

person shows that he or she has successfully completed, if applicable, the course or training that was recommended, or any other training considered equivalent by the Organization and, where applicable, obtains from the board of directors of the Organization an extension of the period for completing the course or training.

25. The effects on a certificate issued by the Association des courtiers et agents immobiliers du Québec of any decision or order of the discipline committee of the Association des courtiers et agents immobiliers du Québec or a court, resulting from a disciplinary complaint, becoming final before or after the coming into force of the Real Estate Brokerage Act (2008, c. 9), are deemed to continue for the licence held by the person or partnership concerned by the decision, with the necessary modifications.

26. Every decision of the discipline committee of the Association des courtiers et agents immobiliers du Québec or a court, resulting from a disciplinary complaint, becoming final before or after the coming into force of the Real Estate Brokerage Act (2008, c. 9), that orders a person or a partnership to perform an act, not to do or to cease doing something or that restricts the right to practise or the professional activities of a person or partnership, continues to produce its effects with respect to the person or partnership, under the same terms and conditions, with the necessary modifications.

27. A person or partnership that has been the subject of a decision of the discipline committee or a court, resulting from a disciplinary complaint, becoming final before or after the coming into force of the Real Estate Brokerage Act (2008, c. 9), may not apply for the issue of a licence under the Real Estate Brokerage Act (2008, c. 9) until the end of the suspension or prohibition of issue imposed on the person by the discipline committee under the Real Estate Brokerage Act (R.S.Q., c. C-73.1).

28. A natural person who, on *(insert the date of the day before the date of coming into force of the Real Estate Brokerage Act (2008, c. 9))*, holds a chartered real estate broker's certificate issued by the Association des courtiers et agents immobiliers du Québec under the Real Estate Brokerage Act (R.S.Q., c. C-73.1), and carries on activities under a name other than the person's name, may continue to act on his or her account under that name or under another name.

29. Except for a document concerning additional training, the issue of a certificate or licence, obtaining and use of a specialist title, discipline, overseeing of the

carrying on of the activities of brokers and agencies, professional inspection and indemnification, a document in the possession of the Association des courtiers et agents immobiliers du Québec on *(insert the date of the day preceding the date of coming into force of the Real Estate Brokerage Act, (2008, c. 9))* is deemed not to be a document of the Organization for the purposes of section 61 of the Real Estate Brokerage Act (2008, c. 9).

30. This Regulation comes into force on *(insert the date of coming into force of the Real Estate Brokerage Act (2008, c. 9))*.

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Draft Regulation

Real Estate Brokerage Act
(2008, c. 9)

Various regulations

Notice is hereby given, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), that the draft regulations appearing below may be submitted to the Government for approval with or without amendment on the expiry of 45 days following this publication.

— Regulation respecting the issue of broker's and agency licences;

— Regulation respecting records, books and registers, trust accounting and inspection of brokers and agencies;

— Regulation respecting disciplinary proceedings of the Organisme d'autoréglementation du courtage immobilier du Québec;

— Regulation respecting the Real Estate Indemnity Fund and determination of the professional liability insurance premium;

— Regulation respecting brokerage requirements, professional conduct of brokers, advertising and additional training;

— Regulation respecting contracts and forms.

The draft Regulation respecting the issue of broker's and agency licences prescribes the rules concerning the issue of licences, in particular, the documents and information to be filed with licence applications, licence fees and reasons for suspension or revocation.

The draft Regulation respecting records, books and registers, trust accounting and inspection of brokers and agencies prescribes all the rules concerning the keeping of records, books, registers and trust accounts and the rules concerning inspections.

The draft Regulation respecting disciplinary proceedings of the Organisme d'autoréglementation du courtage immobilier du Québec prescribes the rules concerning syndics, the syndic decision review committee and the discipline committee.

The draft Regulation respecting the Real Estate Indemnity Fund and determination of the professional liability insurance premium prescribes the rules concerning the indemnity committee, claims and compensation, the fee to be paid into the indemnity fund and the professional liability insurance premium.

The draft Regulation respecting brokerage requirements, professional conduct of brokers, advertising and additional training prescribes the various rules concerning the activities of brokers and agencies, including the brokerage requirements in connection with loans secured by immovable hypothec, the rules concerning professional conduct, and advertising and information on immovables.

The draft Regulation respecting contracts and forms prescribes the terms and conditions of use of contracts and forms, as well as the mandatory particulars they must include.

Further information on the draft Regulations may be obtained by contacting Pierre Rhéaume, Director General, Encadrement du secteur financier et des personnes morales, Ministère des Finances, 8, rue Cook, 4^e étage, Québec (Québec) G1R 0A4; telephone: 418 646-7572; fax: 418 646-5744; e-mail: pierre.rheaume@finances.gouv.qc.ca

Any person wishing to comment on the draft Regulations is requested to submit written comments within the 45-day period to the Minister of Finance, 12, rue Saint-Louis, 1^{er} étage, Québec (Québec) G1R 5L3.

RAYMOND BACHAND,
Minister of Finance

Regulation respecting the issue of broker's and agency licences

Real Estate Brokerage Act
(2008, c. 9, ss. 7, 9, 42, 44.1, and 46, pars. 1 to 7, 11 and 12; 2009, c. 58, ss. 142, 144 and 145)

CHAPTER I BROKER'S AND AGENCY LICENCES

DIVISION I TERMS AND CONDITIONS FOR LICENCE ISSUE

§1. *Real estate and mortgage broker's licences*

1. A real estate or mortgage broker's licence is issued to a natural person at least 18 years of age who makes an application to that effect to the Organisme d'autoréglementation du courtage immobilier du Québec (the "Organization") and, in addition to meeting the requirements set out in the Real Estate Brokerage Act,

(1) is a Canadian citizen, has the status of permanent resident or has a work permit issued by Canadian immigration authorities;

(2) has passed the examination under Division VII, no more than 12 months before the licence application;

(3) has passed all the courses or completed all the training programs required by the inspection committee under the third paragraph of section 75 of the Real Estate Brokerage Act or by the discipline committee under subparagraph 7 of the first paragraph of section 98 of that Act, or taken as a consequence of a voluntary commitment on the person's part;

(4) has demonstrated a working knowledge of the official language of Québec in accordance with section 35 of the Charter of the French language (R.S.Q., c. C-11), or meets one of the following requirements that apply to knowledge of French:

(a) has passed the examination referred to in subparagraph 2, in French;

(b) has received, full time, not less than three years of secondary or post-secondary instruction in French; or

(c) has passed the fourth or fifth year secondary-level examinations in French as a first language;

(5) has paid all fees required under this Regulation, all amounts payable to the insurance fund and the fee to be paid into the Real Estate Indemnity Fund;

(6) has reimbursed the Organization for any indemnity amount paid pursuant to a decision of the indemnity committee concerning the person;

(7) has not failed to comply with an order of the discipline committee or court made in connection with a disciplinary action or a remedy referred to in sections 35 and 128 of the Real Estate Brokerage Act, or has not failed to pay any fine and any interest, costs and charges owing to the Organization pursuant to a decision of the discipline committee or a judgment;

(8) where applicable, has remitted the sum of money to the person or partnership entitled to it, in compliance with a final judgment imposing such a penalty under subparagraph 4 of the first paragraph of section 98 of the Real Estate Brokerage Act; and

(9) has paid every sum of money to the party to whom it is owing as a consequence of a commitment entered into during mediation or conciliation, or an arbitration award, pursuant to section 34 of the Real Estate Brokerage Act.

A person who applies for a broker's licence within 12 months after the date of a licence revocation or suspension is exempted from the requirements of subparagraphs 2 and 4 of the first paragraph if the person has completed all additional training required by the Organization since that date.

A person who applies for a real estate broker's licence within three years after his or her real estate broker's licence is replaced by a mortgage broker's licence or a real estate broker's licence with a restriction described in section 2 is also exempted the requirements of subparagraphs 2 and 4 of the first paragraph provided that the licence has not been revoked or suspended for a period of 12 months or more since the licence replacement.

2. A real estate broker's licence may be restricted

- (1) to residential brokerage; or
- (2) to commercial brokerage.

A restricted licence is issued to a natural person who makes a licence application in accordance with section 1 and passes the required examination prepared by the Organization for the particular restriction.

A licence holder who passes the required examination may have the restricted licence modified to include a second restriction or to have it become a real estate broker's licence with no restriction.

3. A real estate broker's licence restricted to residential brokerage authorizes its holder to act as an intermediary for the purchase, sale, lease or exchange of

(1) part or all of a chiefly residential immovable comprising less than five dwellings, or a vacant residential lot; and

(2) a fraction of a residential immovable that is the subject of an agreement or declaration under articles 1009 to 1109 of the Civil Code.

The licence also authorizes its holder to give a client the name and contact information of a person or partnership offering loans secured by immovable hypothec or to otherwise put them in contact with one another.

4. A real estate broker's licence restricted to commercial brokerage authorizes its holder

(1) to engage in the brokerage activities described in subparagraphs 1, 2 and 3 of the first paragraph of section 1 of the Real Estate Brokerage Act, including activities involving a vacant commercial lot, but excluding activities involving a chiefly residential immovable comprising less than five dwellings, or a vacant residential lot or a fraction of a residential immovable that is the subject of an agreement or declaration under articles 1009 to 1109 of the Civil Code;

(2) to engage in the brokerage activities described in subparagraph 5 of the first paragraph of section 1 of the Real Estate Brokerage Act; and

(3) to give a client the name and contact information of a person or partnership offering loans secured by immovable hypothec or to otherwise put them in contact with one another.

5. A broker's licence application must be filed with the following information and documents pertaining to the prospective broker if they are not already in the Organization's possession:

(1) if the prospective broker is a Canadian citizen, his or her act or certificate of birth or Canadian Citizenship Certificate;

(2) if the prospective broker is not a Canadian citizen, the document issued by Canadian immigration authorities attesting status of permanent resident, or the work permit issued by those authorities;

(3) the address of his or her establishment, including postal code, telephone and fax numbers and those of other communication devices and, if any, e-mail and website addresses. In the absence of an e-mail address, the applicant must ask the Organization to furnish one;

(4) the prospective broker's domicile address including postal code and telephone number;

(5) unless the prospective broker has passed the examination referred to in subparagraph *a* of subparagraph 4 of the first paragraph of section 1 in French, documents showing the applicant meets one of the requirements of subparagraph 4;

(6) a colour photograph taken not more than six months preceding the application, on a white background showing the person from the shoulders up and with the face uncovered, submitted using any medium enabling the date on which it was taken to be ascertained;

(7) the name and licence number of the agency for which the prospective broker undertakes to carry on brokerage activities or, if applicable, a mention that the prospective broker will be carrying on activities for his or her own account;

(8) where applicable, a document from the executive officer of the agency for which the prospective broker will be carrying on brokerage activities to the effect that the agency undertakes to employ or authorize the person to act for the agency once he or she has been licensed;

(9) if the prospective broker has held a licence that has been revoked, suspended or made subject to restrictions or conditions by the discipline committee or by a body in Québec responsible for overseeing and monitoring real estate brokerage, or by such a body in another province or State, the relevant documents;

(10) if the prospective broker has made an assignment of property or has been placed under a receiving order pursuant to the Bankruptcy and Insolvency Act (R.S.C. 1985, c. B-3), the relevant documents;

(11) if the prospective broker has previously been convicted by a court of, or has pleaded guilty to, an offence or act, the relevant documents; and

(12) if the prospective broker has been assigned a tutor, curator or adviser, the relevant documents.

§2. Real estate and mortgage broker agency licences

6. A real estate agency licence or a mortgage broker agency licence is issued by the Organization to a person or partnership making an application to that effect if, in addition to meeting the requirements set out in the Real Estate Brokerage Act,

(1) in the case of a natural person, the person holds a real estate broker's licence or a mortgage broker's licence, and acts as the executive officer of the agency;

(2) the directors or executive officers of the agency have passed all courses or completed all other training programs required by the inspection or discipline committee or taken as a consequence of a voluntary commitment on their part;

(3) the executive officer has the qualifications required to act in that capacity;

(4) all fees required under this Regulation and all amounts owing to the insurance fund and the fee to be paid into the Real Estate Indemnity Fund have been paid;

(5) the person or partnership, and each of its partners in the case of a partnership or directors in the case of a legal person,

(a) has reimbursed the Organization for any indemnity amount paid pursuant to a decision of the indemnity committee concerning them;

(b) has not failed to respect an order of the discipline committee or court made in connection with a disciplinary action or a remedy referred to in sections 35 and 128 of the Real Estate Brokerage Act, or has not failed to pay any fine and any interest, costs and charges owing to the Organization pursuant to a decision of the discipline committee or a judgment;

(c) where applicable, has remitted the sum of money to the person or partnership entitled to it, in compliance with a final judgment imposing such a penalty under subparagraph 4 of the first paragraph of section 98 of the Real Estate Brokerage Act; and

(d) has paid every sum of money to the party to whom it is owing as a consequence of a commitment entered into during mediation or conciliation or an arbitration award, pursuant to section 34 of the Real Estate Brokerage Act.

