

Retirement Homes Regulatory Authority Risk Officer Annual Report 2021 / 2022

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Introduction

The Retirement Homes Regulatory Authority, (“RHRA” or “Authority”) was established under the *Retirement Homes Act, 2010* (“Act”) and, while it is considered an independent body from the provincial government, it is subject to government oversight through a written Memorandum of Understanding (“MOU”) with the Ministry for Seniors and Accessibility (“Ministry”). The Authority administers the Act and regulations and oversees the enforcement of provisions contained within.

The Act requires that an independent, statutory officer (i.e. Risk Officer) be appointed by the Authority. The duties of the Risk Officer are set out in section 24(3) of the Act as follows:

The Risk Officer:

- a) shall review and assess the effectiveness of the Authority’s administration of this Act and the regulations, including the Authority’s activities and proposed activities related to ensuring that licensees meet the care standards and safety standards set out in this Act and the regulations, and respect the rights of residents set out in the Act and regulations, and;*

- b) shall perform the other duties and exercise the other powers that are prescribed.*

The Risk Officer is appointed by the Board of Directors of the RHRA (“Board”), in accordance with provisions set out in the Act, the MOU between the RHRA and the Minister responsible for Seniors and Accessibility, and RHRA’s By-law Number 1. They are accountable to perform such duties and issue reports to the RHRA Board through its Governance, Regulatory Affairs, and Nominations Committee (“Governance Committee”). Notwithstanding these reporting requirements, the Risk Officer role is established as both a statutory but also an independent position, with clear expectations that the Risk Officer carries out their duties in an independent manner.

Overview, Scope and Approach

This report was developed while the COVID-19 pandemic remained active which created challenges given the continued issues and workload the RHRA was managing. However, RHRA management and the Board remained committed and supportive of the Risk Officer's work. During the scoping exercise for this year's report, time was spent reviewing previous Risk Officer and other RHRA reports, speaking with RHRA staff, and conversing with the Governance Committee. Through this process, a defined scope was formulated and is the subject of this report.

The focus of this report is: Reviewing RHRA's licensing processes

Part III of the Act outlines licensing parameters, which includes the requirement that "no person shall operate a retirement home unless the person is licensed under this Act to operate that specific home". This fundamental requirement provides RHRA the ability to review "documents and information specified in the regulations and the other documents and information that the Registrar reasonably requires." In this context, RHRA has the authority to assess the documentation received to issue, terminate, add conditions, or otherwise decide on licensing applications.

The licensing process was previously reviewed by the Risk Officer seven years ago in 2014/2015. The RHRA has matured, and related processes, have significantly changed since that time.

Prior to beginning fieldwork, fundamental questions were developed which helped guide and focus the review process. Specifically, the questions guiding the review were:

- Are the licensing processes efficient? Is there room for improvement?
- Do applicants have a clear understanding of licensing requirements? Is there room for improvement?
- Is the licensing process helping assess whether competent persons/companies are operating retirement homes?

The work undertaken to arrive at the recommendations noted within this report were a result of several discussions with RHRA management and staff, consultation with licensees/operators, in addition to documentation review and analysis. This approach was undertaken to ensure that any recommendations noted within this report were developed based on a comprehensive understanding of perspectives and feedback from various stakeholders.

Although there are several findings and recommendations below, RHRA leverages a risk-based licensing approach which focuses on deploying resources, time, and effort on applicants and

licensees of greatest risk. The recommendations noted below are meant to refine and update RHRA's licensing processes, as opposed to proposing any significant structural changes.

Recommendations

Background:

The licensing of entities to operate retirement homes is a fundamental part of the Act and is a critical tool for the RHRA to ensure that retirement homes are being operated in the best interest of residents. Given the importance of the licensing process, it was the first topic of review of the Risk Officer in 2014/2015. Since that time, RHRA has matured and adapted as an organization to better respond to known and emerging trends and risks. As the aging Ontario population continues to drive retirement home demand, RHRA has continuously reviewed and updated licensing processes to best manage risks. The recommendations noted below build upon the work that has already been done to-date.

