails to take reasonable care to prevent the provider from committing an offence mentioned in subsection (1) is guilty of an offence.

Penalties

- (3) A person or entity that is convicted of an offence under this Act is liable to,
- (a) a fine of not more than \$50,000 or imprisonment for a term of not more than two years less a day or both, in the case of an individual; or
 - (b) a fine of not more than \$250,000, if the person or entity is not an individual.

Limitation

- (4) No proceeding under this section shall be commenced more than two years after the facts upon which the proceeding is based first came to the knowledge of the director.

Orders for compensation, restitution

69 (1) If a person or entity is convicted of an offence under section 68, the court making the conviction may, in addition to any other penalty, order the person or entity convicted to pay compensation or make restitution.

If insurance has paid

- (2) If an order is made in the favour of a person or entity under subsection (1) and that person or entity has already received compensation or restitution from an insurer, the person or entity ordered to pay the compensation or make restitution shall deliver the amount to the insurer.

Default in payment of fines

70 (1) If a fine payable as a result of a conviction for an offence under section 68 is in default for at least 60 days, the director may disclose to a consumer reporting agency the name of the defaulter, the amount of the fine and the date the fine went into default.

If payment made

(2) Within 10 days after the director has received notice that the fine has been paid in full, the director shall inform the consumer reporting agency of the payment.

Liens and charges

71 (1) If a fine payable as a result of a conviction for an offence under section 68 is in default for at least 60 days, the director may by order create a lien against the property of the person or entity that is liable to pay the fine.

Liens on personal property

(2) If the lien created by the director under subsection (1) relates to personal property,

- (a) the *Personal Property Security Act*, except Part V, applies with necessary modifications to the lien, despite clause 4 (1) of that Act;
- (b) the lien shall be deemed to be a security interest that has attached for the purposes of the *Personal Property Security Act*; and
- (c) the director may perfect the security interest mentioned in clause (b) for the purposes of the *Personal Property Security Act* by the registration of a financing statement under that Act.

Liens and charges on real property

(3) If the lien created by the director under subsection (1) relates to real property, the director may register the lien against the property of the person or entity liable to pay the fine in the proper land registry office and on registration, the obligation under the lien becomes a charge on the property.

Initiation of sale proceedings prohibited

(4) The director shall not initiate sale proceedings in respect of any real property against which the director has registered a lien under subsection (3).

Proceeds of sale

(5) If a lien is perfected by registration under subsection (2) or is registered against real property under subsection (3) and the related real or personal property is sold, the director shall ensure that the funds he or she receives as a result of the sale are used to pay the fine.

Discharge of lien

(6) Within 10 days after the director has knowledge of the payment in full of the fine, the director shall,

- (a) discharge the registration of any financing statement registered under clause (2) (c); and
- (b) register a discharge of a charge created on registration of a lien under subsection (3).

PART VI GENERAL

Confidentiality

72 (1) A person who obtains information in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations shall preserve secrecy with respect to the information and shall not communicate the information to any person except,

- (a) as is required in connection with a proceeding under this Act or in connection with the administration of this Act or the regulations;
- (b) to a ministry, department or agency of a government engaged in the administration of legislation similar to this Act or legislation that protects consumers or to any other entity to which the administration of legislation similar to this Act or legislation that protects consumers has been assigned;
- (c) as authorized under the *Regulatory Modernization Act, 2007*;
- (d) to a prescribed entity or organization, if the purpose of the communication is consumer protection;
- (e) to a law enforcement agency;
- (f) to the counsel of the person communicating the information; or

(g) with the consent of the person to whom the information relates.

Testimony

(2) Except in a proceeding under this Act, no person shall be required to give testimony in a civil proceeding with regard to information obtained in the course of exercising a power or carrying out a duty related to the administration of this Act or the regulations.

Service

73 (1) Any notice, order or request is sufficiently given or served if it is,

- (a) delivered personally;
- (b) sent by registered mail; or
- (c) sent by another manner if the sender can prove receipt of the notice, order or request.

Deemed service

(2) If service is made by registered mail, the service shall be deemed to be made on the third day after the day of mailing unless the person on whom service is being made establishes that the person did not, acting in good faith, through absence, accident, illness or other cause beyond the person's control, receive the notice, order or request until a later date.