7. An agency licence application must be filed with the following information and documents pertaining to the applicant if they are not already in the Organization's possession:

(1) the name of the person or partnership and, in the case of a natural person, the person's broker's licence number;

(2) the name under which the agency will be carrying on brokerage activities, which name must not suggest that the agency has not been licensed by the Organization;

(3) the address of the applicant's principal establishment and other establishments, if any, including postal code, telephone and fax numbers and those of other communication devices, and e-mail and website addresses;

(4) a statement of the current information on the person or partnership as published in the register of sole proprietorships, partnerships and legal persons;

(5) in the case of a legal person or a partnership, the name of the agency's executive officer and his or her broker's licence number;

(6) the names of the brokers through whom the applicant will be carrying on brokerage activities;

(7) if the applicant has held a licence that has been revoked, suspended or made subject to restrictions or conditions by the discipline committee or by a body in Québec responsible for overseeing and monitoring real estate brokerage, or by such a body in another province or State, the relevant documents;

(8) if the applicant has made an assignment of property or has been placed under a receiving order pursuant to the Bankruptcy and Insolvency Act, the relevant documents;

(9) if the applicant has previously been convicted by a court of or has pleaded guilty to an offence or act, the relevant documents; and

(10) if the applicant has been assigned a tutor, curator or adviser, the relevant documents.

§3. *Special provisions applying to applications*

8. A licence application is considered to be received only once all the information and documents required by this Division have been furnished along with all fees payable.

9. A new application made within three years after a decision under section 37, 38 or 40 of the Real Estate Brokerage Act must set out new facts that may warrant a different decision.

DIVISION II UPDATING OF INFORMATION AND LICENCE PARTICULARS

10. A licence holder must send any change in information or in a document required by the Real Estate Brokerage Act or this Regulation to the Organization without delay.

In addition, within 10 days of becoming aware of it, a licence holder must inform the Organization of any professional liability claim filed with the holder's insurer, and inform the Organization without delay of any notice of loss the holder files with the insurer in relation to professional liability.

11. A licence holder must reply to any request regarding the updating of information concerning the holder within the time set by the Organization.

12. Five years after an application has been made and every five years thereafter, a holder of a broker's licence must send the Organization a new photograph dated not more than six months previous using a medium enabling the date on which it was taken to be ascertained. A broker's licence bears the most recent photograph furnished by its holder.

13. A licence contains the following particulars:

- (1) the name of the licence holder;
- (2) the licence number and date of issue;
- (3) a mention that the holder is a real estate or mortgage broker agency or a real estate or mortgage broker;
- (4) the licence restrictions, if any;
- (5) the name of the agency for which the broker carries on activities, if applicable;
- (6) the address and telephone number of the licence holder's establishment;
- (7) a mention that the broker is certified to be an agency executive officer, if applicable; and
- (8) the address of the licence holder's website.

At the request of the holder, the licence may specify the name by which the applicant is commonly known but in that case, the holder must have supplied the Organization with a sworn declaration to the effect that the name is generally known in the holder's professional and social life, or any other document establishing that fact.

DIVISION III LICENCE SUSPENSION AND REVOCATION

14. The licence of a broker who may not carry on activities for his or her own account is suspended if

(1) the licence of the agency for which the broker carries on activities is suspended or revoked; or

(2) the broker ceases to carry on activities for an agency.

A broker who may carry on activities for his or her account is deemed to do so as of the date on which the licence of the agency for which the broker carries on activities is revoked or suspended.

15. A broker's licence is suspended by the Organization if

(1) the holder fails to pay any sum owing to the insurance fund other than the premium;

(2) the holder fails to take within the prescribed time any course or complete any training program as required by the inspection or discipline committee or taken as a consequence of a voluntary commitment on the holder's part;

(3) the holder fails to take additional training as required by the Organization and, where applicable, to pass the training;

(4) the holder fails to set up and maintain a trust account in accordance with this Regulation;

(5) the Organization becomes aware of the broker's failure to update information or a document required under the Real Estate Brokerage Act or this Regulation; or

(6) the holder no longer meets a requirement for the issue or maintenance of the licence, other than the requirement in subparagraph 6 of the first paragraph of section 1, and no specific provision in the Real Estate Brokerage Act or this Regulation deals with such a failure.

16. An agency licence is suspended by the Organization if

(1) the agency fails to pay any sum owing to the insurance fund;

(2) the holder, partners in the case of a partnership or directors in the case of a legal person, fail to take and pass within the prescribed time any course or complete any training program as required by the inspection or discipline committee or taken as a consequence of a voluntary commitment on their part;

(3) the holder, partners in the case of a partnership or directors in the case of a legal person, fail to take any additional training required by the Organization and, where applicable, to pass the training;

(4) the holder fails to set up and maintain a trust account in accordance with this Regulation;

(5) the Organization becomes aware of the agency's failure to update information or a document required under the Real Estate Brokerage Act or this Regulation;

(6) the holder ceases to have the qualifications required of an agency executive officer or, in the case of a partnership or a legal person, it has not been headed by a person having those qualifications for a period of more than 60 days; or

(7) the holder no longer meets a requirement for the issue or maintenance of the licence, other than the requirement in subparagraph *a* of paragraph 5 of section 6 of this Regulation, and no specific provision in the Real Estate Brokerage Act or this Regulation deals with such a failure.

17. Once a licence has been suspended, the holder cannot engage in brokerage transactions or, among other things, in advertising, client solicitation or representation in relation to real estate or mortgage brokerage services, or use the title of broker or agency.

18. Other than in the case in section 104 of the Real Estate Brokerage Act, a person may apply to have a licence suspension lifted if the person establishes that the cause giving rise to the suspension no longer exists.

19. A broker's licence is revoked by the Organization if

(1) the holder requests the revocation;

(2) the holder has, on the due date, failed to make the payments required by section 45 of this Regulation or by section 15 of the Regulation respecting the Real Estate Indemnity Fund and determination of the professional liability insurance premium, approved by Order in Council (*insert the number and date of the Order in Council approving that Regulation*), for the issue or maintenance of the licence;

(3) the holder, through misrepresentation, obtained the issue or maintenance of the licence or the modification or lifting of the licence or the restrictions or conditions imposed on the licence;

(4) the holder no longer has an establishment in Québec;

(5) the holder no longer is a Canadian citizen or has the status of permanent resident or a work permit issued by Canadian immigration authorities; or

(6) the holder

(a) fails to repay the principal, interest and costs of any amount imposed by a final judgment arising from liability for a cause referred to in section 108 of the Real Estate Brokerage Act or from the exercise of a subrogatory action under section 112 of that Act;

(b) fails to comply with an order of the disciplinary committee or court made in connection with a disciplinary action or remedy referred to in sections 35 and 128 of the Real Estate Brokerage Act, or fails to pay any fine and any interest, costs and charges owing to the Organization pursuant to a judgment or a decision of the disciplinary committee, any fee required or any fee to be paid into the Real Estate Indemnity Fund; or

(c) fails to pay any amount of money to the party entitled to it arising out of an undertaking made during mediation or conciliation or an arbitration award, pursuant to section 34 of the Real Estate Brokerage Act.

20. A agency licence is revoked by the Organization if

(1) the holder requests the revocation;

(2) the holder has, on the due date, failed to make the payments required by section 45 of this Regulation or by section 15 of the Regulation respecting the Real Estate Indemnity Fund and determination of the professional liability insurance premium for the issue or maintenance of the licence;

(3) the holder, through misrepresentation, obtained the issue or maintenance of the licence or the lifting of the suspension or the restrictions or conditions imposed on the licence;

(4) the holder no longer has an establishment in Québec;

(5) the holder, partners in the case of a partnership or directors in the case of a legal person,

(a) has or have failed to repay the principal, interest and costs of any amount imposed by a final judgment arising from liability for a cause referred to in section 108 of the Real Estate Brokerage Act or from the exercise of a subrogatory action under section 112 of that Act;

(b) has or have failed to comply with an order of the disciplinary committee or court made in connection with a disciplinary action or remedy referred to in sections 35 and 128 of the Real Estate Brokerage Act, or failed to pay any fine and any interest, costs and charges owing to the Organization pursuant to a judgment or a decision of the disciplinary committee, any fee required or any fee to be paid into the Real Estate Indemnity Fund; or

(c) has or have failed to pay any amount of money to the party entitled to it arising out of an undertaking made during mediation or conciliation or an arbitration award, pursuant to section 34 of the Real Estate Brokerage Act; or

(6) in the case of a natural person, the person no longer holds a broker's licence.

21. The licence is suspended or revoked on the date and at the time determined by the Organization.

22. Suspension or revocation of a licence does not give entitlement to a reimbursement of or reduction in the amount of fees payable under the Real Estate Brokerage Act, this Regulation or the Regulation respecting the Real Estate Indemnity Fund and determination of the professional liability insurance premium.

DIVISION IV **LICENCE ISSUE AND MAINTENANCE** **COMMITTEE**

23. The licence issue and maintenance committee, as the delegatee of the functions and powers under sections 37 to 39 and 41 of the Real Estate Brokerage Act, is composed of at least three and not more than nine members, including a chair, appointed by the board of directors of the Organization for a term of three years.

The board of directors may appoint one or more vice-chairs.

At the end of their term, the members remain in office until they are replaced, dismissed or reappointed, or until they resign. A matter referred to a committee member who is later replaced or resigns may continue to be dealt with by the member.

24. If the number of committee members so allows, the committee may sit in two or more divisions composed of three or more members, one of whom is a chair or vice-chair. A division having more than three members must be composed of an odd number of members.

25. The committee members must take the oath of discretion in Schedule A to this Regulation.

26. The notice referred to in section 41 of the Real Estate Brokerage Act must also inform the licence holder or the applicant person or partnership of the possibility of producing documents to complete the file and of the remedy in section 43 of that Act.

27. A decision of the committee is made in writing by a majority of the members and must be signed by the members making it. Reasons must be given for a decision to refuse to issue or a decision to revoke, suspend or impose restrictions or conditions on a licence.

28. The committee may make a decision even if the licence holder or applicant fails to reply to the notice sent in accordance with section 41 of the Real Estate Brokerage Act, does not appear at the arranged meeting, has not submitted observations in writing or has not produced the documents necessary to complete the file.

29. The committee is to send a report on its activities to the Organization each year and whenever a request for such a report is made by the Organization.

30. The committee's meetings are held using any device that enables the participants to communicate with one another; the participants are deemed to have attended the meeting.

DIVISION V **NOTICE OF DECISION**

31. Where the Organization makes a decision that is unfavourable to a person or partnership, it must notify the person or partnership in writing.

It must also notify the agency for which the person carries on or proposed to carry on activities.

32. A decision imposing a licence suspension or revocation or imposing conditions or restrictions on a licence is made public by an entry to that effect in the register of licence holders kept by the Organization.

33. A notice of a final decision made by the licence issue and maintenance committee, the discipline committee or an appeal tribunal that suspends or revokes a broker's or agency licence or imposes conditions or restrictions on

the licence and, where applicable, a notice of a decision that rectifies or revises such a decision is to be published or inserted in an official or regular publication of the Organization or on its website. The notice must specify the name of the broker or agency holding the licence to which the decision applies, the type of licence held, the place where the activities are carried on, the name under which the broker or agency carries on the activities, the broker's or agency's specialty, if any, and the date and conclusions of the decision. If the decision is made by the discipline committee, the notice must indicate the date and nature of the offence.

DIVISION VI **QUALIFICATION OF AGENCY** **EXECUTIVE OFFICERS**

34. A person is qualified as an executive officer of a real estate or mortgage broker agency if the person

(1) holds a real estate or mortgage broker's licence that is neither suspended nor subject to restrictions or conditions;

(2) is able to act for his or her own account;

(3) meets either of the following conditions, showing that the person is qualified to manage the professional activities of brokers and agencies:

(a) has passed, in accordance with Division VII, the examination for executive officers of real estate or mortgage broker agencies; or

(b) has qualified as an executive officer of a real estate or mortgage broker agency for three of the last five years; and

(4) after passing the examination referred to in subparagraph *a* of subparagraph 3, has taken and, where applicable, passed all additional training required for brokers to qualify as agency executive officers.

To maintain qualification, an executive officer of a real estate or mortgage broker agency must continue to meet the requirements of subparagraphs 1, 2 and 4.

