

June 2022

Retirement Homes Regulatory Authority Response to the 2021-22 Risk Officer Annual Report

Introduction

Nav Sandhawalia was appointed as the Retirement Homes Regulatory Authority (RHRA) Risk Officer by the RHRA Board of Directors in March 2018. He was subsequently re-appointed by the Board for a second three-year term, effective June 1, 2021. The Risk Officer reports to the Board and exercises an independent role in assessing the effectiveness of the RHRA’s administration of the [Retirement Homes Act, 2010](#) (RHA) and [Ontario Regulation 166/11](#).

The Board accepted the Risk Officer’s 2021-22 report in June 2022. The report focused on: Reviewing RHRA’s licensing processes

The Board commends Mr. Sandhawalia for his work and welcomes his report, which provides opportunity for further continuous improvements within the RHRA to advance the safety and protection of retirement home residents.

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<p>1) Standardized business/operational plan template</p> <p>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.</p> <p>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</p>	<p>The RHRA agrees with this recommendation, and it will review options for implementation as part of its ongoing functional improvements and capacity planning. Timing for implementation will be evaluated as part of the 2023-2024 business plan process.</p>

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<p>would help focus the information RHRA is seeking and would be welcomed guidance from applicants.</p>	
<p>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.</p> <p>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).</p>	<p>The RHRA agrees with the recommendation to construct a roster of pre-approved external support to assist in its review of licensing applications in an increasingly changing and maturing industry and will be implemented throughout 2022-2023.</p> <p>The RHRA will be assembling a project team to complete work on refining licensing procedures. Tentatively, this will include; finalizing criteria for assessing financial viability of applicants, developing a process for the licensing department to impose conditions on licenses without the involvement of the legal/enforcement department, developing a list of pre-approved vendors to assist the RHRA in vetting financial viability and operational effectiveness, developing plain language guidance on what constitutes controlling interest for a corporation or partnership and developing policy on changes of controlling interest.</p>
<p>3. Online portal for licence applications/submissions</p> <p>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.</p> <p>Context: In the past, applicants submitted licensing applications and related information via mail and more recently via email. This</p>	<p>The RHRA agrees with this recommendation and will be incorporating user-friendly functionality in the design of a new case management system and online portal to increase efficiency. Implementation of the online portal is scheduled for January 2023.</p>

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<p>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.</p>	
<p>4. Enhanced licence surrender guidance and related Communication</p> <p>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.</p> <p>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.</p>	<p>The RHRA agrees with this recommendation. Information has now been placed on the RHRA website to make the obligations of a licensee more prominent. This includes the necessary steps post licensing when ceasing to operate a retirement home including submitting a transition plan to the RHRA within the prescribed period. Formalized guidance to applicants when they first apply as part of a welcome package will be incorporated as part of the ongoing process improvements. This improvement will be implemented in 2023-2024.</p> <p>When notified of a home that wished to cease operating as a retirement home, the RHRA will continue to work with licensees to ensure resident rights are protected.</p>

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<p>5. Enhanced education</p> <p>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.</p> <p>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.</p>	<p>In the 2023-2024 fiscal year, the RHRA will seek to implement additional strategies to improve licensees’ understanding of their obligations and the regulatory environment. Strategies will include identifying fiscally responsible yet effective delivery of additional educational content to licensees and criteria for differentiating between when it may be required versus voluntary.</p>
<p>6. Protocols for rescinding or issuing additional licence conditions</p> <p>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</p>	<p>Consideration is currently being given to time bounding certain licensing conditions and having reporting requirements as part of compliance monitoring based on individual circumstances at licensing and post licensing. This provides additional insight into the necessity of ongoing conditions attached to the license.</p> <p>The RHRA agrees with this recommendation and will review options for formalizing implementation strategies as part of ongoing improvements to compliance monitoring and capacity planning to be undertaken in 2023-2024.</p>

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<p>request of a licensee). The continued development/formalization of monitoring processes will also help in this regard.</p> <p>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.</p>	
<p>7). Enhanced collaboration with other government/oversight agencies</p> <p>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.</p> <p>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</p>	<p>The RHRA agrees with this recommendation and will continue to seek collaboration opportunities with other oversight agencies. The RHA was recently designated under the Regulatory Modernization Act which will be used as a mechanism to allow for expanded flow of information with Ontario regulators. In addition, the RHRA is exploring MOUs with Ontario regulatory agencies in 2022-2023.</p> <p>Open-source searches for information on applicants with other agencies outside of Ontario are gathered as part of the vetting process. Strategies to obtain additional contextual information or evidence from these agencies are currently being sought on a case-by-case basis and a more formal strategy will be implemented in 2023-2024.</p>

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<p>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.</p>	
<p>8). Enhanced notification requirements</p> <p>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.</p> <p>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.</p>	<p>A new notice of change form was implemented in 2021 which outlines the types of changes which require RHRA notification and has clearer guidance on the information required by the RHRA.</p> <p>The RHRA agrees with this recommendation and will incorporate more user-friendly functionality for licensees to make changes during the development of the licensee portal in 2023. At that time, additional clarifying guidance will be provided to the sector on when a change of information needs to be submitted to the RHRA, the details of the information and the consequences for failing to submit the information.</p>
<p>Other Recommendations/Comments:</p> <ul style="list-style-type: none"> - RHRA can collect information during the licensing process 	<p>The RHRA implemented the use of pre-licensing interviews with applicants that were new to the sector in fiscal year 2021-2022. The RHRA</p>

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<p>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:</p> <ul style="list-style-type: none"> ○ 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): <ul style="list-style-type: none"> ▪ 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. 	<p>will continue to refine our list of interview questions and procedures and will consider the Risk Officer’s Recommendations as part of this continuous improvement. Work is scheduled to be completed in 2022-2023 to provide plain language to better understand and more clearly define controlling interest as well as to undertake policy work on the RHRA’s procedures for changes of controlling interest that will assist the RHRA in laying the groundwork to better understand ownership structures and controlling interest in retirement homes and make informed decisions on whether additional disclosures are required as part of the licensing process.</p> <p>Implementation of a licensee portal in 2023 will lend to a more user-friendly experience for providing such disclosures.</p>