

Draft Regulation

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

Chartered appraisers — Code of ethics

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act, (R.S.Q., c. R-18), that the Bureau of the Ordre des évaluateurs agréés du Québec has adopted the “Code of ethics of the members of the Ordre des évaluateurs agréés du Québec”, the text of which appears below. This regulation replaces the “Code of ethics of chartered appraisers” (R.R.Q., 1981, c. C-26, r.91) .

The said regulation will be subject to the examination by the Office des professions du Québec in application of section 95 of the Professional Code. Following, it will be submitted, with the recommendation of the Office, to the Government which may approve it, with or without amendment, upon the expiry of forty-five days following the present publication.

According to the Ordre des évaluateurs agréés du Québec, the purpose of the draft regulation is to update the provisions of the actual Code of ethics of chartered appraisers. More particularly, the draft regulation contains the necessary provisions prescribed by the Professional Code on accessibility and correction of files of clients and on the conditions, obligations and prohibitions in respect of advertising by chartered appraisers.

This regulation will have a major impact towards the public by enhancing considerably its protection and by contributing significantly to maintaining the quality of professional services offered by chartered appraisers and the excellence of the profession. There is no impact on enterprises, small businesses or others.

Further information concerning this regulation may be obtained by contacting Ms. Céline Viau, secretary of the Ordre des évaluateurs agréés du Québec at the following address: 2075, rue University, bureau 1200, Montréal (Québec) H3A 2L1; tel.: (514) 281-9888; fax: (514) 281-0120.

Any person having comments to make on the matter is asked to send them, before the expiry of the 45-day period, to the Chairman of the Office des professions du Québec, 800, place D’Youville, 10^e étage, Québec (Québec) G1R 5Z3. Those comments will be forwarded by the Office to the Minister responsible for the admin-

istration of legislation respecting the professions; they may also be forwarded to the professional order that adopted the Regulation and to the interested persons, departments and agencies.

JEAN-K. SAMSON,
*Chairman of the Office
des professions du Québec*

Code of ethics of the members of the Ordre des évaluateurs agréés du Québec

Professional Code
(R.S.Q., c. C-26, s. 87)

CHAPTER 1 GENERAL

1. This Code determines, pursuant to section 87 of the Professional Code (R.S.Q., c. C-26), the duties incumbent upon all members of the Ordre des évaluateurs agréés du Québec in the practice of his professional activities.

In particular, it determines the acts that are derogatory to the dignity of the profession, sets out provisions to preserve the secrecy of confidential information that becomes known to an appraiser in the practice of his profession, and establishes the conditions and procedure applicable to the exercise of the rights of access and correction provided for in sections 60.5 and 60.6 of the Professional Code as well as conditions, obligations, and prohibitions in respect of advertising by an appraiser.

CHAPTER II DUTIES TOWARD CLIENTS, THE PROFESSION, AND THE PUBLIC

DIVISION I COMPETENCE AND INTEGRITY

2. Every appraiser must discharge his professional obligations with competence and integrity.

He must provide high-quality professional services.

3. Every appraiser shall maintain and increase his knowledge and skills. He shall also constantly seek to improve his professional outlook.

4. Every appraiser must practice his profession in keeping with generally accepted standards of practice and the rules of the profession.

5. Every appraiser shall bear in mind the limitations of his skills, knowledge, experience, and the means at his disposal. He shall, in particular, avoid undertaking or continuing an appraisal for which he is insufficiently qualified without obtaining the necessary assistance.

6. In addition to the provision in section 54 of the Professional Code, no appraiser shall practise his profession or perform professional acts under conditions or in situations likely to impair the dignity of the profession or the quality of the services he provides.

7. Every appraiser shall bear in mind the general effect that his research and work could have on society.

8. Every appraiser shall promote all measures likely to improve the availability and quality of professional services in the area in which he practises his profession.

