



Last Updated: July 9, 2021

## A GUIDE TO GOOD CONDUCT FOR NEW HOME BUILDERS AND VENDORS

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### Purpose

The Home Construction Regulatory Authority (HCRA) has been established under the New Home Construction Licensing Act, 2017 (NHCLA) to be the organization responsible for licensing and regulating new home builders and vendors in Ontario.

The HCRA’s role is to strengthen consumer protection for Ontario’s new home buyers by ensuring that those responsible for the construction and sale of new homes are licensed and meet the HCRA’s high standards for competency, conduct, and financial responsibility.

The purpose of this Guide is to help licensees and applicants for a licence understand the HCRA’s approach to assessing the ongoing good conduct expected of all licensees. Applicants for a licence must satisfy the HCRA Registrar that they can reasonably be expected to act in accordance with the law and with honesty and integrity. This applies to an initial application for licensing and an application to renew a licence.



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This Guide outlines the expectations of good conduct and provides examples of potential concerns regarding conduct that may result in the need for further assessment by the HCRA<sup>1</sup>.

After becoming licensed, meeting the HCRA's expectations of good conduct is an ongoing responsibility of every licensee. In addition to the HCRA's general expectations of good conduct, this Guide includes discussion on the obligations and expectations in the [Code of Ethics](#), which is effective as of July 1, 2021. As of July 1, 2021, all licensees will have the ongoing responsibility to comply with the Code of Ethic.

For greater clarity, in the event of a conflict between the expectations in this Guide and the regulation for the Code of Ethics, the latter shall prevail.

## Introduction to Licensing under the NHCLA

Under the NHCLA, new home builders and vendors are required to have a licence from the HCRA before they can build or sell new homes in Ontario.

The purpose of licensing and regulation is to ensure licensees comply with the law and meet provincial standards, which support public confidence that new home builders and vendors are qualified to perform the work.

New home buyers entrust their financial and other interests to their home builder or vendor. Licensing provides assurance that licensees meet the HCRA's professional standards. This gives greater protection to consumers in terms of what they can expect of their builder or vendor and supports the integrity of the new home industry.

Licensing requirements include technical competence, financial responsibility, and demonstration that applicants will conduct themselves in accordance with the law and with honesty and integrity. The assessment of good conduct will include a careful consideration of past and current conduct that might impact new home buyers and owners and whether the HCRA can reasonably expect an applicant to consistently meet ethical standards.

The HCRA licensing process includes the collection of information necessary for the HCRA Registrar to decide if an applicant is entitled to a licence. The HCRA must exercise due diligence to identify applicants and licensees whose past and current conduct brings into question whether they can reasonably be expected to act with honesty and integrity.

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<sup>1</sup> Throughout this Guide, references to the HCRA include the Registrar



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The HCRA takes a proactive approach to licensing that involves identifying and measuring the specific risks to the public, starting with the initial review of each new licence application and ongoing monitoring and enforcement of obligations under the law during the term of a licence.

If the Registrar determines that an applicant or licensee does not or cannot reasonably be expected to meet the expectations of good conduct, the HCRA Registrar may take actions regarding an application or ongoing entitlement to a licence. With regard to renewals and ongoing entitlement to a licence after July 1, 2021, the Registrar may consider a potential failure to comply with the Code of Ethics, among other considerations of questions of conduct, honesty, and integrity. The actions that the Registrar may take where there are concerns about conduct and any impact on entitlement to be licensed are discussed in the [final section of this Guide](#).