Exception

(3) Despite subsections (1) and (2), the Tribunal may order any other method of service it considers appropriate in the circumstances.

Fees

74 (1) The Minister may, by order, establish fees that are payable under this Act in respect of a licence, a renewal of a licence, late filings and other administrative matters.

Exception

(2) Subsection (1) does not apply if there is an administrative authority.

Legislation Act, 2006, Part III

(3) An order made under this section is not a regulation for the purposes of Part III (Regulations) of the *Legislation Act, 2006*.

Certificate as evidence

75 (1) For all purposes in any proceeding, a statement purporting to be certified by the director is, without proof of the office or signature of the director, admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in it in relation to,

- (a) the licensing or non-licensing of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the registrar;
- (c) the time when the facts upon which the proceedings are based first came to the knowledge of the director; or
- (d) any other matter pertaining to licensing or non-licensing of persons or to filing or non-filing of information.

Proof of document

(2) Any document made under this Act that purports to be signed by the director or a certified copy of the document is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, that the document is signed by the director without proof of the office or signature of the director.

Information concerning licensees

76 (1) As required by regulation, the registrar shall make available to the public the names of licensees and other information, as prescribed, in respect of licensees.

Same

(2) The names of licensees shall be made available in the prescribed form and manner and with the information that is prescribed.

PART VII REGULATIONS

Minister's regulations

77 (1) The Minister may make regulations,

- (a) establishing a code of ethics for the purposes of subsection 58 (1);
- (b) governing the jurisdiction and procedures of any committee established under this Act;
- (c) respecting any matter that is delegated by the Lieutenant Governor in Council to the Minister under paragraph 26 of subsection 78 (1).

Code of ethics

- (2) A regulation under clause (1) (c) may be made as part of the code of ethics established under clause (1) (a).

Conflicts

- (3) If there is a conflict between a regulation made under this section and a regulation made by the Lieutenant Governor in Council under section 78, the latter prevails.

Lieutenant Governor in Council regulations

78 (1) The Lieutenant Governor in Council may make regulations,

- 1. defining, for the purposes of this Act and the regulations, any word or expression that is used in this Act but not defined in this Act;
- 2. specifying any matter or thing that this Act describes as being prescribed or done in accordance with the regulations;
- 3. exempting any person or class of persons or class of activities from any provision of this Act or the regulations and attaching conditions to an exemption;
- 4. respecting applications for a licence or a renewal of licence;
- 5. governing educational and examination requirements for applicants for a licence, applicants for a renewal of licence and licensees, including,
 - i. requiring applicants for a licence, applicants for a renewal of licence and licensees to meet educational requirements that the board of the administrative authority, the Minister, the director or the registrar has specified or to complete a program of studies or one or more courses that the board of the administrative authority, the Minister, the director or the registrar has designated,
 - ii. authorizing the board of the administrative authority, the Minister, the director or the registrar to designate organizations that are authorized to provide the programs and courses designated under subparagraph i, and
 - iii. requiring that all educational requirements specified under subparagraph i and the list of all programs and courses designated under that subparagraph be made available to the public;
- 6. requiring an applicant for a licence or a renewal of a licence to provide information to the registrar concerning persons other than the applicant in order to assist the registrar in determining whether the persons are or may be interested persons;
- 7. specifying information that licensees must provide to the registrar and requiring that specified information be verified by affidavit;
- 8. requiring the registrar to make available to the public the names of licensees and prescribing the form and manner in which the registrar must make the names available and specifying other information in respect of licensees that the registrar must make available to the public;
- 9. specifying the responsibilities of condominium management providers, condominium managers or principal condominium managers;
- 10. prescribing matters that condominium managers must disclose to the condominium management providers that employ them and to condominium management providers that are prospective employers, and the circumstances under which such disclosures are required;
- 11. governing the activities of licensees including,
 - i. specifying terms that licensees are required to include in contracts for condominium management services that they provide to clients,
 - ii. specifying matters that they must disclose and when they must disclose them in the course of providing condominium management services, including the conditions under which disclosure is required and matters related to any holdings in,
 - A. condominium management providers, other than the condominium management provider by which they are employed, in the case of condominium managers, or
 - B. other condominium management providers, in the case of condominium management providers, and