He shall, among other things, promote all training or information designed to make such services known to the public and must, at the request of the Order, participate in the implementation of such measures, unless he has serious reason not to do so.

DIVISION II CONDUCT

9. Every appraiser's conduct must be irreproachable.

He shall, in particular, act with courtesy, dignity, moderation, and objectivity.

10. Every appraiser shall avoid any attitude or method likely to diminish the reputation of the profession or his ability to serve the public interest. He shall avoid discriminatory, fraudulent, or illegal practices, and must refuse to participate in such practices.

11. Every appraiser shall show respect toward all commissions of inquiry, bodies, and courts, and the members thereof.

No appraiser shall, directly or indirectly, broadcast or publish comments or remarks that he knows to be false or that are manifestly false, concerning a commission of inquiry, a body, or a court, or any member thereof.

12. No appraiser shall, directly or indirectly, comment publicly in any manner whatsoever on any case pending before a commission of inquiry, a body, or a court, and in which he or one of his partners or employees has acted.

13. No appraiser shall

(a) lead or attempt to lead a court into error, create doubt in favour of his client, or restrict or deform reality by his testimony;

(b) prevent or try to prevent another party from being assisted by an appraiser or represented by an advocate.

DIVISION III IMPARTIALITY AND INDEPENDENCE

14. Every appraiser shall subordinate his personal interests to those of his client.

For the purposes of this Regulation, the word "client" means mandator or the person requiring the services of the appraiser.

15. No appraiser shall accept to provide professional services when a contract regarding the same services has already been entered into with another appraiser, unless he advises his client of a possible duplication of costs and services.

16. No appraiser shall refuse to provide professional services without reasonable grounds.

However, he shall not accept more contracts than are dictated by the interests of his clients and the respect of his professional obligations.

17. Every appraiser shall safeguard his professional independence at all times. He shall, in particular:

1° ignore any intervention by a third party that could influence the fulfilment of his professional obligations to the detriment of his client;

2° retain his professional independence when called upon to collaborate with another person, notably, another member of the Order or a member of another professional order;

3° avoid performing a task contrary to his professional conscience, to the rules of his profession, or to generally accepted standards of practice;

4° avoid appraising, examining, or holding a consultation on a thing or a right in which he or his partners have an interest, whether direct or indirect, present or future;

5° refrain from sitting as a member of an adjudicatory body in a decision or recommendation relating to the rights and obligations of his client or the client of a partner;

6° refrain from acting in a situation where he could derive personal advantage, whether direct or indirect, present or future.

18. Every appraiser who acts solely as a real estate broker in a brokerage transaction must disclose this fact in writing to his client and obtain the client's acknowledgment to the effect that none of his acts will be considered an assessment of value.

When in the same transaction, the appraiser acts for a client as broker and appraiser and that his professional independence is not at risk, he must disclose in writing to his client his double role as his way of remuneration and attest that his independence is not at risk in the said transaction. He will have nevertheless to cease to act if the situation becomes irreconcilable with his duty to be independent.

19. Every appraiser shall avoid any situation in which he could be in a conflict of interest. Without restricting the generality of the foregoing, the appraiser is in a conflict of interest:

1° where he serves opposing interests, notably, where he agrees to appraise for a third party an immovable situated in the territory of a municipality for which he prepares and maintains the valuation roll;

2° where the interests in question are such that he might favour some of them over those of his client or where his judgment and loyalty toward his client could be unfavourably affected.

As soon as he becomes aware that he is in a situation of conflict of interest, or apparent conflict of interest, the appraiser must disclose this fact in writing to the clients concerned and request authorization to continue to act for them. Mention of this must be made by the appraiser in his report.

20. Generally, an appraiser shall act for only one party in any given case.

If his professional duties require him to act for more than one party, such as in the capacity of arbitrator or amiable compositeur, the appraiser must specify to all parties concerned the nature of his duties or responsibilities and must inform them that he will cease to act if the situation becomes irreconcilable with his duty to be independent.