## Legislative Framework

Section 38 of the NHCLA states that an applicant is entitled to a licence or a renewal of a licence if, in addition to other factors such as technical competence, their past and present conduct provides a reasonable basis to believe that they will carry on business with honesty and integrity:

If the applicant is an individual, clause 38 (1) (a) (ii) states: the past and present conduct of the applicant, of all interested persons in respect of the applicant and of all other prescribed persons affords reasonable grounds to believe that the applicant will carry on business in accordance with the law and with integrity and honesty

If the applicant is a corporation, clause 38 (1) (b) (iii) states: the past and present conduct of its officers and directors, of all interested persons in respect of its officers and directors and of all interested persons in respect of the corporation affords reasonable grounds for belief that its business will be carried on in accordance with the law and with integrity and honesty

Subsection 84 (1) (f) of the NHCLA allows the Minister to make a regulation establishing a [Code of Ethics](#). The Registrar can refer a complaint about an alleged breach of the Code of Ethics to the Discipline Committee.

In the event of a discrepancy between this Advisory, any regulation, or the NHCLA, the NHCLA will prevail.



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## Conduct Across Entire Organization

Expectations of good conduct, including the Code of Ethics, reasonably apply to the full organization of a licensee, including personnel such as contractors, marketing and sales representatives, construction site supervisors, trades, warranty and customer service staff, officers and directors, and other employees or contractors. The HCRA expects licensees to take reasonable measures to ensure that the people they employ and contract with are aware of and uphold the NHCLA, the Code of Ethics, and other conduct requirements. These expectations apply at the time of applying to be licensed and continue to apply for the duration of the licence.

## The Application Process

In the licensing application, an applicant must answer questions related to conduct and circumstances that are relevant to the Registrar's assessment of whether the applicant can reasonably be expected to meet the expectations of good conduct. The self-reporting requirements in the application include providing full and detailed information about any relevant conduct or circumstances and providing any supporting documentation. Applicants must answer all questions honestly and accurately. Failure to do so may result in a Notice of Proposal to refuse a licence, to revoke or suspend the licence if the applicant is seeking a renewal, or require one or more conditions on the licence, and possibly other actions.

New applicants are required to provide a Criminal Record and Judicial Matters check .

The following is a list of the areas for self-declaration information in the application form that relate to expectations of good conduct.

- Have you ever had a commercial, professional or business registration, certificate or licence of any kind refused, suspended, revoked, cancelled or been subject to disciplinary action in respect of those registrations, certificates or licenses, or have you ever been or are you currently a party to such a proceeding?
- Has any civil action been taken against you personally or against a business that you owned or currently own, or in which you played a controlling role, in the last 10 years? Are there any unsatisfied judgements or court orders, or collection activity against you or those businesses?
- Have you ever been found guilty or convicted of an offence under any law, or are there any charges pending? Make sure to include cases with a conditional, absolute discharge or stayed charges. Please note: This question refers to charges under any law, including the Criminal Code, Building Code Act, Provincial Offences Act, Workplace Safety and Insurance Act, or Income Tax



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Act. You must answer “yes” even if the finding of guilt, conviction or pending charges do not appear on a Criminal Record (or other) check.

- Have you had a restraining order or other judicial order against you in the previous 10 years under any law, including the Provincial Offences Act, Criminal Code, Workplace Safety and Insurance Act, Family Law Act, or the Children’s Law Reform Act?
- To the best of your knowledge, are any investigations being conducted on you in any jurisdiction?
- Have you been involved in the construction of a new home in Ontario in the previous 10 years by a builder that was not licensed or where that new home was not registered for warranty coverage?
- Have you been involved in the construction or major renovation of a home in the previous two years? If yes, what is the full municipal address?

The HCRA will consider information received from Tarion that is relevant to an applicant’s good conduct, including their history of meeting their warranty obligations. Information from external sources, including about charges and convictions, terminations from employment for cause, and past discipline and licensing actions by a regulatory authority will also be considered.

The HCRA will take a holistic approach to assessing conduct. The Registrar will consider a broad range of factors including how much time has passed since the conduct; whether the conduct is part of a pattern of behaviour, and steps taken to redress the impact of the conduct. The Registrar will also consider the circumstances of each individual matter.

The expectation of good conduct is an ongoing obligation. The licensee is expected to uphold these standards throughout the term of their licence.

## Code of Ethics

The Code of Ethics is new to the new home construction sector and became effective on July 1, 2021.