Recommendations:

1) Standardized business/operational plan template

Recommendation: Based on an assessment of factors during the licensing process, RHRA, on occasion, requests a business/operational plan from applicants. RHRA should consider developing a standard template for the type of information that is expected from applicants when business/operational plans are requested.

Context: There have been instances where a business/operational plan has been requested from applicants, however what applicants submitted was not the information RHRA was looking for or expecting. This subsequently created confusion and unnecessary 'back and forth', leading to frustration and delays in processing the licensing application. A standardized template would help focus the information RHRA is seeking and would be welcomed guidance from applicants.

2) Roster of pre-approved external support

Recommendation: Construct a roster of pre-approved external vendors to provide RHRA quick access to specialized support which may be required throughout the licensing process. This may include expertise in areas such as, amongst others, legal, financial, operational, etc.

Context: As the industry continues to mature, more and more complex applicants are applying to operate retirement homes. As such, there may be occasions when external expertise is required to process licensing requests given either the complexity of the situation and/or bandwidth challenges at the RHRA. RHRA should consider issuing a Request for Proposal, in which external experts in various disciplines apply to be pre-approved, so that RHRA can quickly access their services, as needed. Note: Although this recommendation is in relation to the licensing lifecycle, this pre-approved roster may also yield benefit in other areas of RHRA's business (for example in litigation scenarios).

3) Online portal for licence applications/submissions

Recommendation: Develop a user-friendly online portal for submission of licensing applications and related documentation submissions. This portal should also feature a mechanism by which a minimum amount of information is required to be uploaded prior to the application being able to be submitted for review.

Context: In the past, applicants submitted licensing applications and related information via mail and more recently via email. This process can lead to delays, confusion, and is difficult to manage. A online tool will help foster better access on the status of an application, what documents have been submitted, what documents are still outstanding, any open questions, etc., which ultimately leads to increased efficiency and a more user-friendly experience for applicants.

4) Enhanced licence surrender guidance and related communication

Recommendation: Develop more formalized guidance in relation to surrendering licences, which aligns with 'Ceasing to operate a retirement home' requirements under Section 49 of the Act. This guidance should be provided to applicants when they first apply for a license, but also be easily accessible post licensing. RHRA should also consider proactively communicating this guidance in other circumstances deemed appropriate.

Context: A transition plan for a licensed retirement home is extremely important depending on the needs of residents. A formal, well communicated license surrender guide will remind licensees of their obligations, which ultimately will help ensure that any surrender transition is smooth and uneventful for residents. There have been incidents in the past where the RHRA has had to use enforcement and compliance monitoring resources to ensure that licensees provided residents with proper notice and the RHRA worked with community partners to assist residents find alternate

accommodations. Formal documentation and clear communication will help mitigate the risk of these types of situations from occurring.

5) Enhanced education

Recommendation: Develop educational material that is available to all licensees, with a focus on operators new to the Province and/or new to operating retirement homes. This could take the form of documentation, video, online content, etc., with the goal being to provide a strong understanding of the retirement home regulatory environment including RHRA's requirements and expectations. Also consider whether the educational portion would be a requirement during the licensing process for all or some (e.g. new to the Province or new to operating retirement homes) applicants.

Context: There has been an increase in applicants who are either new to operating homes in Ontario or new to operating retirement homes. As such, there may be a lack of understanding in relation to the regulatory environment. Upfront, easily available education will help increase understanding of RHRA's requirements and expectations but will also decrease the 'back and forth' with RHRA on a variety of questions.

6) Protocols for rescinding or issuing additional licence conditions

Recommendation: Develop protocols and a formal approach for how conditions, post initial licensing, can be rescinded, or subsequently issued. Conditions may be placed on operator licences at the outset, however there are no formal protocols for how and when conditions will be rescinded or issued post licensure. RHRA should consider how this would be executed, as currently conditions are not tied to a length of time or parameters for how and when conditions could be removed (other than at the request of a licensee). The continued development/formalization of monitoring processes will also help in this regard.