- iii. specifying statements that licensees must provide in respect of providing condominium management services, the content of the statements, the manner of providing them, the circumstances under which a statement is not required and the consequences of failing to provide statements;
- 12. requiring licensees to provide, on request and in the prescribed circumstances, proof of licence and specifying the nature of the proof and the manner in which they must provide it;
- 13. requiring licensees to maintain business premises that comply with the prescribed rules;
- 14. respecting financial security requirements for licensees, including requiring them to be bonded or insured or have collateral security, and prescribing the forfeiture of bonds, the disposition of proceeds and other terms related to the financial security requirements;
- 15. governing the insurance that licensees must have, including,
 - i. prescribing the types of insurance they must have, and
 - ii. prescribing the minimum amounts for which they must be insured under each type of insurance;
- 16. requiring licensees or any class of licensees to maintain trust accounts, governing those accounts including specifying the money that shall be held in trust and the conditions of the trust and authorizing the registrar to specify the location at which the trust accounts must be kept;
- 17. governing the documents and records that licensees must keep, including the manner and location in which licensees must keep them and the time periods for which they must keep them and authorizing the registrar to specify the location at which licensees must keep them;
- 18. governing the transfer of documents and records that a licensee is required to make to a client under section 54, including,
 - i. specifying the form in which and the time at which the licensee is required to make the transfer,
 - ii. specifying the rights and obligations of the parties if the licensee does not comply with the requirement, and
 - iii. specifying the rights of any other condominium management provider or condominium manager who provides condominium management services to the client after the time at which the licensee was required to make the transfer, if the licensee did not make the required transfer;
- 19. governing the making and retaining of copies of documents and records by a licensee under subsection 54 (2), including,
 - i. specifying conditions that apply to the making of the copies,
 - ii. specifying the time period during which the licensee is authorized to retain the copies, and
 - iii. requiring the licensee to return the copies to the client or to destroy the copies after the expiry of the time period mentioned in subparagraph ii and governing the disposition of the copies under this subparagraph;
- 20. specifying procedures and other matters related to complaints under section 57;
- 21. governing the composition of the discipline committee and the appeals committee and, subject to subsection 58 (3), governing matters relating to the appointment of the members of those committees;
- 22. respecting inspections and investigations under this Act;
- 23. requiring that any information required under this Act be in a form approved by the director, the registrar or the Minister, as specified in the regulation;
- 24. specifying rules relating to addresses for service under this Act;
- 25. authorizing the director or the board of the administrative authority to conduct quality assurance programs in relation to the administration of this Act or the regulations and to use information collected under this Act for the purposes of those programs;
- 26. delegating to the Minister the power to make regulations with respect to any matter that may be the subject of a regulation under this section;
- 27. providing for any transitional matter necessary for the effective implementation of this Act or the regulations, including,
 - i. authorizing persons who are not licensees but who provide condominium management services to clients before section 34 comes into force to continue to provide those services, subject to the requirements set out in the regulations, and

- ii. governing the application of prescribed provisions of this Act and the regulations to licensees and other prescribed persons. 2017, c. 33, Sched. 5, s. 1.

Residual authority to act

(2) Despite any delegation to the Minister under paragraph 26 of subsection (1) and without having to revoke the delegation, the Lieutenant Governor in Council continues to have authority to make regulations in respect of the matter that is the subject of the delegation.

Making regulation not revocation

(3) If the Lieutenant Governor in Council makes a regulation to which subsection (2) applies, the regulation does not have the effect of revoking a delegation under this section unless the regulation so specifies.

Minister's regulations preserved

(4) The Lieutenant Governor in Council may, by regulation, revoke a delegation to the Minister under paragraph 26 of subsection (1), but the revocation of a delegation does not result in the revocation of any regulation the Minister made under the delegated power before the revocation of the delegation.

Section Amendments with date in force (d/m/y)

2017, c. 33, Sched. 5, s. 1 - 14/12/2017

PART VIII (OMITTED)

79 OMITTED (PROVIDES FOR AMENDMENTS TO THIS ACT).

PART IX (OMITTED)

80-82 OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).

PART X (OMITTED)

83 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT). 2017, c. 20, Sched. 8, s. 147.

Section Amendments with date in force (d/m/y)

2017, c. 20, Sched. 8, s. 147 - 14/11/2017

84 OMITTED (ENACTS SHORT TITLE OF THIS ACT).

Français

[Back to top](#)