When reviewing a licensee’s ongoing entitlement to a license, the HCRA Registrar will consider, in addition to the good conduct considerations in the NHCLA, whether a licensee has lived up to the HCRA’s expectations of good conduct. The Registrar will review a licensee’s conduct against the standard in the Code of Ethics.

If the Registrar receives a complaint or other information about a licensee’s conduct, the Registrar may take certain actions, such as reviewing a licensee’s ongoing entitlement to a licence or proposing conditions on the licence. The Registrar may also refer a complaint to the Discipline Committee if the Registrar believes a licensee may have violated the Code. The Registrar’s decision on what action they might take will be based



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on a broad range of factors, such as the severity of the conduct, the nature of the information and evidence, and the licensee's conduct and compliance history.

The HCRA's current and ongoing expectations of good conduct and the licensee's obligations in the Code of Ethics are summarized below. For the precise wording of each of the 20 sections of the Code of Ethics please refer to the [Code of Ethics](#) regulation. In the event of a discrepancy between the regulation and the information in this Guide, the regulation will prevail.

## 1. Comply with the NHCLA and its regulations

Section 1 of the Code of Ethics reinforces the licensee's obligation to comply with the duties and responsibilities of licensees in the NHCLA and the regulations made under it. The Registrar may be of the opinion that a failure to comply with a provision of the NHCLA or its regulations may be a breach of the Code of Ethics and the Registrar may refer the matter to the Discipline Committee. Depending on the nature of the conduct, it may also give rise to a notice of proposal to apply conditions to a licence, revoke or suspend a licence, or other compliance action under the NHCLA.

The Registrar will consider the circumstances of an alleged breach of the Code of Ethics in determining what compliance measures are appropriate. This provision complements the expectation that a licensee will carry on business in accordance with the law as provided for in section 38 of the NHCLA.

## 2. Ensure employees and others working for the licensee comply with the NHCLA and its regulations

A licensee must ensure that any employees, contractors, key office holders and others acting on behalf of the licensee carry out their duties in compliance with the NHCLA and its regulations. This includes directors, officers, principals, agents, and independent contractors.

## 3. Treat people fairly, honestly and with integrity

In carrying on business, the licensee must treat every person they deal with fairly and with honesty and integrity. The obligation applies broadly to the conduct of the licensee when carrying on business. This provision complements the expectation that a licensee will carry on business with integrity and honesty as provided for in section 38 of the NHCLA.



#### 4. Not engage in discrimination, harassment or bullying and reasonable accommodation

This provision has two distinct obligations. The first is that the licensee, in carrying on business, must treat all persons without discrimination and must not engage in harassing or bullying. The second obligation is to provide reasonable accommodation for persons with disabilities. The two aspects of this provision complement the expectation that a licensee will carry on business with integrity as provided for in section 38 of the NHCLA.

#### 5. Protect the public

In carrying on business, the licensee has an obligation to protect the health and safety of all persons. This provision applies generally in the licensee's conduct of business and captures a variety of relationships and locations, from the construction site to the sales office, and from the interested buyer and the ultimate purchaser.

#### 6. Provide conscientious and competent service

This provision has two aspects. First, a licensee is obliged to provide conscientious, courteous, and responsive service in the course of carrying on business. Second, the licensee is also required to demonstrate reasonable knowledge, skill, judgement, and competence. This second aspect is complementary to the competency requirements in section 38 of the NHCLA.

#### 7. Be financially responsible

A licensee must be financially responsible in carrying on business. This provision complements section 38 of the NHCLA that requires that the licensee be financially responsible in the conduct of business.

#### 8. Not engage in unprofessional conduct

This provision has two aspects. From a personal perspective, a licensee is prohibited from doing or failing to do something that, considering all the circumstances, would reasonably be regarded as being disgraceful, dishonourable, unprofessional, or unbecoming a licensee.

From the perspective of the regulated sector, a licensee is similarly prohibited from doing or failing to do something that, having regard to all the circumstances, is likely to bring the sector into disrepute.



