

iv. an irrevocable letter of credit issued by a banking institution or a savings and credit union;”.

2. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

9570

Draft Regulation

Professional Code
(R.S.Q., c. C-26)

Notaries

— Trust accounting
— Amendments

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act, (R.S.Q., c. R-18.1), that the “Regulation to amend the Regulation respecting trust accounting by notaries”, adopted by the Bureau of the Chambre des notaires du Québec, the text of which appears below, may be submitted to the government for approval upon the expiry of forty-five days following the present publication. The government may approve it with or without amendment.

The Chambre des notaires du Québec believes that this regulation has a dual-purpose. On the one hand, it aims at integrating the existing Regulation respecting the indemnity fund of the Chambre des notaires du Québec in the Regulation respecting trust accounting by notaries, in conformity with the new provisions of section 89 of the Professional Code. On the other hand, this regulation which replaces the existing Regulation respecting the indemnity fund of the Chambre des notaires du Québec aims at ameliorating the operation of the indemnity fund of the order. Also, this regulation modifies certain existing provisions of the Regulation respecting trust accounting by notaries in order to better regulate the keeping of trust accounts by notaries.

The Chambre des notaires du Québec believes that this regulation will have positive impacts towards citizens by giving them a better indemnity and a quicker settlement of claims in terms of the application of the regulation. As for enterprises, particularly for small and medium size companies, the provisions of the regulation concerning indemnity may have financial impacts depending on the number of claims made annually on the fund. Finally, the provisions of the regulation concerning keeping of trust accounts by notaries will impose on them certain administrative constraints. Nevertheless in return, these provisions will have the effect of increasing the protection of the public.

Additional information may be obtained by contacting M^e Michel Poulin, Secretary of the Chambre des notaires du Québec, 630, boulevard René-Lévesque Ouest, bureau 1700, Montréal, (Québec) H3B 1T6; telephone no.: (514) 879-2908; fax no.: (514) 879-1923.

Any person having comments to make is asked to transmit them, before the expiry of the 45-day period, to the Chairman of the Office des professions du Québec, complexe de la place Jacques-Cartier, 320, rue Saint-Joseph Est, 1^{er} étage, Québec, (Québec) G1K 8G5. These comments will be forwarded by the Office to the Minister responsible for the administration of legislation concerning the professions; they may also be forwarded to the order professional that made the Regulation as well as to the persons, departments and agencies concerned.

ROBERT DIAMANT,
*Chairman of the Office
des professions du Québec*

Regulation to amend the Regulation respecting trust accounting by notaries

Professional Code
(R.S.Q., c. C-26, s. 89)

1. The Regulation respecting trust accounting by notaries (R.R.Q., 1981, c. N-2, r. 5) amended by the regulation approved by O.C. 1754-92 dated December 02, 1992 and replaced by the regulation approved by O.C. 823-95 dated June 14, 1995 is again amended by adding, after section 8, the following section:

“**8.1.** All notaries must obtain the authorization of the secretary of the order prior to opening a general trust account.”.

2. This regulation is also amended by replacing the period in sub-section (4) of section 9 by a semi-colon.

3. This regulation is amended by adding thereto, after sub-section (4) of section 9, the following sub-section:

“(5) an irrevocable authorization entitling the administrative committee or the president of the order, upon recommendation by the syndic, an assistant syndic, or the professional inspection committee of the Chambre, to require that the notary obtain, at his expense, the cosignature of another notary designated by the committee to draw cheques and other orders to pay on the account.”.

4. This regulation is also amended by replacing the period in sub-section (5) of section 14 by a semi-colon.

5. This regulation is amended by adding thereto, after sub-section (5) of section 14, the following sub-section:

“(6) an irrevocable authorization entitling the administrative committee or the president of the order, upon recommendation by the syndic, an assistant syndic, or the professional inspection committee of the Chambre, to require that the notary obtain, at his expense, the cosignature of another notary designated by the committee to draw cheques and other orders to pay on the account.”.