21. Every appraiser shall refuse any benefit, commission, or return in relation to the practice of his profession that is in addition to the remuneration to which he is entitled. Similarly, he shall not pay, offer to pay, or undertake to pay such benefit, commission, or return.

DIVISION IV DILIGENCE AND AVAILABILITY

22. Every appraiser shall display reasonable availability and diligence. He shall, among other things, inform his client upon request of the approximate time required for the execution of the professional services.

DIVISION V FEES

23. Every appraiser must charge fair and reasonable fees.

Fees are considered fair and reasonable if they are warranted by the circumstances and in proportion to the services provided.

24. In determining the amount of his fees, every appraiser shall, in particular, bear in mind the following factors:

1° the knowledge or skill required to execute the professional services;

2° the degree of responsibility assumed;

3° the complexity and extent of the professional services;

4° his experience;

5° the need to perform unusual professional services or services requiring exceptional celerity or competence;

6° the tariff suggested by the Order for the professional services rendered;

7° the time required to perform the professional services.

He shall not, in whole or in part, determine his fees as a percentage of taxes saved through contestation, or a percentage of a surplus expropriation indemnity.

25. No appraiser shall request payment of his fees in advance. However, he may accept an advance to cover the payment of disbursements and the payment of part of his fees.

26. Every appraiser must receive fees from only one source in payment of a professional service, unless all parties concerned explicitly agree otherwise.

He shall inform his client before receiving payment of his fees from another person.

The agreement contemplated in paragraph 1 must also state whether the fees, payment of costs, or other amounts he may receive from another person will be deducted from the fees established in the agreement.

27. No appraiser shall share his fees with another person unless responsibilities and services are also shared.

28. No appraiser shall collect interest on an outstanding statement of fees without first notifying his client. The interest thus charged must be at a reasonable rate.

29. Before having recourse to legal proceedings, every appraiser must have exhausted all other available means for obtaining payment of his fees.

30. Every appraiser who entrusts the collection of his fees to another person must, as far as possible, ensure that that person acts with tact and moderation.

DIVISION VI LIABILITY

31. Every appraiser shall assume full civil liability. He shall not, directly or indirectly, insert in whole or in part in a contract for professional services, any clause excluding his civil liability.

He shall sign no contract containing such a clause.

32. Every appraiser shall ensure that the provisions of the law and regulations applicable to members of the Order are respected by the persons or partners with whom he acts. In particular, every appraiser is liable for any work he has caused to be executed by other persons. He must train and supervise such persons and review their work to ensure that it complies with the laws, regulations, and standards of practice applicable to members of the Order.

DIVISION VII ADDITIONAL DUTIES IN THE PRACTICE OF PROFESSIONAL ACTIVITIES

33. Every appraiser shall identify himself to his client as a member of the Ordre des évaluateurs agréés du Québec.

34. Every appraiser shall seek to establish a relationship of mutual trust between himself and his client.

35. Every appraiser shall refrain from intervening in the personal affairs of his client on issues that are not relevant to the profession or to the reasons for which his client required his professional services.

36. Every appraiser must recognize his client's right to consult at any time another member of the Order, a member of another professional order, or any other competent person.

37. If the good of his client so requires, the appraiser shall, with his client's authorization, consult another member of the Order, a member of another professional order, or any other competent person, or refer him to one of these persons.

38. Every appraiser shall explain to his client, in a complete and objective manner, the nature and scope of the problem as he sees it on the basis of facts brought to his knowledge by the client.

He shall also, without delay, inform his client of the scope of the professional services required from him and the terms and conditions for carrying it out, and must obtain the client's consent thereto.

If, during the execution of the required professional services, a new fact arises that could alter their scope or the terms and conditions for carrying them out, the appraiser shall inform his client thereof as soon as possible and must obtain his consent to continue.

39. Every appraiser must attempt to acquire full knowledge of the facts before giving advice to or counselling his client.