DIVISION VII **EXAMINATIONS**

35. The Organization's examinations deal with the skills a broker must have, according to the licence applied for or licence restrictions, those required of an agency executive officer or of the holder of a specialist's title, in the latter case according to the title applied for.

36. The Organization must make accessible the list of skills tested in the examinations it prepares and send the list to any person who requests it.

37. An examination application must be sent to the Organization before the date set for the examination along with the documents and information required by paragraphs 1, 2, 4 and 6 of section 5, and specify the licence or title for which it is made.

38. A person who fails an examination may apply up to three times for a supplemental examination within 12 months after the date of the initial examination. A person who fails all the supplemental examinations cannot re-apply for an examination for a period of 12 months after the date of the last supplemental examination.

39. The Organization may cancel the examination of a person who makes a false representation in the examination application, or who seriously disrupts the examination in a repeated or continued manner, including by fraud, copying or cheating or by collaborating in such strategies. That person may not sit for any examination for a period of 12 months after the date of the cancellation by the Organization.

CHAPTER II SPECIAL AUTHORIZATIONS

40. A special 12-month authorization for brokerage transactions described in section 1 of the Real Estate Brokerage Act may be issued to any person, partnership or group of persons or partnerships, other than brokers or agencies, requesting an authorization and that

(1) has made an application for special authorization that contains

(a) the applicant's name and contact information;

(b) if the applicant is a natural person acting for a person, a partnership or a group of persons or partnerships authorized to engage in brokerage transactions described in section 1 of the Real Estate Brokerage Act outside Québec, the name and contact information of that person, partnership or group of persons or partnerships;

(c) a description of the brokerage activities to be engaged in occasionally or from time to time by the applicant in Québec;

(d) an enumeration of the specific purposes for which the application is made;

(e) a statement whereby the applicant undertakes to act within the limits of the special authorization; and

(f) any observation the applicant considers appropriate to make to justify the application for special authorization;

(2) has furnished a certificate from the competent authority attesting that the applicant is authorized to engage in brokerage transactions described in section 1 of the Real Estate Brokerage Act outside Québec;

(3) has paid the fees required by Chapter III;

(4) has paid the fee that must be paid into the Real Estate Indemnity Fund; and

(5) has paid into the insurance fund the civil liability insurance premium set by resolution of the Organization.

41. The special authorization issued by the Organization is valid only to the extent of the limits and conditions specified in the authorization.

42. Special authorization may not be issued to a natural person who acts for a person, a partnership or a group of persons or partnerships unless that person, partnership or group holds special authorization.

43. The holder of special authorization must, throughout the period for which the authorization is valid,

(1) be authorized by the competent authority to engage in brokerage transactions described in section 1 of the Real Estate Brokerage Act outside Québec;

(2) comply with the provisions of the Real Estate Brokerage Act and the regulations made under it as if the holder were licensed by the Organization;

(3) deposit all sums to be held by the holder into a trust account maintained by a holder licensed by the Organization; and

(4) be assisted by a holder licensed or designated by the Organization or chosen by the holder of the special authorization.

The holder of the special authorization must inform the Organization in writing as soon as the authorization to engage in brokerage transactions described in section 1 of the Real Estate Brokerage Act outside Québec ceases or is made subject to restrictions or conditions.

44. In any advertising, client solicitation and representation in relation to brokerage transactions carried on in Québec and described in section 1 of the Real Estate Brokerage Act, the holder of special authorization must ensure that the following particulars appear after the holder's name:

(1) mention of the Canadian province or territory or the State where the holder is legally authorized to engage in brokerage transactions described in section 1 of the Real Estate Brokerage Act; and

(2) mention to the effect that the holder is specially authorized to engage in brokerage transactions described in section 1 of the Real Estate Brokerage Act in Québec.

The holder must also specify the limits on the special authorization.

In addition, the holder of special authorization must without delay inform in writing every person with whom the holder has dealings in connection with brokerage activities in Québec of the special authorization and of its limits.

CHAPTER III FEES

45. The annual licence fees are,

- (1) for a real estate broker's licence: \$850;
- (2) for a mortgage broker's licence: \$850;
- (3) for a real estate agency licence: \$500; and
- (4) for a mortgage broker agency licence: \$500.

The fees are payable on application for the licence and thereafter on 1 May of each year. If the licence is issued for a period of less than 12 months, the fee amount is adjusted pro rata to the number of months left until the annual licence fee due date, including the month of the application.

If a licence holder applies for both the issue of a new licence and the abandoning of a licence already held, the fees for the new licence are reduced by an amount equal to the fees paid for the abandoned licence, pro rata to the number of months left until the next annual licence fee due date, excluding the month of the application.

46. The fees for special authorization are,

- (1) for a natural person: \$850; and
- (2) for the person, partnership or group of persons or partnerships represented by a natural person: \$500.

47. The fee amounts are adjusted annually on 1 May of each year based on the rate of increase in the general Consumer Price Index for Canada, as determined by Statistics Canada for the 12-month period ending on 31 December of the preceding year.

The adjusted amounts are reduced to the nearest dollar if they contain a fraction of a dollar less than \$0.50; they are increased to the nearest dollar if they contain a fraction of a dollar equal to or greater than \$0.50.

The results of the adjustment are to be published in the *Gazette officielle du Québec*.

CHAPTER IV ADDITIONAL TRAINING OF BROKERS AND AGENCY EXECUTIVE OFFICERS

48. The purpose of the additional training activities is to enable brokers and agency executive officers to develop, maintain, update, improve and broaden professional skills associated with their activities.

49. The additional training activities to be taken by all or some of the brokers or agency executive officers must deal with the following subject-matters in particular:

- (1) general or special legal rules that apply to brokerage transactions described in section 1 of the Real Estate Brokerage Act;
- (2) any legislative or regulatory reform that may affect the activities of brokers and agencies;
- (3) the content, use and drafting of contracts and forms relating to brokerage transactions described in section 1 of the Real Estate Brokerage Act;
- (4) any material, physical or environmental consideration that may affect the object of a brokerage transaction described in section 1 of the Real Estate Brokerage Act;
- (5) ethics and professional conduct of brokers and agency executive officers;
- (6) management of the professional activities of brokers and agency executive officers;
- (7) assessment of the value of an immovable or enterprise;
- (8) assessment of the quality and construction features of an immovable;
- (9) financial implications of transactions described in section 1 of the Real Estate Brokerage Act; and
- (10) financing of transactions described in section 1 of the Real Estate Brokerage Act.

50. For every training activity to which this Chapter applies, the Organization must

- (1) approve the content;
- (2) set the duration of the activity and time within which it must be taken; and
- (3) specify the training personnel, bodies or educational institutions qualified to offer it.

51. This Regulation comes into force on (*insert the date of coming into force of the Real Estate Brokerage Act (2008, c. 9)*).

SCHEDULE A

(s. 25)

“OATH OF DISCRETION

I, A.B., swear under oath that I will not, without being so authorized by law, disclose or make known anything whatsoever of which I may take cognizance in the performance of my duties.”

Regulation respecting records, books and registers, trust accounting and inspection of brokers and agencies

Real Estate Brokerage Act
(2008, c. 9, ss. 10, 46, 47, 49 and 76;
2009, c. 58, ss. 145 and 146)

CHAPTER I

REGISTERS AND RECORDS

DIVISION I

GENERAL

1. A broker or agency must keep and maintain the registers and records prescribed by this Chapter.

Where a broker acts for an agency, the obligations related to the keeping of registers and records are delegated to the agency. The broker must send all the information required for that purpose to the agency without delay.

DIVISION II

KEEPING OF REGISTERS

2. A broker or agency must keep the following registers at the establishment:

- (1) a register of brokerage contracts;

- (2) a register of transactions;

- (3) accounting registers on the amounts held in trust by the broker or the agency;

- (4) a register of disclosure notices required by section 18 of the Regulation respecting brokerage requirements, professional conduct of brokers, advertising and additional training approved by Order in Council XX (*insert the number and date of the Order in Council approving that Regulation*);

- (5) a register on the accounting of the broker or the agency; and

- (6) a register of the brokers acting for the agency.

3. The register of brokerage contracts must provide, in ascending order, the numbers attributed by the licence holder to each brokerage contract. The register contains, for each contract,

- (1) where the contract concerns the purchase, sale, lease or exchange of an immovable property or the purchase or sale of an enterprise, the address of the immovable or enterprise covered by the contract or its cadastral description if there is no address;

- (2) where the contract concerns a loan secured by immovable hypothec, the name and contact information of the person or partnership that awarded the contract;

- (3) the date on which the contract was awarded to the licence holder;

- (4) the number attributed to the contract from a series of consecutive numbers used only by the licence holder; and

- (5) where applicable, the name of the broker acting for the agency for the performance of the contract.

4. The register of transactions must provide, in ascending order, the numbers attributed to each transaction. The register must contain, for each transaction,

- (1) the number attributed to the transaction, from a series of consecutive numbers used only by the licence holder;

- (2) the date of acceptance of the transaction proposal;

- (3) the address of the immovable or enterprise to which the transaction pertains, or its cadastral description if there is no address;

(4) the sum received in trust, where applicable;

(5) the name of the broker to whom the transaction proposal was awarded; and

(6) the name of the person or partnership with whom the licence holder shares remuneration and, where applicable, the number of the broker's or agency licence or the number of the permit, licence, certificate or any other form of authorization issued outside Québec or under an Act other than the Real Estate Brokerage Act.

5. The accounting register showing the sums held in trust must be integrated into an accounting system kept according to generally accepted accounting principles. The register contains, in chronological order,

(1) in the case of a sum received in trust and deposited into the general trust account:

(a) the number attributed to the transaction by the licence holder, where applicable;

(b) the sum received;

(c) the number of the receipt issued to the depositor for the sum received;

(d) the date of deposit with the financial institution;

(e) identification of the depositor; and

(f) the balance of the general trust account;

(2) in the case of a sum received in trust and withdrawn from the general trust account:

(a) the number attributed to the transaction by the licence holder, where applicable;

(b) the sum withdrawn;

(c) the number attributed to the cheque, bill of exchange or transfer slip used for the withdrawal;

(d) the name of the recipient of the cheque, bill of exchange or transfer slip used for the withdrawal;

(e) the date appearing on the cheque, bill of exchange or transfer slip used for the withdrawal; and

(f) the balance of the general trust account;

(3) in the case of a sum received in trust and deposited into a special trust account:

(a) the information provided for in paragraph 1;

(b) identification of the special account; and

(c) the name of the financial institution with which the account was opened;

(4) in the case of a sum received in trust and withdrawn from a special trust account:

(a) the information provided for in paragraph 2;

(b) identification of the special account; and

(c) the name of the financial institution with which the account was opened.

6. The register of disclosure notices must provide, in ascending order, the numbers attributed to each disclosure notice. The register contains, for each transaction for which such a notice is required under section 18 of the Regulation respecting brokerage requirements, professional conduct of brokers, advertising and additional training,

(1) the name of the licence holder producing the disclosure notice and the holder's licence number;

(2) the object and nature of the transaction;

(3) the nature of the interest that the licence holder has or intends to acquire;

(4) identification of the parties to the transaction;

(5) the sale price accepted or the amount of the loan granted;

(6) the date and time of the drafting of the transaction proposal;

(7) the date and time of the acceptance of the transaction proposal; and

(8) the date and time the notice is received by each prospective contracting party.

7. Each year, before 31 March, and each time the Organization so requests, the licence holder must send a copy of the register of disclosure notices to the Organization.

8. The accounting register of the enterprise must be integrated into an accounting system kept according to generally accepted accounting principles.

9. The register of brokers acting for an agency must contain a complete updated list of the names and licence numbers of the brokers through whom the agency engages in brokerage transactions described in section 1 of the Real Estate Brokerage Act.

DIVISION III KEEPING OF RECORDS

10. A broker or agency must keep the following records at the establishment:

- (1) a record for each brokerage contract;
- (2) a record for all the transaction proposals not accepted;
- (3) a record for each transaction; and
- (4) a record for disclosure notices.

11. The record for a brokerage contract contains

- (1) the brokerage contract;
- (2) any document currently or previously used in the performance of the contract, including any document used to demonstrate the accuracy of the information provided; and
- (3) the content of the record provided for in section 13, where applicable.

12. The record for all the transaction proposals not accepted contains the transaction proposals that were not accepted, in the case where the licence holder is not the licence holder to whom a brokerage contract was awarded.

13. The record for a transaction contains the transaction proposal accepted and any other document used to complete the transaction.

14. The record for all the disclosure notices contains

- (1) the disclosure notices required by section 18 of the Regulation respecting brokerage requirements, professional conduct of brokers, advertising and additional training, duly completed, and proof of their receipt; and
- (2) the transaction proposal accepted and all documents related thereto, unless the documents have been filed in any of the records provided for in paragraphs 2 and 3 of section 10.