6. This regulation is amended by inserting, after section 37, divisions VIII.1. to VIII.4:

**“DIVISION VIII.1.
CONSTITUTION OF THE FUND**

37.1. The Bureau of the order shall establish an indemnity fund for the purpose of reimbursing sums of money or other securities used by a notary for purposes other than those for which they were entrusted to him in the practice of his profession.

37.2. The fund shall consist of:

- (1) the sums of money already allocated for such purpose;
- (2) sums of money which the Bureau allocates as needed;
- (3) assessments levied for such purpose;
- (4) the sums of money recovered from offending notaries, by subrogation or in virtue of section 159 of the Professional Code (R.S.Q., c. C-26);
- (5) the interest accrued on the sums of money constituting the fund;
- (6) the sums of money paid by an insurance company under a group insurance policy subscribed to by the Chambre des notaires du Québec for all its members.

**DIVISION VIII.2.
ADMINISTRATION OF THE FUND**

§1. Administrative committee

37.3. The administrative committee of the order shall administer the fund. In particular, it is authorized to conclude any contract of group insurance or reinsurance for the purposes of the fund and to pay the premiums of such insurance using fund monies.

37.4. The accounting of the administrative committee for the fund shall be kept separate from the accounting of the Chambre.

37.5. The sums of money constituting the fund shall be invested by the administrative committee as follows:

(1) those sums which the administrative committee intends to use on a short-term basis shall be deposited in an institution governed by the Act respecting trust companies and savings companies (R.S.Q., c. S-29.01), the Trust and Loan Companies Act (S.C., 1991, c. 45), the Bank Act (S.C., 1991, c. 46), or the Savings and Credit Union Act (R.S.Q., c. C-4.1);

(2) the balance shall be invested in accordance with article 1339 of the Civil Code of Québec.

§2. Indemnity fund committee

37.6. The indemnity fund committee, hereinafter called the “committee,” shall comprise at least 5 members appointed by the Bureau from among notaries who have been registered on the roll of the order for at least 10 years and directors appointed by the Office des professions to sit on the Bureau. The committee shall sit with 5 members or more, at least one of whom must be chosen from among the directors appointed by the Office. The quorum of the committee shall be an absolute majority of its members.

If the number of committee members permits, the committee may sit in divisions composed of 5 members, one of whom shall be the chairman or another committee member designated by division members as chairman of the division, and another of whom shall be chosen from among the directors appointed by the Office des professions. The quorum of a division shall be 3 members.

37.7. The chairman of the committee shall be designated by its members.

37.8. The Bureau shall appoint the committee secretary and, as needed, one or more assistant secretaries, who perform the same duties as the secretary.

The committee secretary and, if applicable, the assistant secretaries, may take cognizance of a file held by a notary, require the delivery of any document, and make copies of any such file or document, in the performance of their functions. The notary must, upon request, allow the examination of such file or document, and cannot refuse to do so on the grounds of professional secrecy. The same applies to all persons in possession of such file or document.

37.9. The committee secretary and, if applicable, the assistant secretaries and each committee member must take an oath or make an affirmation of discretion as formulated by the Bureau. The same applies to all persons who participate in the work of the committee.

37.10. Committee members remain in office at the end of their mandate until they have been reappointed or replaced by the Bureau.

37.11. It shall be the responsibility of the committee to study each claim filed in respect of the fund, and where the amount of a claim exceeds the sum of \$5,000.00, to file a report with the administrative committee.

Committee members may take cognizance of a file held by a notary, require the delivery of any document, and make copies of any such file or document, in the performance of their functions. The notary must, upon request, allow the examination of such file or document, and cannot refuse to do so on the grounds of professional secrecy. The same applies to all persons in possession of such file or document.

The committee may designate a person to hold an inquiry and to report to it in respect of a claim.

DIVISION VIII.3. CLAIMS ON THE FUND

37.12. A claim on the fund must:

- (1) be made in writing;
- (2) state all supporting facts;
- (3) indicate the amount claimed;
- (4) provide all details and be accompanied by all relevant documents;
- (5) be filed with the committee secretary.

37.13. The committee secretary shall inform the members about the claim at the first meeting subsequent to receipt of the claim.