## 9. Not intimidate or coerce

This provision has three obligations. First, a licensee must not intimidate any person. Second, a licensee must not coerce any person. And third, a licensee must not subject any person to undue pressure.

## 10. Comply with the law

Complementing section 38 of NHCLA's requirement to act with honesty and integrity, this provision requires that the licensee comply with the laws of every jurisdiction in which the licensee carries on business. This requirement would extend to a licensee's conduct in other provinces and countries such that breaches of the law in those jurisdictions is relevant to determining whether a licensee is complying with the Code of Ethics.

## 11. Report charges and findings of guilt

Licensees must promptly notify the registrar in writing upon becoming aware that certain persons have been charged with or found guilty of certain offences. The obligation applies in respect of the licensee, a director, officer, principal, or partner of the licensee. It applies to charges and findings of guilt for offences that a licensee must disclose as part of an application for licence or for renewal of licence. It applies regardless of when the charge or the finding of guilt occurs, and not just charges or findings of guilt that occur after an application for licence or for renewal. This complements the requirements in section 52 of NHCLA regarding informing the HCRA of material changes.

## 12. Not engage in or be party to misrepresentation

Licensees have an obligation to not engage in misrepresentation or be a party to a misrepresentation involving another party. The obligation is concerned with the conduct of the licensee and others the licensee is engaged with when it is a situation of misrepresentation. It complements section 54 of the NHCLA that prohibits a licensee from making a false, misleading, or deceptive representation in its advertising, documents or in any other material that may be set out in the regulations. It is also relevant to the Registrar's authority under section 64 of the NCHLA to make an order in respect of false advertising.

## 13. Not provide false, misleading or deceptive information or documents

A licensee must not provide false, misleading or deceptive information or documents to the HCRA. This provision of the Code of Ethics complements the requirement in section 38 of the NHCLA that neither the applicant, employee, agent of the applicant, nor officer or director of a corporate applicant, have made any false statement regarding the conduct of the applicant's business. This provision also links to the offence provision in



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section 71 of the NHCLA, which makes it an offence to furnish false information to the HCRA in any application under section 38, in any statement required under the NHCLA, or in any circumstance that may be set out in the regulations.

## 14. Use forms and documents required by law

In carrying on business, a licensee must ensure that it uses all forms and documents that are required by law. For example, this provision is linked to the NHCLA and its regulations that require that certain forms be used such as the addenda to agreements of purchase as well as section 38's requirement that the applicant act in accordance with the law.

## 15. Make and keep business records

A licensee must make and keep all records that the licensee reasonably requires for the conduct of the licensee's business. This provision complements section 38 of the NHCLA's entitlement provision that requires that the Registrar be of the opinion that the applicant can reasonably be expected to be financially responsible in the conduct of business and to act in accordance with the law and with honesty and integrity.

## 16. Not obstruct complainants or persons making inquiries into complaint

This provision has two parts. First, a licensee must not obstruct or attempt to obstruct any person from making a complaint to the Registrar. Second, a licensee must not obstruct or attempt to obstruct the Registrar or their representative, from inquiring about a complaint.

## 17. Be clear and truthful in representations and avoid false, misleading, deceptive or illegal representations

The first obligation on the licensee is that they be clear and truthful when describing a new home including its features, any benefits and prices in connection with the new home. In addition, the licensee must ensure that all representations they or others acting on their behalf make, including advertising, are not false, misleading, deceptive or illegal.

## 18. Be clear in communications about payments, commissions, remuneration or other costs in connection with a new home

A licensee must not communicate that amounts payable in respect of a new home are fixed or approved by the HCRA, Tarion Warranty Corporation or any government authority. The one exception is fees, costs or other charges that are set by the HCRA, Tarion Warranty Corporation or a government authority, in which case the communication can identify they are fixed or approved as applicable.



## 19. Maintain confidentiality of information

A licensee must not disclose to a third party any confidential information received from someone unless they have the prior written consent of the person to whom the information relates. The one exception is if the disclosure is otherwise authorized or required by law.