He shall refrain from counselling or giving his client advice that is contradictory or incomplete.

40. Every appraiser must agree in advance with his client on the nature and form of the report. He must present his report in accordance with generally accepted standards, and in particular, he must describe the methodology used and the scope of the research carried out in the execution of the required professional services. In the case of an appraisal, he must submit a report to his client, unless the client relieves him of this obligation in writing.

41. Every appraiser shall provide the explanations required by his client to evaluate and understand the professional services received.

Further, he shall notify his client of the approximate and foreseeable costs of his professional services, in disbursements and fees.

42. Every appraiser shall provide his client with the explanations necessary to understand his statement of fees and the terms and conditions of payment.

43. Every appraiser shall avoid performing or creating professional acts that are not justified by the nature of the professional services required from him by his client.

44. Every appraiser shall submit to his client all offers of settlement relating to the professional services required from him by the client.

45. Every appraiser shall, upon his client's request, account for the progress of the professional services required from him by the client.

46. Every appraiser shall cease providing professional services to his client if the client terminates the contract.

47. No appraiser shall, without valid and reasonable grounds, unilaterally terminate a contract entrusted to him by a client.

The following, in particular, constitute valid and reasonable grounds:

1° the client is deceitful or fails to cooperate;

2° the appraiser is in a conflict of interest or in a situation in which his professional independence could be questioned;

3° the client refuses to pay the appraiser's fees;

4° it is impossible for the appraiser to communicate with his client or to obtain from him the elements deemed necessary to carry out the required professional services;

5° the client attempts to induce the appraiser to commit a discriminatory, fraudulent, or illegal act;

6° the appraiser loses his client's confidence.

48. Every appraiser who, on valid and reasonable grounds, unilaterally terminates a contract must give to the client prior notice to that effect, indicating when it will be terminated.

He must give the notice within a reasonable time and ensure, as far as possible, that it is not prejudicial to his client.

49. Every appraiser must appear in person, or be represented, at the time fixed for any proceeding relating to the practice of his profession, unless he is prevented therefrom for good and sufficient cause and, where possible, has given prior notice of his absence to his client and the other parties involved.

DIVISION VIII

ACTS DEROGATORY TO THE DIGNITY OF THE PROFESSION

50. In addition to the acts to which section 59 of the Professional Code applies, the act mentioned in section 59.1 of the Code, and those that may be determined under subparagraph 1 of the second paragraph of section 152 of the Code, the following acts are derogatory to the dignity of the profession:

1° communicating with a complainant without the prior written permission of the syndic, or the assistant or corresponding syndic, where he is informed that he is the subject of an inquiry into his conduct or professional competence or where he has been served notice of a complaint against him;

2° repeatedly or insistently inciting a person to have recourse to his professional services;

3° failing to notify the syndic of the Order that he has reasonable grounds to believe that another member of the Order is incompetent or contravenes the Professional Code or a regulation made pursuant to the Code;

4° ordering or inciting another appraiser to perform an act that contravenes the regulations of the Order;

5° conspiring with any person, in any manner whatsoever, to procure clients or business;

6° participating alone or with the aid of another, in any manner whatsoever, in the violation of the laws and regulations governing the practice of the profession;

7° drawing up a declaration or report that he knows to be incomplete, without qualifying it, or that he knows to be false, or the conclusion of which has been predetermined in respect of the value of a thing or a right;

8° refusing or neglecting, without just cause, to meet or communicate with the syndic, or the assistant or corresponding syndic, after being informed that he is the subject of an inquiry into his conduct or professional competence, or after being served notice of a complaint against him;

9° refusing or neglecting, without just cause, to transmit information or documents required by the syndic or the assistant or corresponding syndic;

10° attempting to obtain a contract that, to his knowledge, has already been entrusted to a colleague.