37.14. A claim on the fund may be filed whether or not there has been, in respect of the notary concerned, a decision of the committee on discipline, the Professions Tribunal, or any other tribunal of competent jurisdiction.

37.15. To be admissible, a claim on the fund must be filed within one year of knowledge by the claimant of

the use of sums of money or other securities for purposes other than those for which they were entrusted to the notary in the practice of his profession.

Subject to section 37.16., a claim which is not filed within the time period stipulated is inadmissible.

37.16. Where a claim does not exceed the sum of \$5,000.00, the committee may extend the time period stipulated in section 37.15., if the claimant can show that he could not file the claim within the required time for reasons beyond his control.

37.17. A request by any person to the syndic for an investigation with regard to facts likely to give rise to a claim on the fund constitutes a claim within the meaning of section 37.12., so long as the claim is produced within the time period stipulated in section 37.15.

37.18. Upon request by the committee, the notary concerned shall:

- (1) provide all details and documents relating to the claim;
- (2) produce all evidence deemed relevant by the committee.

37.19. If, when a claim on the fund is filed, the notary concerned is still registered on the roll of the order, the syndic or assistant syndic shall, at the request of the administrative committee, lodge any complaint which appears justified, as soon as the decision concerning indemnity has been rendered by the fund committee or the administrative committee, as the case may be.

DIVISION VIII.4. INDEMNITY

37.20. The committee shall decide, in respect of any claim on the fund which does not exceed the sum of \$5,000.00, whether it is expedient to allow it, in whole or in part, and shall determine the indemnity, as the case may be. The decision of the committee shall be final.

37.21. The administrative committee, upon recommendation of the committee, shall decide, in respect of any claim on the fund which exceeds the sum of \$5,000.00, whether it is expedient to allow it, in whole or in part, and shall determine the indemnity, as the case may be. The decision of the committee shall be final.

37.22. The committee may exercise the powers granted in virtue of sections 37.20. and 37.21. even if the claimant has not instituted a civil lawsuit or whether or not a decision has been rendered in respect of the

notary concerned by the committee on discipline or the Professions Tribunal.

37.23. The maximum indemnity payable from the fund is established at \$100,000.00 for the total of all the claims on the fund arising from the use by one or more notaries, in the framework of one or more contracts for professional services entered into with one or more persons for the same prestation, of sums of money or other securities for purposes other than those for which they were entrusted to him in the execution of such contract or contracts for services.

37.24. The balance of a general trust account of a notary contemplated in the present regulation, the funds whereof have been blocked or otherwise disposed of in accordance with the Regulation respecting trust accounting by notaries ((1995) 127 *G.O.* II, 1897) shall be distributed, at the expiration of 60 days following the publication of a notice to this effect in a newspaper circulating in the area where the notary is or was professionally domiciled, among the claimants respecting such notary in proportion to the amount of their allowed claims to a maximum of the amount of each claim, less the sum paid under section 37.23.. The committee secretary shall cause the notice to be published after one year has elapsed without any claim being filed on the fund in respect of such notary.

37.25. Before receiving the indemnity established by the committee or the administrative committee, as the case may be, the claimant must sign an acquittance in favour of the Chambre with subrogation in all his rights in respect of his claim to a maximum of the amount of the indemnity against the offending notary, his successors, and any individual, partnership, or artificial person that is or could be responsible for payment.”.

7. Section 38 of this regulation is amended by inserting, after the reference “(R.R.Q., 1981, c. N-2, r. 5)”, the words “and the Regulation respecting the indemnity fund of the Chambre des notaires du Québec (R.R.Q., 1981, c. N-2, r. 8) as amended by O.C. 645-86 dated May 14, 1986, nevertheless the previous regulation shall continue to govern claims filed on the fund before the coming into force of the present regulation, as well as claims filed on the fund after the coming into force of the present regulation which relate to facts previous to the coming into force hereof and which concern a notary in respect of whom one or more other claims have already been filed on the fund”.

8. This regulation comes into force on the fifteenth day following its publication in the *Gazette officielle du Québec*.