## 20. Not facilitate or participate in illegal construction or sale of new homes

This provision has three parts. The first obligation is that a licensee must not participate in or facilitate the construction or sale of a new home by a builder or vendor who is not licensed. The second obligation is that a licensee must not participate in or facilitate a vendor's sale of a new home, or a vendor's offer to sell a new home, where the vendor has not received the confirmation either that the home qualifies for enrolment in the warranty plan under the Ontario New Home Warranties Plan Act or has been enrolled in the warranty plan. The third obligation is that a licensee must not participate in or facilitate a builder's construction of a new home, or a builder's entering into a contract with an owner of land for the construction of a home, where the builder has not received confirmation that the home has been enrolled in the plan.

## Actions of the HCRA Registrar

The HCRA is responsible for assessing all applications for initial licensing and renewal of licence to ensure the applicant is entitled to be licensed, both initially and during the term of a licence. The Registrar may issue a Notice of Proposal to refuse, suspend, or revoke a licence, or impose a condition on a licence including in circumstances where the Registrar has reason to believe that an applicant or licence holder cannot reasonably be expected to meet the expectations of good conduct.

At the initial screening stage, any potential good conduct concerns that have been disclosed or identified will be addressed as follows:

1. Reviewed and a determination made that the issues disclosed do not give rise concerns that the applicant would not act in accordance with the law or with honesty and integrity;
2. Resolved based on a review of additional information or clarification received following a request by HCRA and a determination made that the issues disclosed do not give rise to concerns that the applicant would not act in accordance with the law or with honesty and integrity; or
3. Referred to the Licensing Manager for further inquiry.

If further inquiry is necessary, the applicant will be provided an explanation which includes next steps and the expected timing of the inquiry. Factors that may be considered in undertaking a further inquiry include: the past criminal and other record of



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offence of the applicant, the seriousness of any offence, the risk to the public, the extent of any harms that have been or could be caused, and the builder or vendor's willingness to comply with licensing requirements.

If the HCRA receives a complaint about the conduct of a licensee, the Registrar has a range of possible responses, including addressing the matter as a licensing issue. The Registrar may refer the matter to the Discipline Committee if they believe that there may have been a breach of the Code of Ethics. The Discipline Committee may hold a hearing into the matter and may make determinations and orders. The determination and/or order of the Discipline Committee may be appealed to the Appeals Committee.

The HCRA's commitment to promoting high professional standards for new home builders and vendors starts with a commitment to help applicants and licensees come into compliance with the rules of the new home construction sector and to stay in compliance. Where there is no previous history of concern or of non-compliance, and where appropriate in the circumstances, the HCRA will support good conduct expectations by providing compliance assistance and implement progressive compliance and enforcement actions.

The HCRA has adopted a compliance-focused approach to support the objectives of the NHCLA through an efficient and effective process. The compliance-focused approach aims to maximize the regulatory effectiveness of harm reduction efforts while minimizing burdens imposed on the regulated industry. Measures include compliance assistance, guidance, and education. As the risk to home buyers increases, the HCRA will escalate its response to prevent or mitigate potential harm. For situations where the level of risk may be immediate and serious, the HCRA will use available enforcement actions.

Regulatory decision making is guided by the broad objective of consumer protection and by a commitment to treat applicants and licensees fairly, with consistency and transparency, and with consideration of the unique circumstances of each applicant or licensee.

If the Registrar has reason to believe that licensing conditions are necessary to address good conduct concerns, then the Registrar will propose licensing conditions. Should the Registrar determine that the applicant cannot reasonably be expected to meet good conduct requirements of acting in accordance with the law and with honesty and integrity, the Registrar may propose to refuse, suspend, or revoke the licence.

An applicant or licensee who has been refused a licence or a renewal of licence, or had a licence suspended or revoked or had conditions applied to the licence is entitled to ask for a hearing before the [License Appeal Tribunal](#).