DIVISION IV PRESERVATION, USE AND DESTRUCTION OF REGISTERS AND RECORDS

15. A licence holder must take the measures necessary to prevent the loss or destruction of registers and records and to prevent any falsification of the information and documents contained therein.

16. A licence holder must ensure that registers and records are conserved in such a way that an unauthorized person may not have access thereto.

When the registers and records are conserved on a technological medium, access to the documents contained therein must be limited to the persons employed by or authorized to act for the licence holder, for the information necessary for the carrying on of their activities.

17. A licence holder must conserve the registers and records for at least 6 years following their final closing. After the 6-year period, those registers and records may be destroyed unless they constitute evidence in a civil, disciplinary, penal or criminal action.

18. The destruction of registers and records must be done by taking the measures necessary to protect the confidential nature of the information contained therein.

19. A broker who ceases to practise on his or her account or an agency that ceases to practise must, without delay, turn over registers and records, other than those relating to the accounting for his or her enterprise, to a broker acting on his or her account or to an agency, holding the licence or licences necessary to maintain such registers and records.

The broker or agency receiving the registers and records has the same obligations for preservation, use and destruction as the broker or agency has for their own registers and records.

20. A licence holder receiving the registers and records from another licence holder, in accordance with section 19, must, within 30 days following the date of receipt, so notify the Organization in writing.

21. A licence holder who ceases activities and who has no person to turn over his or her registers and records, in accordance with section 19, must send a notice to the Organization indicating the address where the registers and records are maintained, attesting to the security of the location, with respect in particular to the destruction of the registers and records, and guaranteeing the protection of the confidential information contained therein. Any change of location where the registers and records are maintained must be notified in writing to the Organization.

22. As soon as a licence holder ceases activities, the licence holder must send the Organization

- (1) the register of disclosure notices; and
- (2) the documents provided for in section 38.

23. The registers and records of a licence holder who ceases activities without complying with sections 19 and 21 may be seized and archived by the Organization. All costs incurred must be paid by the licence holder.

CHAPTER II TRUST ACCOUNTS

DIVISION I GENERAL

24. A broker must, in accordance with this Chapter, open and maintain a trust account.

Where a broker acts for an agency, the obligations related to the opening and maintaining of a trust account are delegated to the agency. The broker remains responsible with the agency for the obligations imposed in this Chapter.

An agency may delegate to only one other agency the obligations related to the opening and maintaining of a trust account that were delegated to the agency by the brokers acting for the agency. Those brokers remain responsible for the obligations imposed in this Chapter, with their agency and the agency to which they were delegated. A written notice of the delegation must be sent to the Organization without delay.

This section does not apply to a broker who files a declaration with the Organization to the effect that the broker

- (1) is employed by the Organization; or
- (2) is employed by a person who is not an agency and the broker engages, as such, in no brokerage transaction described in section 1 of the Real Estate Brokerage Act.

25. The sums that must be paid into a trust account are paid immediately, under the terms of the trust provided for in the transaction proposal or under the terms of any other agreement, into a general trust account opened under the name of the licence holder.

Where a person who entrusted a sum to the licence holder expressly requests that the interest on that sum be remitted to him or her, the licence holder must immediately transfer the sum from the general trust account to a special trust account. The broker or the agency must ensure that the name of the client for whom the account is opened is indicated.

26. Any sum received by a licence holder as advance on remuneration or disbursements must be paid without delay into the general trust account opened under the name of the licence holder receiving the sum.

27. A sum received by a licence holder and paid into a trust account in accordance with sections 25 and 26 may be paid in Canadian or foreign currency.

DIVISION II OPENING OF A GENERAL TRUST ACCOUNT OR A SPECIAL TRUST ACCOUNT

28. A licence holder opens only one general trust account, as soon as the licence holder's activities so require and not later than 10 days after the licence is issued, and as many special trust accounts as necessary, in which the sums held are deposited, including advances on remuneration, given by a client or another person.

The accounts must be composed of deposits covered by the deposit insurance under the Canada Deposit Insurance Corporation Act (R.S.C. 1985, c. C-3) or guaranteed under the Deposit Insurance Act (R.S.Q., c. A-26).

The accounts must be opened in Québec, in a financial institution governed by the Act respecting trust companies and savings companies (R.S.Q., c. S-29.01), the Bank Act (S.C. 1991, c. 46), the Act respecting financial services cooperatives (R.S.Q., c. C-67.3) or the Trust and Loan Companies Act (S.C. 1991, c. 45) and with which the Organization has entered into an agreement on the payment of interest into the Financing fund of the Organization.

29. When opening a general trust account, a licence holder must complete and send a declaration related to the opening of an account to the depositary financial institution and the Organization. The licence holder must keep a copy for inspection purposes.

The declaration related to the opening of an account must indicate

- (1) the name and address of the financial institution to which the declaration is addressed;
- (2) the name of the broker or the agency executive officer making the declaration, the number of the holder's licence and the address of the establishment;
- (3) the date on which the account is opened;
- (4) that the general account opened at the financial institution in the name of the licence holder is "in trust";

(5) the account number;

(6) that the account contains sums that the licence holder receives or will receive in trust in the carrying on of the holder's activities and that the account is governed by the Real Estate Brokerage Act;

(7) that the interest generated by the sums deposited into the account must be paid into the Financing fund of the Organization;

(8) that the financial institution is authorized to transfer directly to the Financing fund of the Organization the interest generated by the account and to deduct at source, if applicable, the administrative costs provided for in the agreement entered into or to be entered into with the Organization;

(9) the persons authorized to sign, on behalf of the licence holder, any document related to the current transactions of the account and the signature of each person;

(10) that at all times, the Organization is irrevocably authorized to request and obtain from the financial institution any information, explanation or copy of a document necessary or useful for the purposes of auditing the account; and

(11) that the Organization is irrevocably authorized to freeze the sums held in trust, take possession of any sum entrusted to a licence holder, revoke the signature of the broker or agency executive officer or close any of their trust accounts.

30. Where a licence holder opens a special trust account, the licence holder must complete a declaration related to the opening of an account, keep a copy of the declaration for inspection purposes and send the declaration without delay to the depositary financial institution.

The declaration must indicate, in addition to the elements referred to in paragraphs 1, 2, 3, 5, 9, 10 and 11 of section 29,

(1) the name and address of the depositor;

(2) the sum received and an indication that the sum is received "in trust" in the carrying on of the broker's activities;

(3) that the sum is deposited into a special account opened "in trust" with the financial institution under the name of the licence holder;

(4) that the account is governed by the Real Estate Brokerage Act; and

(5) that the interest generated by the sum deposited into the account belong to the depositor.

DIVISION III MANAGEMENT OF TRUST ACCOUNTS

31. When a licence holder receives a sum in cash, the licence holder must give the depositor a receipt indicating

(1) the date the sum is received;

(2) the amount received and the currency of the sum;

(3) whether the sum is received for someone else's account or as advance on remuneration or disbursements;

(4) the name, address, date of birth and occupation of the depositor;

(5) that, as soon as the sum is deposited into a trust account, a receipt will be issued to the depositor;

(6) the name and signature of the person who, on the licence holder's behalf, receives the sum; and

(7) the name, address and licence number of the licence holder.

32. As soon as a licence holder has deposited a sum into a general or special trust account, or the sum has been deposited in trust by electronic transfer, the licence holder must give the depositor a receipt with a number, from a series of consecutive numbers, attributed to the receipts the licence holder issues. The licence holder must keep a duplicate of the receipt in his or her records.

The receipt must be signed by the person authorized by the licence holder and, in addition to the elements referred to in paragraphs 1, 2, 3 and 6 of section 31, indicate

(1) the form under which the sum was received;

(2) that the sum is received for deposit into the trust account of the licence holder;

(3) the purposes for which the sum is received; and

(4) that the licence holder will use the sum for those purposes, in accordance with the Real Estate Brokerage Act.

33. When the payment of a cheque or another bill of exchange received as a deposit or arrears is refused by the financial institution from which it is drawn, or the sum is not received within the period provided for in the transaction proposal, a licence holder must, without delay, so inform the parties to the transaction in writing.

34. Every withdrawal from a general or special trust account must be made by electronic transfer, a cheque, another bill of exchange or a transfer slip bearing the number attributed to the transaction concerned.

The licence holder must keep a copy of a document evidencing an electronic transfer, cheques, bills of exchange and transfer slips, and a copy of the cheques and bills of exchange cashed in, for the purposes of inspection by the Organization.

35. A sum corresponding to an advance on remuneration or disbursements that is deposited in the trust account of a licence holder may be withdrawn when the invoicing or the amount of the disbursements stated in writing has been sent to or accepted by the depositor.

36. Cheques, bills of exchange and transfer slips and any document evidencing an electronic transfer that a licence holder draws from a general or special trust account must bear

(1) a number from a series of consecutive numbers attributed by the licence holder to the holder's cheques, bills of exchange and transfer slips; and

(2) except for a document evidencing an electronic transfer, the indication "trust account governed by the Real Estate Brokerage Act".

DIVISION IV **KEEPING OF TRUST ACCOUNTS**

37. A licence holder must maintain separate accounting for each trust account and prepare a monthly reconciliation thereof, according to generally accepted accounting principles.

38. Each year, before 31 March, and each time the Organization so requests, a licence holder must send the Organization

(1) a summary of the deposits into and withdrawals from the holder's general trust account and all special trust accounts including

(a) identification of the period covered;

(b) for the general trust account:

i. the balance of the general trust account according to the accounting register at the start of the period;

ii. the total of the sums deposited during the period;

iii. the sum of the amounts referred to in subparagraphs i and ii;

iv. the total of the sums withdrawn during the period;

v. the balance of the account according to the accounting register at the end of the period, established by subtracting the sum mentioned in subparagraph iv from the sum obtained in subparagraph iii;

(c) for all the special trust accounts:

i. the balance of the special trust accounts according to the accounting registers at the start of the period;

ii. the total of the sums deposited during the period;

iii. the interest deposited during the period;

iv. the sum of the amounts mentioned in subparagraphs i, ii and iii;

v. the total of the sums withdrawn during the period;

vi. the total of the interest withdrawn during the period;

vii. the sum of the amounts mentioned in subparagraphs v and vi;

viii. the balance for all the special accounts, according to the accounting register at the end of the period, established by subtracting the sum mentioned in subparagraph vii from the sum obtained in subparagraph iv;

(d) the total of the balances, according to the accounting registers at the end of the period, established by adding the balances in subparagraph v of subparagraph b and subparagraph viii of subparagraph c;

(2) a copy of the bank reconciliation statement, established at the end of the calendar year or for the period for which the Organization requests it, for the general trust account and each of the special trust accounts including

(a) the date on which ends the period covered;

(b) for the general trust account:

i. the name and address of the financial institution and the number of the general trust account;

ii. the balance of the general trust account, according to the financial institution's statement;

iii. the total of the sums not yet deposited;

iv. the sum of the amounts mentioned in subparagraphs ii and iii;

v. the total of the outstanding cheques, bills of exchange and transfer slips;

vi. the balance of the general trust account after reconciliation, established by subtracting the sum mentioned in subparagraph v from the sum mentioned in subparagraph iv;

vii. the balance mentioned in subparagraph v of subparagraph *b* of subparagraph 1;

viii. the difference between what is mentioned in subparagraphs vi and vii;

(*c*) for all the special trust accounts:

i. the name and address of the financial institution and the number of each special trust account;

ii. the balance of each special trust account, according to the financial institution's statement;

iii. the total of the sums not yet deposited in each special trust account;

iv. the sum of the amounts mentioned in subparagraphs ii and iii;

v. the total of the outstanding cheques, bills of exchange and transfer slips for each special trust account;

vi. the balance of each special trust account after reconciliation, established by subtracting the sum mentioned in subparagraph v from the sum mentioned in subparagraph iv;

vii. the total of all the special trust accounts;

viii. the balance mentioned in subparagraph viii of subparagraph *c* of subparagraph 1;

ix. the difference between what is mentioned in subparagraphs vii and viii;

(*d*) the total of the balances according to the accounting registers at the end of the period, established by adding the balances provided for in subparagraph vi of subparagraph *b* and in subparagraph vii of subparagraph *c*;

(3) the detailed list of the sums held in the licence holder's general trust account and special trust accounts at the end of the calendar year or the period for which the Organization requests the list. The list must contain

(*a*) the date of the end of the period covered;

(*b*) for the general trust account:

i. the number attributed to each transaction by the licence holder;

ii. the sum held with respect to each transaction;

iii. the total of the sums held in the general account;

(*c*) for the special trust accounts:

i. the number attributed to each transaction by the licence holder;

ii. the sum held in each special trust account;

iii. the number of the special trust account;

iv. the total of the sums held in the special trust accounts;

(*d*) the total of the balances according to the detailed list of the sums held at the end of the period, established by adding the balances provided for in subparagraph iii of subparagraph *b* and in subparagraph iv of subparagraph *c*.