DIVISION IX
PROVISIONS TO PRESERVE THE SECRECY OF
CONFIDENTIAL INFORMATION

51. For the purpose of preserving the secrecy of confidential information brought to his knowledge in the practice of his profession, every appraiser shall:

1° refrain from using such information to the prejudice of his client or for purposes other than those for which it was given to him, such as, in particular, obtaining a direct or indirect benefit for himself or another person;

2° take the measures required to prevent persons under his authority or supervision from disclosing or making use of confidential information that becomes known to them in the performance of their duties;

3° avoid initiating or participating in indiscreet conversations concerning his client or the services provided to him;

4° refrain from revealing that a person has requested his services unless it is required by the nature of the case or the person has given him written authorization to do so;

5° ensure, where he asks his client to disclose information of a confidential nature or allows such information to be confided to the him, that the client is fully aware of the purpose of the interview and of the various uses that could be made of such information.

DIVISION X
ACCESSIBILITY AND CORRECTION OF FILES

§1. General

52. In addition to respecting the special rules established by law, every appraiser shall respond to a client's request for access or correction in respect of any record concerning the client within 20 days after receipt of the request. If the appraiser fails to reply within this period, he shall be deemed to have refused to grant it.

§2. Terms and conditions for the exercise of the right of access provided for in section 60.5 of the Professional Code

53. Every appraiser may, in respect of a request for a copy of a document, charge reasonable fees not exceeding the transcription or reproduction costs and the cost of forwarding the copy.

The appraiser who requests such fees must, before copying, transcribing, or sending the information, inform the client of the approximate amount that must be paid.

54. Every appraiser who, pursuant to the second paragraph of section 60.5 of the Professional Code, denies his client access to information contained in a record established in the client's respect must indicate to him in writing that its disclosure would be likely to cause serious harm to him or to a third person, and must inform him of his recourses.

§3. Terms and conditions for the exercise of the right of correction provided for in section 60.6 of the Professional Code

55. Every appraiser who grants a request for correction must issue to his client, free of charge, a copy of the document or part of document that allows the client to see for himself that the information has been corrected or deleted, or as the case may be, an attestation that the written comments prepared by the client have been filed in the record.

56. Every appraiser must, upon his client's written request and without charging him, forward a copy of the corrected information, or an attestation that the information has been deleted or that written comments have been filed in the record, as applicable, to any person from whom the appraiser has received information that has been corrected, deleted, or commented upon, and to any person to whom the information has been provided.

Every appraiser who refuses his client's request for correction must notify the client in writing of his refusal, giving reasons, and must inform him of his recourses.

§4. Obligation for the appraiser to give documents to his client

57. Every appraiser shall promptly honour his client's written request to retrieve a document entrusted to him, even if the fees for his services have not been paid in full.

DIVISION XI
CONDITIONS, OBLIGATIONS, AND
PROHIBITIONS IN RESPECT OF ADVERTISING

58. Every appraiser shall ensure that his name and professional title appear in his advertising.

59. No appraiser shall, by whatever means, engage in or allow the use of advertising that is false, incomplete, misleading, or liable to be misleading.

60. Every appraiser who, in his advertising, claims to possess skills or specific qualities, particularly in respect of the effectiveness or scope of his services or of those generally ensured by other members of his profession or persons with his level of competence, must be able to substantiate such a claim.

61. No appraiser shall use or allow to be used, in his advertising, any endorsement or statement of gratitude in his regard, save awards for excellence and other prizes received in recognition of a contribution or achievement, the honour of which is reflected on the profession as a whole.

Similarly, no appraiser shall use or allow to be used, in whole or in part, his list of clients, unless he has obtained a written authorization from each of them.

62. No appraiser shall resort to advertising practices likely to discredit or denigrate another person with whom he has dealings in the practice of the profession, in particular another member of the Order or a member of another professional order.