Context: Some conditions are placed on licences based on past experience, while other conditions may be placed given an assessment of the ability of an operator to operate a home in compliance with the spirit of the Act. In either situation, a licensee may, over time, exhibit behaviour which no longer requires certain conditions on their licence or alternatively exhibit behaviours that requires the issuing of conditions. This would provide RHRA another tool to appropriately oversee licensees as they change / adapt over time. It should be noted that this recommendation is contemplated and aligned with Sections 39 ('Conditions imposed by Registrar') and 43 ('Application for removal of condition') of the Act.

7) Enhanced collaboration with other government/oversight agencies

Recommendation: Many retirement home licensees operate in multiple jurisdictions and interact with local, provincial, and other oversight agencies. Currently RHRA, in some instances, seeks publicly available information during the licensing process. RHRA should consider expanding this approach to assess opportunities to build relationships to inform licensing related decisions.

Context: Information that can be gathered from other government/oversight agencies can be valuable when assessing licensees, especially those new to Ontario. The ability to leverage both publicly available and other information may allow RHRA to adjust what type of information is requested at the outset or may lead to conditions. For example, if another jurisdiction can share that an operator continues to have critical staffing challenges which lead to resident complaints, this may allow RHRA to place conditions on that operators' licence. Information to assess 'past conduct' as noted within Section 35(2) of the Act can be helpful to RHRA in the licensing related lifecycle.

8) Enhanced notification requirements

Recommendation: Develop enhanced and more robust notification requirements post licensure, which are clear and well communicated. This may include notification requirements such as: notification required if fines/penalties/legal action taken from an oversight body in another jurisdiction, equity changes exceeding a certain threshold (i.e. below 50%), beneficial ownership changes, and other items which could impact the status or risk profile of a licensee. The examples listed above are for illustrative purposes only and RHRA should assess what additional information would be valuable.

Context: The focus of this recommendation is business related changes, as opposed to changes in the services offered or type of licence, which may be covered in RHRA's routine inspections or Alternate Assurance Evaluation Project. This recommendation helps further clarify and motivate operators to notify RHRA if changes occur, as opposed to any active obligations on RHRA to seek information. There is already a process in place for licensees to notify RHRA of changes, so enhanced notification requirements could simply bolster the current process.

Other Recommendations/Comments:

- RHRA can collect information during the licensing process which may be valuable for on-going compliance monitoring, risk evaluations, and most importantly providing insight into the suitability of an applicant. As such, below are some suggestions on how to bolster some of the questions noted in the personal and corporate history application forms:
 - o Although litigation and bankruptcy searches are completed by RHRA, it may be helpful to corroborate and assess honesty and integrity of an applicant by asking questions such as (but not limited to):
 - Have they or the corporation ever declared bankruptcy?
 - Do they or the corporation have any arrears in tax filings?
 - Have they or the corporation been involved in any civil proceedings?
 - Questions that lead to a better understanding of ultimate ownership and ‘controlling mind’ of applicants.
 - Consideration should also be given to obtaining disclosure from all board of director members and officers, in addition to attestation from these individuals.

Concluding Remarks

RHRA has made many changes to licensing processes since it was last reviewed in 2014/2015. These modifications have been made to respond to the changing environment of the retirement home sector. Recent trends in the sector include the entrance of new licensees with complex ownership and operating structures. These changes in the market further support the need for RHRA to implement enhanced approaches and tools that allow the right information to be collected and analyzed to make licensing decisions, which includes on-going monitoring. The goal is to ensure retirement home licensees and operators are ‘good actors’, who put the safety, security, and comfort of residents first.

In closing, I would like to thank Jay O’Neill, CEO and Registrar of the Authority, and his management team for their continued commitment in supporting the Risk Officer’s work. This is especially appreciated, given RHRA’s current workload and on-going COVID-19 pandemic. Their support has helped ensure that my recommendations will not only add value but are practical, aligned with the Act and best positioned to further strengthen the RHRA as a risk-focused, collaborative, and effective regulator.

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