The total amounts appearing under the headings mentioned in subparagraph *d* of subparagraph 1, subparagraph *d* of subparagraph 2 and subparagraph *d* of subparagraph 3 must coincide.

Each document required under subparagraphs 1, 2 and 3 of the first paragraph must contain the name of the licence holder, be signed by a person authorized by the licence holder and bear the date of the signature.

39. A licence holder holding sums in trust that are considered as unclaimed property within the meaning of the Public Curator Act (R.S.Q., c. C-81) must dispose of the sums in accordance with that Act and so notify the Organization without delay.

DIVISION V CLOSING OF A TRUST ACCOUNT

40. When closing a general trust account, a licence holder must send without delay to the Organization a notice containing

(1) the name and address of the financial institution and the account number;

(2) the date on which the account is closed; and

(3) the name, address and licence number of the broker or agency.

DIVISION VI MISCELLANEOUS

41. The Organization, the inspection committee, an inspector, the syndic or an assistant syndic may

(1) require and obtain at any time from the financial institution that is the depository of every general or special trust account all the information or explanations deemed necessary or useful for the purposes of this Regulation;

(2) require and obtain at any time from the financial institution in which sums belonging to clients are deposited and which should have been deposited by the licence holder in a general or special trust account all the information or explanations deemed necessary or useful for the purposes of this Regulation;

(3) freeze the sums held in trust; and

(4) take possession of any sum entrusted to a licence holder, revoke the signature of the broker or agency executive officer, or close any of their general or special trust accounts.

CHAPTER III FINANCING FUND

42. The “Fonds de financement de l’Organisme d’autoréglementation du courtage immobilier du Québec” is established.

The financing fund must be used in particular to produce and disseminate information on the public’s rights in real estate brokerage and to promote the quality of services by brokers and agencies.

43. The accounting for the financing fund is integrated into the accounting of the Organization, but constitutes a separate part of the accounting.

44. The Organization enters into, with the financial institutions that are the depositories of the general trust accounts held by licence holders, agreements on the interest to be paid on those accounts and the transfer of the interest to the financing fund, and any other agreement useful for the purposes of this Chapter.

CHAPTER IV INSPECTION COMMITTEE

DIVISION I COMPOSITION OF THE INSPECTION COMMITTEE

45. The inspection committee is composed of at least 3 and not more than 9 members, including a chair, appointed for a three-year term by the board of directors of the Organization.

At the end of their term, the members remain in office until they are replaced, dismissed or reappointed or until they resign.

46. The sittings of the committee may be held using any medium that enables participants to communicate with each other. They are then deemed to have been present at the sitting.

47. A member of the inspection committee, an inspector and any expert whose services are retained by them must take the oath set out in Schedule A to this Regulation.

DIVISION II ORDER OF THE INSPECTION COMMITTEE TO COMPLETE A COURSE OR TAKE A TRAINING PROGRAM

48. The committee, before requiring a broker or an agency executive officer to successfully complete a course or to take a training program and at least 15 days before the date set for the ruling, informs the broker or the executive officer of his or her right to submit written observations to the committee and send the committee the documents necessary to complete the file. The notice must also indicate the consequences of the ruling.

The committee may render a decision despite the absence of written observations or additional documents produced by the broker or the agency executive officer to complete the file.

49. Where the inspection committee requires a broker or an agency executive officer to successfully complete a course or to take a training program, the committee notifies the broker or the executive officer that he or she may request the review of such an order by the Organization’s board of directors within 30 days after receiving the decision of the inspection committee.

The notice must indicate that the broker or the executive officer may submit, within the 30-day period, written observations and, where applicable, the documents necessary to complete the file. The notice also indicates that

the Organization's board of directors may render its decision despite the absence of observations or additional documents to complete the file.

50. This Regulation comes into force on (*insert the date of coming into force of the Real Estate Brokerage Act (2008, c. 9)*).

SCHEDULE A

(s. 47)

“OATH OF DISCRETION

I, A.B., swear under oath that I will not, without being so authorized by law, disclose or make known anything whatsoever of which I may take cognizance in the performance of my duties.

Regulation respecting disciplinary proceedings of the Organisme d'autoréglementation du courtage immobilier du Québec

Real Estate Brokerage Act
(2008, c. 9, ss. 82, 90 and 95; 2009, c. 58, s. 148)

CHAPTER I SYNDIC

1. Neither the syndic nor an assistant syndic may act as a broker while in office.

Neither the syndic nor an assistant syndic may hold other offices arising from the application of the provisions of the Real Estate Brokerage Act.

2. Where the syndic or an assistant syndic is absent or unable to act, he or she may be replaced by a person appointed by the board of directors in accordance with section 82 of the Real Estate Brokerage Act, for the duration of the absence or inability to act.

3. The syndic or an assistant syndic may be removed from office by a vote of no fewer than 8 members of the board of directors, after being given the opportunity to be heard.

4. The syndic and assistant syndics, as well as any personnel they hire for the conduct of their office, must take all necessary measures to protect the confidentiality of records of inquiry at all times.

5. The syndic and assistant syndics, as well as any expert or investigator and any personnel they hire, must take the oath in Schedule A of this Regulation.

CHAPTER II SYNDIC DECISION REVIEW COMMITTEE

DIVISION I COMPOSITION

6. The syndic decision review committee is formed of no fewer than 3 and no more than 9 members, including a chair, appointed for a term of 3 years by the Organization's board of directors.

The board of directors may appoint one or more vice-chairs.

At the end of their term, members remain on the committee until their replacement, removal from office, re-appointment or resignation. However, a committee member who is replaced or who resigns may continue to work on a matter of which the member has been seized.

7. Where the number of members permits, the committee may sit in 2 or more divisions composed of 3 members or more, including the chair or a vice-chair. Divisions with more than 3 members must have an uneven number of members.

DIVISION II OPERATING RULES

8. A person who requests a ruling by the syndic decision review committee under section 91 of the Real Estate Brokerage Act must set out the reasons in writing.

9. At least 15 days before the date when the request for review is to be heard, the review committee must give written notice to the syndic and the person who requested a review of the syndic's decision.

10. The review committee may make a ruling even if the syndic or the person who requested a review does not attend the scheduled meeting or does not present written observations or produce the necessary documents to complete the file. The committee's ruling must be made by a majority of members. A ruling must be substantiated only if the committee decides to uphold the syndic's decision not to file a complaint. Rulings must be recorded in writing, and signed by the concurring committee members.

11. Sittings of the review committee may be held using any means of communication allowing all participants to communicate with the others. Those participating are deemed to have attended the sitting.

12. The syndic decision review committee must submit an activity report to the board of directors at least annually and whenever requested by the board.

13. Members of the syndic decision review committee must take the oath in Schedule A of this Regulation.

CHAPTER III DISCIPLINE COMMITTEE

DIVISION I GENERAL

14. There must be 3 members at the sittings of the discipline committee, including the chair or a vice-chair. The chair may increase the number where he or she deems it appropriate.

Where the number of members permits, the discipline committee may sit in 2 or more divisions composed of 3 members or more. Divisions with more than 3 members must have an uneven number of members.

If the discipline committee has more than 3 members, the committee secretary must promptly select those committee members who will sit as a division with the chair or a vice-chair.

15. Members of the discipline committee may, even after ceasing to be members, continue to hear a complaint they had begun to hear and render a decision in that regard.

16. Where a member of the discipline committee is absent or unable to act, a majority of the members of a division may validly proceed with the hearing and render a decision, provided one of them is the chair or a vice-chair.

If the member who is absent or unable to act is the chair or a vice-chair, the other members may validly make a decision, provided the hearing has ended and the decision is made without dissent.

For the purposes of the preceding paragraph, the members of the discipline committee who remain seized of a matter may be assisted by a legal counsel appointed by the board of directors. The legal counsel advises the committee on all questions of law or procedure, but abstains from committee decisions.

17. The chair or a vice-chair of the discipline committee who is appointed to a court or body in which no concurrent functions may be exercised retains jurisdiction and may continue to perform committee duties without remuneration in order to conclude the matters he had begun to hear at the time of the appointment.

However, if the appointment, replacement or vacancy takes place after the discipline committee has determined guilt, and the person appointed does not avail him or herself of the possibility under the first paragraph, another division must be formed promptly to hear the parties in relation to the penalty and impose it. The new division must impose the penalty within 90 days after the hearing on penalty. Interlocutory decisions rendered before continuance of the matter by the new division remain valid.

18. From the time of their appointment to the discipline committee, the chair or a vice-chair cannot act as attorney for a party in a case governed by the Real Estate Brokerage Act or a case in which the Organization is a party.

19. At the end of their term, members remain on the discipline committee until their re-appointment, removal, replacement or resignation.

20. The salary and fees of the members of the discipline committee, as well as the indemnities and travel and lodging expenses established to compensate members for actual expenses incurred, are set by the board of directors and borne by the Organization.

21. The board of directors appoints the secretary of the discipline committee and one or more assistant secretaries.

22. The secretary sees to the preparation and preservation of discipline committee records and sees that access to the records is available.

23. Committee records may be consulted only in the presence of the secretary or a person designated by the secretary.

DIVISION II FILING A COMPLAINT

24. Complaints must be made in writing and supported by the complainant's oath.

25. A complaint must briefly describe the alleged offence of the broker or agency, including a director or executive officer of the agency, as well as the time and place of its occurrence.

26. The discipline committee is seized of a complaint as of the date on which the secretary receives it.

27. A complaint may necessitate the immediate provisional suspension of a licence or the imposition of immediate provisional conditions or restrictions if the licence holder is alleged to have

(1) appropriated, without entitlement, sums of money or other securities held for other persons, or used such sums of money or securities for purposes other than those for which they were entrusted;

(2) committed an offence such that the protection of the public may be compromised if the holder continues to practise brokerage activities; or

(3) contravened section 80 of the Real Estate Brokerage Act.

28. Where this Regulation provides for service in accordance with the Code of Civil Procedure (R.S.Q., c. C-25), the powers under section 138 of the Code are exercised by the chair of the discipline committee or one of its vice-chairs.

29. The secretary of the discipline committee has the complaint served on the person or partnership against which it is lodged, in the manner set out in the Code of Civil Procedure.

30. A request for the immediate provisional suspension of a holder's licence or the imposition of immediate provisional conditions or restrictions on the licence must be heard and decided by preference, after the secretary of the discipline committee has served notice on the respondent in accordance with the Code of Civil Procedure, at least 2 clear juridical days before the hearing and no later than 10 days after service of the complaint.

As a result of the hearing, the committee may issue an order for the provisional suspension of the respondent's licence or impose provisional conditions or restrictions on the licence, if it considers that necessary for public protection.

An order for provisional suspension of a licence or the imposition of provisional conditions or restrictions on the licence becomes enforceable on being served on the respondent by the secretary of the discipline committee in accordance with the Code of Civil Procedure. However, an order made in the presence of a party is deemed to be served on that party on being made. The secretary must indicate in the minutes whether the parties are present or absent when the committee makes an order.

An order for the provisional suspension of a holder's licence or the imposition of provisional conditions or restrictions on the licence remains in force until service of the committee's decision dismissing the complaint or imposing a penalty, as the case may be, unless the committee decides otherwise. However, where the committee imposes a penalty under subparagraph 2 of the first paragraph of section 98 of the Real Estate Brokerage Act, the

order for provisional suspension of the licence or the imposition of provisional conditions or restrictions on the licence remains in force until the decision imposing one of those penalties becomes enforceable in accordance with section 101 of the Act or, where an appeal from the decision allowing the complaint or imposing one of those penalties is lodged before the Court of Québec, until the final decision by the Court becomes enforceable, unless the Court decides otherwise.

31. The person or partnership concerned by a complaint must appear in writing, either personally or through an advocate, at the head office of the Organization, within 10 days after service of the complaint.

A written appearance may state that the respondent acknowledges or denies the alleged fault; a respondent whose written appearance contains no such statement is presumed not to have acknowledged any fault.

A written contestation may be enclosed with a written appearance or filed within 10 days.

32. Any party or witness summoned before the disciplinary committee is entitled to be assisted or represented by an advocate.

Subject to sections 29 and 36, any document that must be sent to a party under this Regulation is validly sent to the party if sent to the party's advocate.

DIVISION III HEARING A COMPLAINT

33. The secretary of the discipline committee must keep a hearing roll and ensure that access to the roll is available at least 10 days before the date set for the hearing.