63. Every appraiser who advertises professional fees or prices must do so in a manner easily comprehensible by the public, and in particular, must:

1° set fixed prices;

2° specify the services included in his fees or prices;

3° indicate whether expenses or other disbursements are included in his fees or prices;

4° indicate whether additional services may be required, incurring additional fees or costs;

5° give as much significance to the professional services offered as to fees and prices.

64. In any advertising relating to fees, special prices, or discounts, the appraiser must specify the period during which such fees, prices, or discounts, as the case may be, are valid. This period must not be less than 90 days after the last broadcast or publication.

However, he may agree with his client on an amount lower than the one broadcast or published.

65. No appraiser shall, by any means whatever, engage in or allow the use of any advertising intended for persons who may be emotionally or physically vulnerable as a result of a specific event.

66. Every appraiser shall retain copies of all documents relating to every advertisement in its original form for a period of the least five years following the date on which it was last published or broadcast.

67. Where an appraiser uses the graphic symbol of the Order in his advertising, he must, except on a professional card, include the following warning: "This advertisement does not originate from the Ordre des évaluateurs agréés du Québec."

DIVISION XII RELATIONS WITH THE ORDER AND OTHER PERSONS IN THE PRACTICE OF THE PROFESSION

68. Every appraiser who is asked by the Bureau or the administrative committee of the Order to be a member of the professional inspection committee, the committee on discipline, the review committee constituted under section 123.3 of the Professional Code, or the council for the arbitration of accounts established pursuant to the provisions of the regulation adopted under section 88 of the Code, must accept that duty unless he has reasonable grounds to refuse it.

69. Every appraiser shall reply as soon as possible to any correspondence from the Secretary of the Order, the syndic of the Order, the assistant or corresponding syndic, an expert appointed by the syndic, or a member, investigator, expert, or inspector of the professional inspection committee.

70. No appraiser shall breach the trust or betray the good faith of, or voluntarily mislead or use unfair practices toward any person with whom he has dealings in the practice of his profession, in particular, any other member of the Order or any member of another professional order.

No appraiser shall take credit for work performed by another person, particularly another member of the Order.

DIVISION XIII CONTRIBUTION TO THE DEVELOPMENT OF THE PROFESSION

71. Every appraiser shall, as far as he is able, contribute to the development of the profession by sharing his knowledge and experience with other members of the Order and with students and trainees, and by taking part in activities, courses, and continuing education sessions organized for members of the Order.

DIVISION XIV**USE OF THE APPRAISER'S NAME IN A PARTNERSHIP NAME**

72. No appraiser shall include his name in a partnership name unless the partnership name includes the names of other members of the Order who practice together.

He shall not allow his name to appear in a partnership name that includes the expression "and associate" or any similar expression unless he has a partner and at least one partner's name does not appear in the partnership name.

His name may appear in a partnership name where that name includes the name of a deceased or retired partner.

73. Every appraiser who withdraws from a partnership must ensure that his name no longer appears in the partnership name or in any advertising of the partnership after one year following his withdrawal.

When an appraiser ceases to exercise his profession or deceases, his name must not appear in the partnership name, unless a written authorization has been obtained from him or his representatives.

DIVISION XV**REPRODUCTION OF THE GRAPHIC SYMBOL OF THE ORDER**

74. Every appraiser who, for any purpose whatsoever, reproduces the graphic symbol of the Order must ensure that it is identical to the original held by the Secretary of the Order and shall add the following phrase: "Member of the Ordre des évaluateurs agréés du Québec."

CHAPTER III**FINAL PROVISIONS**

75. This Regulation replaces the Code of ethics of chartered appraisers (R. R. Q., 1981, c. C-26, r.91) and, in accordance with section 10 of the Act to amend the Professional Code and various acts constituting professional corporations with respect to professional advertising and certain registers (1990, c. 76), the Regulation respecting advertising by chartered appraisers (R.R.Q. 1981, c. C-26, r.96) ceases to have effect on the date on which this Regulation comes into force.

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