

Conditions on Licences and Removal of Conditions

Purpose:

This document is intended to explain primarily to licensees, and secondarily to the public, what conditions on a licence are and the process for applying for the removal of conditions from a licence. It is also intended to describe the factors that the Registrar will generally consider when deciding whether to remove conditions from a licence. In each case, before making such a decision, the Registrar will consider the relevant information before them. They have discretion to consider relevant factors other than those set out in in this document and nothing in this document fetters their discretion. This document does not constitute legal advice.

The goal of this document is to help licensees better understand the process for applying to have conditions removed and the general criteria the RHRA will consider.

What are Conditions?

Central to the RHRA's mission is the protection of Ontario retirement home residents such that they live with dignity, respect, privacy, and autonomy, and in security, safety, and comfort. One of the ways that the RHRA does this is by holding those that own and operate licensed retirement homes accountable for complying with the *Retirement Homes Act, 2010*, ("the Act"). In order to operate a retirement home in Ontario, an operator must hold a licence from the Registrar of the RHRA. The Registrar will only issue a licence to someone if they meet the licensing test under the Act. The Act gives the Registrar the ability to impose "conditions" on a license. Conditions are a tool that the Registrar can use to set out requirements that a licensee (a person that operates a licensed retirement home) must meet. Conditions can provide some reassurance to the Registrar that a retirement home will be operated in a manner that is compliant with the Act. The Registrar may delegate the authority to impose conditions to a Deputy Registrar.

When are Conditions Imposed?

The Registrar may impose conditions on a licence either at the time that the licence is issued, or after the licence has been issued.

- 1) **Conditions imposed at the time the licence is issued:** These are generally imposed when the licensee is new to the retirement home sector or when, for some other reason, the Registrar requires some assurance that the home will be operated in compliance with the Act.
- 2) **Conditions imposed after the licence has been issued:** These are generally imposed due to non-compliance by the licensee, or some other concern.

Notice of Intent to Impose Conditions

Before the Registrar imposes a condition on a licence, the Act requires that they provide a notice of intent to the applicant or licensee. This notice provides information about the intended condition and the reasons for the intended condition. The licensee or licence applicant has the right to provide a response to the Notice of Intent, which the Registrar will consider before deciding whether to impose

the conditions. If the licensee or applicant does not oppose the intended conditions, they can indicate this.

Types of Conditions

Consulting/Management Conditions – These conditions require a licensee to retain or employ someone with appropriate operational experience who will have responsibility for maintaining and monitoring the home's compliance with the Act. The condition may also require the consultant or manager retained by the licensee to report to the RHRA on the licensee's compliance with the Act and regulation. These conditions are generally not time-bound and will apply to a licence until such time as the Registrar removes the conditions, either on application from the licensee, or on the Registrar's own initiative.

Outcome-specific Conditions – These conditions require a licensee to take a particular action, and may require that the licensee do a thing by a particular date. Once an outcome-specific condition is satisfied, the condition can be removed. The licensee needs to request the removal.

Removal of Conditions

Licensees may apply to have conditions on their licence removed if they have new information to provide regarding either the condition or the circumstances of the licensee. Any information about a change in circumstances for the licensee should reflect a permanent change in circumstances and not a temporary one. Licensees can apply to have their conditions removed by e-mail to enforcement@rhra.ca.

The Registrar may approve or deny the request. If the Registrar intends to deny the request, the licensee will be provided with a Notice of Intent, which will include the Registrar's rationale for the intended denial. The licensee may provide a response to the Notice of Intent, which the Registrar will consider before making a final decision.

Factors in Assessing the Removal of Conditions

The following factors are generally relevant in assessing a request for removal of conditions. However, each case will be looked at based on its specific facts and the Registrar may consider other factors as well.

- 1) **The length of time that the condition(s) have been in place:** In general, and subject to the specific facts of a case, conditions that are not outcomes-based will not be removed for a minimum of two years. This length of time provides the RHRA with an opportunity to assess the licensee's ability to operate the home in compliance for a sustained period of time.
- 2) **The number and outcomes of inspections and other RHRA interactions that the home has had since conditions were imposed:** Generally, at least three inspections are required to demonstrate sustained compliance, and a condition will usually not be removed before that has occurred. Other matters that will be considered are whether the home's compliance record is trending towards overall improvement, and whether there has been any significant non-compliance on any inspection since the imposition of the conditions. Licensees hoping to have conditions removed should be able to demonstrate that their record is moving towards improved compliance even if there are some relatively minor or technical instances of non-compliance found on inspection. Similarly where the Compliance Monitor, who is responsible for monitoring compliance with the conditions, reports that

the licensee has demonstrated a pattern of compliance in a timely manner, this will likely be a factor in favour of removing the conditions. A positive record of engagement with the RHRA's voluntary Compliance Support program will also be relevant.

- 3) **Whether competent and qualified management will be in place:** Licensees may be operating the home in compliance or on a trajectory towards compliance *as a result of* the condition that they are requesting be removed. Consequently, general assurance that the home will maintain competent and qualified management in place if the condition is removed is often required. In the case of a licensee that employs one or more managers to operate the home, the licensee will be expected to commit to continuing to employ competent and qualified management if the condition is to be removed. In the case of a licensee or a person with controlling interest that will personally play a role in the operations of the home, the licensee will be expected to demonstrate (e.g. with letters of reference, through demonstrated competence, expert opinions, etc.) that they are personally competent and qualified to manage the operations of the home.
- 4) **Any similar instances of concern:** If conditions were initially imposed to address a particular area of non-compliance on the part of the licensee, the Registrar will consider whether the licensee has been found non-compliant regarding the same issue or for something similar since the conditions were imposed.
- 5) **Where financial concerns gave rise to the condition(s), whether the licensee has demonstrated that the home is being operated in financially viable manner:** Where the licensee provides evidence that it has been operating, and will continue to operate, in a financially viable manner going forward, it will weigh in favour of removing financially-based condition(s).

Removal of Outcome-specific Conditions

Where a condition is in place that requires a particular outcome (e.g. the licensee must complete a report, or the licensee must provide audits for a period of 6 months) that can be measured and/or is time bound, the licensee should request removal of the condition and provide verifiable evidence that the condition has been satisfied.

Status of Conditions on the Public Register

Conditions that have been removed from the licensee's licence will be removed from the public register.