34. The chair or a vice-chair designated by the chair, acting alone, may hear and decide any preliminary exception.

Preliminary exceptions and their conclusions must be disclosed in writing to the adverse party at least 3 clear days before the date of the hearing. Failing that, the discipline committee may refuse the presentation of the exceptions.

Where a party fails to disclose in accordance with this section, the discipline committee must order the faulty party to pay the resulting charges.

35. The discipline committee holds its hearings at the Organization's head office or in any other place it determines.

36. The secretary of the discipline committee must ensure that the hearing begins within a reasonable time. Except in special circumstances, the hearing must begin within 180 days after service of the complaint.

At least 3 clear days before the hearing, the secretary of the discipline committee must serve notice, in accordance with the Code of Civil Procedure, informing the respondent or the respondent's attorney, as the case may be, of the date and place of the hearing.

37. Members of the discipline committee may be recused in cases provided in article 234 of the Code of Civil Procedure.

Articles 234 through 242 of the Code apply to such recusation, with the necessary modifications.

38. Hearings must be recorded, unless all the parties dispense with recording.

39. All hearings are public, unless an order referred to in the second paragraph of section 95 of the Real Estate Brokerage Act is made.

However, the discipline committee may, on its own initiative or on request, order that a hearing be held *in camera* or ban the disclosure, publication or release of any information or document it indicates, in the interest of public order, in particular to protect information obtained by a broker in the course of his or her activities, the professional secrecy of a member of a professional order, or an individual's privacy, reputation or safety.

40. The discipline committee has the power to decide any question of law or fact necessary for the exercise of its jurisdiction.

It may use all legal means to ascertain the facts alleged in a complaint.

41. The chair or a vice-chair of the discipline committee may, on request, dismiss a complaint that he or she considers excessive, frivolous or clearly unfounded, or subject it to certain conditions.

42. If warranted by the circumstances of a complaint, for instance its complexity or the foreseeable duration of the hearing, the chair or a vice-chair of the discipline committee may, on his or her own initiative or at the request of one of the parties, convene the parties to a case management conference in order to, among other things,

(1) come to an agreement with the parties as to the processing of the complaint, specifying the undertakings of the parties and determining the timetable to be complied with;

(2) if the parties fail to agree, determine a timetable for the proceeding, which is binding on the parties; and

(3) determine how the processing of the complaint may be simplified, facilitated or accelerated and the hearing shortened, among other things by better defining the questions at issue or recording admissions concerning any fact or document.

43. The minutes of the conference are drawn up by the secretary of the discipline committee and signed by the committee's chair or a vice-chair.

44. If the parties fail to comply with the agreement or the timetable, the chair or a vice-chair of the discipline committee may make the appropriate determinations, including foreclosure of a right under the agreement. The chair or a vice-chair may, on request, relieve a defaulting party from default, where warranted by the facts.

45. Once a party's failure to participate is noted in the minutes of the conference, the discipline committee may make the case management determinations it considers appropriate.

46. The discipline committee must permit the respondent to present a full and complete defence.

The discipline committee may conduct the hearing in the absence of a respondent who does not appear on the date and at the place fixed for the hearing.

47. A complaint may be amended at any time, on the conditions necessary to safeguard the rights of the parties. It may be so amended to request, in particular, the suspension or the imposition of provisional conditions or restrictions referred to in section 27. However, except with the consent of all the parties, the discipline committee must not allow any amendment from which an entirely new complaint unrelated to the original would result.

48. The discipline committee must summon such witnesses and require the filing of such documents as it or either party considers useful by ordinary summons over the signature of the secretary.

49. The discipline committee, through one of its members, administers the oath to the parties and witnesses.

50. A person testifying before the discipline committee is bound to answer all questions. The testimony is privileged and cannot be used against the person in any adjudicative proceedings. He may not invoke his obligation to protect the confidentiality of personal information obtained in the course of his activities or professional secrecy as a ground for refusing to answer.

Where *in camera* proceedings are ordered, anyone acquainted with such testimony is personally bound by confidentiality, saving the right of the Organization's chair and members of a court of appeal to be informed of it in the performance of their duties.

DIVISION IV DECISIONS

51. Discipline committee decisions must be made by a majority of members in a division formed in accordance with section 14. Decisions must be recorded in writing, and signed by the concurring committee members. In addition to the conclusions, a decision must contain any indication that the disclosure, publication or release of certain information or documents is banned and the reasons for the decision.

Notwithstanding the first paragraph, where a member refuses or neglects to give reasons, a decision may be rendered by the other members, provided one of them is the chair or a vice-chair.

Where the chair or a vice-chair of the discipline committee refuses or neglects to give reasons, the other members may render a decision on behalf of the majority, provided the decision is made without dissent.

52. The discipline committee must render its decision within 90 days after the matter is taken under advisement.

53. The secretary must record the minutes of the hearing and the committee's decision in a special register.

The minutes must mention if the parties dispensed with recording, in which case they must contain a summary of the hearing, including the depositions. The minutes constitute evidence of their contents until proof to the contrary.

54. After a conviction, the parties may be heard with respect to the penalty.

A hearing on penalty must take place within 120 days after the conviction. The discipline committee must impose a penalty within 90 days after the hearing on penalty.

55. The discipline committee may condemn a complainant or respondent to costs or apportion the costs between them as it indicates.

Where the chair of the discipline committee dismisses a complaint under section 41, he may condemn the complainant to costs.

The costs are those related to the processing of the complaint. They include, in particular, service costs, recording costs, the cost of expert opinion admitted in evidence, as well as the indemnities payable to summoned witnesses, calculated in accordance with the tariff established in the Regulation respecting indemnities payable to witnesses summoned before courts of justice (R.R.Q., 1981, c. C-25, r.2). If the respondent is found guilty, the costs also include the travel and lodging expenses of the discipline committee members and the clerk of the hearing.

Where a condemnation to costs becomes enforceable, the secretary of the discipline committee must draw up a list of costs and have it served in accordance with the Code of Civil Procedure. The list may be revised by the chair or a vice-chair of the discipline committee that heard the case, on a motion filed within 30 days of the date of service. At least 5 days' notice of the filing must be given to the parties in writing. A motion for revision does not prevent or suspend the execution of the decision. The decision of the chair or a vice-chair of the discipline committee concerning the revision of the list is final.

DIVISION V MISCELLANEOUS

56. The secretary of the discipline committee must send the indemnity committee any decision made following a complaint filed against a licence holder, including a director or executive officer, for fraud, fraudulent tactics or misappropriation of funds for which the latter is responsible.

57. The secretary of the Organization's discipline committee must promptly send the Organization a copy of any decision of the discipline committee or a court of appeal ordering the suspension or revocation of a holder's licence, or imposing conditions or restrictions on the licence.

58. The discipline committee must submit an activity report annually and whenever requested by the Organization.

The report must indicate in particular the number and nature of the complaints received, the number of complaints dismissed, and the number and nature of the convictions.

59. Parties and witnesses may take back any filed exhibits belonging to them in the 12 months after the end of the proceedings or the appeal period. Where a party appeals from the decision by any means, exhibits may be taken back in the 12 months after the date of the final decision or the act terminating the appeal.

After that time, the secretary of the discipline committee may copy or transfer exhibits onto any medium that ensures their integrity, accessibility, authenticity and understandability for preservation purposes, unless the chair of the discipline committee decides otherwise.

60. The members of the discipline committee must take the oath in Schedule A of this Regulation, as must the committee secretary, assistant secretaries and office personnel.

61. This Regulation comes into force on (*insert the date of coming into force of the Real Estate Brokerage Act (2008, chapter 9)*).

SCHEDULE A

(ss. 5, 13 and 60)

“OATH OF DISCRETION

I, A.B., swear under oath that I will not, without being so authorized by law, disclose or make known anything whatsoever of which I may take cognizance in the performance of my duties.”

Regulation respecting the Real Estate Indemnity Fund and determination of the professional liability insurance premium

Real Estate Brokerage Act
(2008, c. 9, s. 46, pars. 15 and 17; ss. 52, 107 and 109;
2009, c. 58, ss. 145 and 153)

CHAPTER I

REAL ESTATE INDEMNITY FUND

DIVISION I

INDEMNITY COMMITTEE

1. The indemnity committee is formed of no fewer than 3 and no more than 9 members, including a chair, appointed for a term of 3 years by the Organization’s board of directors.

The board of directors may appoint one or more vice-chairs.

At the end of their term, members remain on the indemnity committee until their replacement, dismissal, re-appointment or resignation. However, a committee member who is replaced or who resigns may continue to work on a matter of which the member has been seized.

2. Where the number of members permits, the indemnity committee may sit in 2 or more divisions composed of 3 members or more, including the chair or a vice-chair. Divisions with more than 3 members must have an uneven number of members.

3. Sitings of the indemnity committee may be held using any means of communication allowing all participants to communicate with the others. Those participating are deemed to have attended the sitting.

4. The indemnity committee must submit an activity report annually and whenever requested by the Organization.

5. Members of the indemnity committee must take the oath in Schedule A of this Regulation.

DIVISION II

CLAIMS AND COMPENSATION

6. Claims filed with the indemnity committee must be in writing. They must set out the facts on which they are based and state the amount claimed, supported by evidence, and identify the licence holder in question.

A request for assistance under section 70 of the Real Estate Brokerage Act in relation to facts that may result in a claim against the Fund constitutes a claim.

7. To be admissible, a claim must be filed in the year in which the claimant becomes aware of fraud, fraudulent tactics or misappropriation of funds referred to in section 108 of the Real Estate Brokerage Act.

The indemnity committee may extend the time period if the claimant proves that, for a reason beyond the claimant’s control, he or she was unable to submit the claim within the required time.

8. A claim that the indemnity committee has already determined to be admissible and for which, if applicable, it has already determined the amount of indemnity cannot be re-submitted unless new facts warrant a review of the committee’s decision.

9. Licence holders may not submit claims against the Fund in that role.

10. A claim against the Fund is ineligible if made by a person who remitted money to a licence holder for unlawful purposes or who knew or should have known that the money would be used for inappropriate purposes, or by a person who knew or should have known that the licence holder was engaged in fraud or fraudulent tactics.

11. The claimant and the licence holder must provide all information and documents pertaining to the claim and must adduce all relevant evidence.

12. The indemnity committee's ruling on a claim and, if applicable, on the amount of indemnity to be paid is final. Rulings must be made by a majority of members and substantiated. They must be recorded in writing, and signed by the concurring committee members.

13. Before receiving an indemnity determined by the indemnity committee, the claimant must sign a release in favour of the Organization, with subrogation of all rights in respect of the claim against the licence holder in question, his or her successors, or any person, partnership or legal person that is bound or may be bound to make the payment, up to the amount of the indemnity.

14. The maximum indemnity that may be paid out of the Fund is \$35,000 per claim.

DIVISION III FEES

15. The annual fee to be paid into the Real Estate Indemnity Fund is \$53 per licence.

The fee must be paid on application for a licence and annually thereafter.

Where the fee is paid for a licence covering a period of less than 12 months, it must be prorated to the number of months between the month of application and the fee's annual due date.

16. Fees paid into the Fund are indexed on May 1 of each year, on the basis of the rate of increase in the general Consumer Price Index for Canada for the 12-month period ending on 31 December of the preceding year, as determined by Statistics Canada.

Fees thus indexed are reduced to the nearest dollar where they contain a fraction of a dollar less than \$0.50 or increased to the nearest dollar where they contain a fraction of a dollar equal to or greater than \$0.50.

The indexed fee is published in the *Gazette officielle du Québec*.

CHAPTER II PROFESSIONAL LIABILITY INSURANCE PREMIUM

17. The annual premium to be paid by licence holders into the insurance fund is determined by the Organization on the basis of common practice and forecasts. It may be adjusted to the following criteria:

(1) the juridical form chosen for the conduct of a licence holder's activities;

(2) the risks inherent in the types of licences held;

(3) risk experience, loss experience, and the frequency and amounts of claims against the licence holder;

(4) the territory where the licence holder conducts his activities;

(5) the fact of the licence holder's employment with the Organization.

Where the Organization adjusts the premium, it must do so through an additional premium, a premium credit or modification of the deductible.

18. This Regulation comes into force on (*insert the date of coming into force of the Real Estate Brokerage Act (2008, chapter 9)*).

SCHEDULE A (s. 5)

"OATH OF DISCRETION"

I, A.B., swear under oath that I will not, without being so authorized by law, disclose or make known anything whatsoever of which I may take cognizance in the performance of my duties."

Regulation respecting brokerage requirements, professional conduct of brokers, advertising and additional training

Real Estate Brokerage Act
(2008, c. 9, ss. 7, 21, 22 and 46, pars. 2, 5 and 8;
2009, c. 58, s. 145)

CHAPTER I BROKERAGE REQUIREMENTS

DIVISION I GENERAL REQUIREMENTS

1. A licence holder must disclose to every person dealt with in brokerage-related activities that a broker's or agency licence has been issued to the holder under the Real Estate Brokerage Act.

The licence must be produced by the holder on request.

2. A licence holder must avoid any situation of conflict of interest; if the situation cannot be avoided, the holder must disclose it in writing to all parties concerned without delay.

3. A licence holder who engages in professional activities that are not real estate brokerage activities or carries on another enterprise must prevent the activities or enterprise from compromising the holder's integrity, independence or competence.

4. A licence holder must offer professional services without distinction, exclusion or preference based on a ground of discrimination set out in section 10 of the Charter of human rights and freedoms, including number or age of children.

5. A licence holder must verify, in accordance with generally accepted practice, all information provided to the public or to another holder, and be able at all times to prove the accuracy of the information.

6. A licence holder engaging in brokerage activities may not elude or attempt to elude professional civil liability, including by inserting in a contract of professional services a clause that directly or indirectly, fully or partially, excludes that liability.

7. A licence holder may not allow a person to use the holder's name if the person is no longer qualified to engage in brokerage activities or is no longer licensed.

In addition, a licence holder must ensure that no person whose licence has been suspended or revoked uses the holder's name to engage in brokerage activities. Without valid reason, the holder may not employ, authorize to act, retain the employment of or tolerate such a person in the holder's office.

8. A licence holder may not derive or agree to derive remuneration determined on the basis of the difference between the price set by the party represented and the price accepted by the other party to the transaction.

9. A licence holder may not use or lend property placed in the holder's care by a party represented or another party to a transaction for purposes other than those for which the property was placed in the holder's care, without written authorization to that effect.

10. A licence holder may not unduly delay handing over property placed in the holder's care by a party represented or by a party to a transaction.

11. A licence holder must always use the most recent version of any form.

12. Every disclosure statement required under the Real Estate Brokerage Act or this Regulation must be written in plain language that is simple, clear and concise. It must be presented in a logical manner that is likely to bring the information to the attention of the person or partnership for which it is intended.

DIVISION II REPRESENTATION OF PARTIES TO A TRANSACTION

13. The parties to a transaction are all the persons having an interest in completing a transaction described in section 1 of the Real Estate Brokerage Act.

14. A licence holder represents the party to whom the holder is bound by a brokerage contract.

A licence holder not bound by a brokerage contract represents the party who has requested the holder act as an intermediary.

15. A licence holder must protect and promote the interests of the party represented and act towards all the parties to a transaction in a fair and equitable manner.

A holder may not make any representation that is contrary to the interests of the party represented. No disclosure of confidential or strategic information concerning that party or the prospective transaction may be made by the holder without the party's written authorization.

16. A licence holder representing a party must as soon as possible inform all unrepresented parties that the holder has an obligation to protect and promote the interests of the party represented and to act towards all other parties in a fair and equitable manner.

17. A licence holder must disclose without delay to the party to whom the holder is bound by a brokerage contract the fact that the holder is also bound by a brokerage contract to another party to the transaction.

DIVISION III INTEREST IN AN IMMOVABLE, AN ENTERPRISE OR A LOAN SECURED BY IMMOVABLE HYPOTHEC

18. A licence holder who, whether or not in the course of the holder's functions, directly or indirectly holds or proposes to acquire an interest in an immovable or enterprise that is to be purchased, sold or exchanged, or who acts or proposes to act as a lender in connection with a loan secured by immovable hypothec must, before the drafting or acceptance of the proposed transaction by the prospective contracting party, send without delay to that party, using any means providing proof of the date and time of receipt, a written notice containing

- (1) the name of the licence holder;
- (2) the licence held and its number;
- (3) the address of the holder's establishment;
- (4) the name and contact information of the prospective contracting party;
- (5) the purpose and nature of the transaction;
- (6) the nature of the interest the holder has or proposes to acquire;
- (7) the date and time of receipt of the notice; and
- (8) the signature of the broker or agency executive officer, as the case may be.

The notice must also state, if applicable, the fact that the licence holder, for the holder's account, is negotiating, has negotiated or intends to negotiate the resale or alienation of the immovable the holder proposes to acquire.

In the event that the notice is not given, the person entitled to the information may, as long as the contract has not been signed by the parties, withdraw without penalty from any offer or promise concerning the immovable, enterprise or loan, whether accepted or not, by sending or giving a written notice to the other party.

The licence holder's notice must be kept in the notice of disclosure record maintained by the broker or the broker's agency and be entered in the notice of disclosure register.

19. A licence holder proposing to act as a lender in connection with a loan secured by immovable hypothec cannot represent the borrower. Before entering into an agreement with the borrower, the holder must terminate any binding brokerage contract. Despite the foregoing, the brokerage contract cannot be terminated as long as negotiations are in progress with another lender for a loan applied for by the borrower.

The broker must in such a case inform the borrower in writing that the broker is not acting as a representative and that the borrower may seek representation by a licence holder of his or her choice.

20. A licence holder selling, exchanging or leasing an immovable or enterprise in which a direct or indirect interest is held by the holder may not represent an interested purchaser or lessee. The holder must without delay inform that person in writing that the holder is not acting as a representative and that the person may seek representation by a licence holder of his or her choice.

21. A licence holder acquiring a direct or indirect interest in an immovable or enterprise cannot represent the seller. The holder must without delay inform the seller in writing that the holder is not acting as a representative and that the seller may seek representation by a licence holder of his or her choice.

22. A licence holder proposing to acquire a direct or indirect interest in an immovable or enterprise to be sold, leased or exchanged by the holder pursuant to a brokerage contract must terminate the brokerage contract before submitting a transaction proposal. Despite the foregoing, the brokerage contract cannot be terminated with a view to the purchase or lease of the immovable as long as transactions are in progress or the holder is collaborating with another licence holder to complete the transaction on the immovable.

23. A licence holder cannot claim remuneration if the holder acquires an interest in an immovable or enterprise or does so for the holder, a partnership or legal person controlled by the holder, or if the married or civil union spouse of the holder, the person with whom the holder is in a de facto union or a legal person or a partnership controlled by that spouse or person acquires the immovable or enterprise.

DIVISION IV CHANGE AFFECTING A BROKER OR AGENCY BOUND BY A BROKERAGE CONTRACT

24. An agency that has entered into a brokerage contract must without delay notify the contracting party in writing of any change in the identity of the broker acting for the agency with the contracting party.

25. A broker must notify in writing the parties represented as soon as the broker ceases to act for his or her own account. The notice must, if applicable, state the right of the parties either to continue to deal with the broker if the broker is subsequently acting for an agency, with the name of the agency, or to terminate the brokerage contract.

26. If the broker ceases to act for an agency, the broker and the agency must, without delay, so notify in writing the parties represented by the broker. The notice must, if applicable, state the right of the parties either to continue to deal with the agency, to continue to deal with the broker if the broker is acting for his or her account or for a new agency, with the name of the agency, or to terminate the brokerage contract.

27. A licence holder who has entered into a brokerage contract must notify the contracting party in writing of any change in the address of the holder's establishment.

28. A brokerage contract entered into by a broker working for his or her own account is deemed to be cancelled as of the time the broker ceases brokerage activities or the broker's licence is suspended or revoked.

DIVISION V **VERIFICATION OF IDENTITY AND** **LEGAL CAPACITY**

29. A licence holder must verify and ascertain the identity of the party represented as well as the identity of the other parties to the transaction if the latter parties are not represented by a licence holder.

30. A licence holder must verify and ascertain the legal capacity of the party represented for the proposed transaction as well as the legal capacity of the other parties to the transaction if the latter parties are not represented by a licence holder.

DIVISION VI **INFORMATION PROTECTION MEASURES**

31. A licence holder must respect the confidential nature of information given to the holder and the confidentiality of personal information obtained in the course of the holder's brokerage activities, unless an express provision of an Act, an order of a court of competent jurisdiction or the carrying on of the brokerage activities exempts the holder from that requirement.

32. A licence holder must not use personal information obtained in the course of brokerage activities for purposes other than those for which the information was obtained.

33. A licence holder must take all reasonable measures to prevent a person employed by or authorized to act for the holder from disclosing the personal information obtained by the holder in the course of brokerage activities.

The licence holder must ensure that all office equipment and the registers and records maintained by the holder are installed and kept so that the confidentiality of the information they contain is preserved.

34. A licence holder must, when personal information is obtained from another licence holder in connection with a transaction, use the information for the sole purpose for which it was obtained. The holder may not communicate the information to another licence holder without authorization from the licence holder from whom the information was first obtained.

DIVISION VII **REMUNERATION SHARING**

35. A broker acting for an agency must, when receiving remuneration in connection with a transaction, pay the remuneration without delay to the agency for which he or she carries on brokerage activities.

36. Every remuneration agreement in favour of a licence holder other than the agreement with the party represented must be disclosed in writing to the party for whom the licence holder is acting as an intermediary.

In addition, the licence holder must without delay make a written disclosure to that party stating the identity of the other person or partnership from which the remuneration is owing, the nature of the holder's relation with that person or partnership, and the nature of the remuneration owing if it is a non-monetary benefit.

37. A licence holder may not share remuneration with a person or partnership that engages in or attempts to engage in brokerage activities without being authorized to do so in or outside Québec.

A licence holder may share remuneration received in connection with a transaction described in section 3 of the Regulation respecting the issue of broker's and agency licences, approved by Order in Council XX (*insert the number and date of the Order in Council approving that Regulation*), only with another licence holder, a person or a partnership authorized to engage in a brokerage transaction described in section 1 of the Real Estate Brokerage Act outside Québec, or a person or a partnership authorized to engage in a brokerage transaction under sections 2 and 3 of that Act.

Remuneration received by an agency to be paid to a broker acting for the agency may be paid to a legal person controlled by the broker. Under this paragraph, the broker will be deemed to control a legal person if 90% of its shares are held by the broker and the shares are linked to participation in the decision-making process concerning the legal person.

38. A licence holder sharing or proposing to share remuneration must without delay disclose that fact in writing to the party represented and retain a copy of the notice given to that effect.

In addition, if any other remuneration is or may be payable, the licence holder must disclose the identity of the other person or partnership and, in the case of a non-monetary benefit, the nature of the compensation.

39. A licence holder may, as a means of promoting services, offer reductions in remuneration, or benefits or gifts.

A licence holder may waive all or any part of the remuneration to which the holder is entitled so long as doing so does not disadvantage the other parties to the transaction or another licence holder.

A licence holder may not, however, waive all or any part of the remuneration to which the holder is entitled if one or more transaction proposals are presented by other licence holders at the same time as a transaction proposal presented by the holder or received directly by the seller.

40. A licence holder must without delay disclose in writing to the party represented the terms of any shared remuneration offered to the other licence holders collaborating in the transaction as well as the consequences the proposed terms entail.

DIVISION VIII **BROKERS NEW TO THE PROFESSION**

41. Before being able to act for his or her account, a broker must have carried on activities for an agency, as a broker new to the profession, for at least three of the five years preceding the time the broker begins acting for his or her account.

42. An agency acting through one or more brokers who are new to the profession must set up a system enabling the brokers to be mentored and their practices supervised. The agency must in particular review the brokerage contract files before an immovable is put on the market by a new broker, examine each of the broker's transactions and oversee its progress.

DIVISION IX **MISCELLANEOUS**

43. When acting as an intermediary in connection with a brokerage transaction described in section 1 of the Real Estate Brokerage Act, a licence holder must recommend a reasonable deposit be made.

The deposit may not be placed elsewhere than in the licence holder's trust account.

44. If a party represented wishes to use an information listing service in connection with an immovable or enterprise, the licence holder must list the immovable or enterprise with that service without delay. The listing must be made before the marketing of the immovable or enterprise or performance of the brokerage contract begins, unless written instructions to the contrary are given by the party represented.

45. A licence holder must without delay give to the party represented a copy of every document containing data used to describe the immovable, enterprise or loan secured by immovable hypothec covered by the brokerage contract, using any medium capable of ensuring its integrity, accessibility, authenticity and intelligibility.

46. A licence holder may offer to the party for whom the holder is acting as an intermediary only the immovables, enterprises or loan-related products that correspond to the party's needs or criteria. The holder must also inform the party of the reasons for selecting the proposed immovables, enterprises or products.

CHAPTER II **BROKERAGE REQUIREMENTS IN CONNECTION** **WITH LOANS SECURED BY IMMOVABLE** **HYPOTHEC**

DIVISION I **GENERAL**

47. Except where the licence holder only gives a client the name and contact information of a person or partnership offering loans secured by immovable hypothec, or otherwise puts them in contact with one another, the licence holder must ensure that the proposed loan is suitable for the party represented in view of the party's needs and financial capacity and the circumstances.

DIVISION II **DISCLOSURE IN RELATION TO LOANS** **SECURED BY IMMOVABLE HYPOTHEC**

§1. Requirement to disclose

48. A licence holder engaging in a brokerage transaction in relation to a loan secured by immovable hypothec must without delay give a written disclosure statement to the borrower, in accordance with generally accepted practice, containing all pertinent facts relating to the loan applied for.

The disclosure statement must specify the following in particular:

(1) the cost of borrowing associated with the loan applied for by the borrower;

(2) any costs or penalties to be assumed by the borrower if the loan is not repaid at term or a loan payment is not made on its due date; and

(3) all brokerage fees, if they are included in the amount borrowed and are paid directly by the lender to the broker or agency.

The requirements of this section do not apply to a licence holder who only gives a client the name and contact information of a person or partnership offering loans secured by immovable hypothec or otherwise puts them in contact with one another.

49. Disclosure may be based on an estimate or reasonable assumption if, at the time of the disclosure, the information to be disclosed cannot be known by the licence holder. Mention must be made in the disclosure statement of the fact that the information is based on an estimate or assumption.

50. Disclosure of the cost of borrowing is not required to be made as provided in this Regulation if the loan secured by immovable hypothec is made by one of the persons or partnerships listed below and the borrower is informed of the cost of borrowing in accordance with the statutes that apply to the person or partnership:

- (1) a bank;
- (2) a financial services cooperative;
- (3) an insurance company;
- (4) a mutual insurance association;
- (5) a mutual benefit association;
- (6) a savings company;
- (7) a trust company;
- (8) a loan company;
- (9) a retail association within the meaning of the Cooperative Credit Associations Act (S.C. 1991, c. 48).

51. A licence holder must without delay make a written disclosure of the following information to the borrower retaining the holder's services so that the holder may act as the intermediary for a loan secured by immovable hypothec:

- (1) the number of lenders who in the previous 12 months have made loans for which the broker or agency acted as the intermediary; and
- (2) whether the broker or agency in the previous 12 months was a lender while brokerage or agency services were retained so that the broker or agency could act as the intermediary for a loan secured by immovable hypothec.

For the purposes of subparagraph 1 of the first paragraph, if there is more than one lender for the same loan, the lenders are considered to be one lender.

On request, a licence holder must without delay make a written disclosure to a borrower

(1) of the fact that the broker or agency in the previous 12 months was the lender of more than 50% of the total number of loans secured by immovable hypothec for which the broker's or agency's services were retained so that the broker or agency could act as the intermediary; and

(2) of the name of the lender that, if applicable, made more than 50% of the total number of hypothecary loans or loan renewals for which the broker or agency acted as the intermediary during the previous 12 months.

§2. Calculation of cost of borrowing

52. The cost of borrowing is calculated as if the borrower scrupulously met all commitments. It is expressed as an annual rate with a specification, if required, of an amount in dollars and cents.

53. For the purposes of this subdivision:

“APR” means the cost of borrowing expressed as the annual rate on the principal referred to in the first paragraph of section 54;

“disbursement charge” means a charge, other than the one referred to in the first paragraph of section 57, to recover an expense incurred by the lender to arrange, document, insure or secure a loan and includes charges referred to in subparagraphs 3 and 6 to 8 of the second paragraph of section 57;

“high-ratio loan” means a loan under which the amount advanced, together with the amount outstanding under any other hypothec that ranks equally with, or prior to, the hypothec loan exceeds 80% of the market value of the property securing the loan;

“principal” means the amount borrowed but does not include any cost of borrowing.

54. The cost of borrowing is calculated using the formula

$$\text{APR} = (C/(\text{T} \times \text{P})) \times 100$$

in which

“APR” is the annual percentage rate of the cost of borrowing,

“C” is the cost of borrowing within the meaning of section 57 over the term of the loan;

“P” is the average of the principal of the loan outstanding at the end of each period for the calculation of interest under the loan agreement, before subtracting any payment that is due at that time, and

“T” is the term of the loan in years, expressed to at least two decimal points of significance.

For the purposes of the preceding paragraph:

- (1) the APR may be rounded off to the nearest 1/8%;
- (2) each instalment payment made on the loan must be applied first to the accumulated cost of borrowing and then to the outstanding principal;
- (3) a period of
 - (a) one month is 1/12 of a year;
 - (b) one week is 1/52 of a year; and
 - (c) one day is 1/365 of a year;
- (4) if the annual interest rate underlying the calculation is variable over the period of the loan, it must be set as the annual interest rate that applies on the day that the calculation is made;
- (5) if there are no instalment payments under the loan agreement, then the APR must be calculated on the basis that the outstanding principal is to be repaid in one lump sum at the end of the term of the loan; and
- (6) a loan agreement for an amount that comprises, in whole or in part, an outstanding balance from a prior loan is a new loan for the purpose of the calculation.

55. If an immovable hypothec secures the use of a credit card or line of credit, the cost of borrowing is expressed as an annual rate that is,

- (1) if the loan has a fixed annual interest rate, that annual interest rate; or
- (2) if the loan has a variable interest rate, the annual interest rate that applies on the date of the disclosure.

56. The APR for a loan is the annual interest rate if there is no cost of borrowing other than interest.

If an interest rate is disclosed in accordance with section 6 of the Interest Act (R.S.C. 1985, c. I-15), the APR must be calculated in a manner that is consistent with that section.

57. Except for a credit card or a line of credit, the cost of borrowing consists of all the costs of borrowing under the loan over its term and includes the following charges:

- (1) administrative charges, including charges for services, transactions or any other activity in relation to the loan;
- (2) charges for the services and disbursements of an advocate or notary hired by the lender and payable by the borrower;
- (3) insurance charges other than those excluded under subparagraphs 1, 6 and 8 of the second paragraph;
- (4) brokerage charges paid by the lender to a broker in connection with the loan, if the borrower is required to reimburse the lender for the charges; and
- (5) charges for appraisal, inspection or surveying services provided to the borrower in relation to the immovable that is security for the hypothec, if those services are required by the lender.

The cost of borrowing for a loan does not include

- (1) charges for insurance on the loan if
 - (a) the insurance is optional; or
 - (b) the borrower is its beneficiary and the amount insured reflects the value of the immovable that is security for the hypothec;
- (2) charges for an overdraft;
- (3) charges paid to register documents or obtain information from a public register about security interests related to the immovable given as security;
- (4) penalty charges for the prepayment of the loan;
- (5) charges for the services or disbursements of an advocate or notary, other than those mentioned in subparagraph 2 of the first paragraph;
- (6) charges for insurance against defects in title, if the borrower selects the insurer, if the insurance is paid for directly by the borrower and if the borrower is the beneficiary of the insurance;
- (7) charges for appraisal, inspection or surveying services in relation to the immovable that is security for the hypothec, if the borrower receives a report from the person providing the service and is entitled to give the report to third parties;

- (8) charges for insurance against default on a high-ratio loan;
- (9) charges to maintain a tax account that are required for a high-ratio loan or that are optional;
- (10) any charges to discharge a security interest; or
- (11) default charges.

DIVISION III

LOAN SECURED BY REVERSE IMMOVABLE HYPOTHEC

58. A licence holder may not make or enter into a loan secured by reverse immovable hypothec with a borrower unless the holder receives from the borrower a written statement signed by an advocate or a notary stating that the advocate or notary has given the borrower independent legal advice concerning the proposed loan.

59. A loan secured by reverse immovable hypothec is a loan secured by immovable hypothec that satisfies both of the following conditions:

(1) the money advanced does not have to be repaid until the occurrence of one or more of the following events:

- (a) the borrower's death or, if there is more than one borrower, the death of the last surviving borrower;
- (b) the acquisition by the borrower or the last surviving borrower, as the case may be, of another immovable to use as his or her principal residence;
- (c) the sale of the immovable charged with the hypothec;
- (d) the borrower's or last surviving borrower's vacating the immovable charged with the hypothec to live elsewhere with no reasonable prospect of returning;
- (e) payment default; and

(2) one or more of the following conditions applies while the borrower or last surviving borrower, as the case may be, continues to occupy the immovable charged with the hypothec as his or her principal residence and otherwise complies with the terms of the loan:

- (a) no repayments of the principal or interest are due or capable of becoming due;
- (b) although interest payments may become due, no repayment of all or part of the principal is due or capable of becoming due;

(c) although interest payments and repayment of part of the principal may become due, repayment of all of the principal is not due or capable of becoming due.

CHAPTER III

PROFESSIONAL CONDUCT

DIVISION I

GENERAL

60. This chapter applies to brokers and agency executive officers whether or not they are carrying on activities.

DIVISION II

GENERAL DUTIES AND OBLIGATIONS TOWARDS THE PUBLIC

61. A broker or agency executive officer must act with prudence, diligence and competence and demonstrate integrity, courtesy and a spirit of cooperation. He or she may not commit acts that are derogatory to the honour and dignity of the profession.

The broker or agency executive officer must also adhere to sound practices.

62. The conduct of a broker or agency executive officer must demonstrate objectivity, discretion and moderation.

63. A broker or agency executive officer must support any measure aimed at protecting the public.

64. A broker or agency executive officer must support any measure likely to improve the quality of the services in the field in which the activities are carried on.

65. A broker or agency executive officer must refrain from carrying on activities in conditions or circumstances likely to impair the quality of services.

66. A broker or agency executive officer must carry on activities in such a manner as to avoid controversy.

67. A broker or agency executive officer must not attempt to intimidate a person dealt with in connection with his or her activities, including to urge that person to withdraw a request made to the Organization or to alter testimony.

68. A broker or agency executive officer must not participate in any act or practice in real estate matters that may be illegal or that may harm the public or the profession.

69. A broker or agency executive officer must take all reasonable measures to ensure that the persons employed by or authorized to act on his or her behalf comply with the Real Estate Brokerage Act and the regulations made under it.

70. A broker or agency executive officer must collaborate with any official service or body responsible for protecting the public, to the extent provided by law.

71. A broker or agency executive officer must not urge a person insistently or improperly to use the broker's or the agency executive officer's professional services.

A broker or agency executive officer may not, in any manner whatsoever, unduly influence or attempt to influence persons who may be physically or emotionally vulnerable because of their age, state of health or the occurrence of a specific event or allow that such persons be influenced.

72. In carrying on activities, a broker or agency executive officer must take into account his or her aptitudes, limits on knowledge and means available. The broker or agency executive officer may not agree to engage in a brokerage transaction described in section 1 of the Real Estate Brokerage Act that is outside his or her field of expertise without seeking the necessary assistance, including from another licence holder having the required expertise.

73. A broker or agency executive officer must ensure his or her knowledge is continually maintained current.

74. A broker or agency executive officer must, when speaking publicly of real estate matters, do so in a competent manner.

75. A broker or agency executive officer may express an opinion on the value of an immovable, an enterprise or the cost of a loan only if the opinion is based on and supported by generally accepted practice.

DIVISION III DUTIES AND OBLIGATIONS TOWARDS THE PARTY REPRESENTED AND THE PARTIES TO A TRANSACTION

76. A broker or agency executive officer must demonstrate a reasonable degree of availability or otherwise designate another licence holder as a replacement, and must take the necessary measures to ensure that all communications are dealt with in his or her absence and that all files are properly followed up.

77. A broker or agency executive officer must provide all explanations necessary to enable a person to understand and evaluate the services proposed or provided.

78. A broker or agency executive officer must not advise or encourage a party to a transaction to commit an act the broker or officer knows to be illegal or fraudulent.

79. A broker or agency executive officer must, if the protection of the interests of a party to a transaction so requires, advise that party to seek the assistance of a recognized expert.

80. A broker or agency executive officer must recommend to the person proposing to acquire an immovable that the person have a full inspection performed by a professional or a building inspector who

(1) has professional liability insurance covering fault, error and omission;

(2) uses a recognized inspection service agreement;

(3) performs inspections according to recognized building inspection standards; and

(4) submits a written report to the party that requested the inspection services.

The broker or agency executive officer may furnish a list of more than one professional or building inspector meeting the requirements of the first paragraph.

81. A broker or agency executive officer must also recommend to the owner of the immovable that a statement regarding the immovable be furnished to any person proposing to acquire an interest in the immovable.

82. A broker or agency executive officer must act with objectivity whenever advising or informing the party represented and all other parties to a transaction. That obligation extends to all the material facts relevant to the transaction and to its object, and must be fulfilled without exaggeration, concealment or misrepresentation.

If applicable, the broker or officer must inform the parties of products and services that concern heritage protection and relate to the transaction.

83. A broker or agency executive officer must take steps, in accordance with accepted practice, to learn of any factors that may adversely affect the party represented, the parties to the transaction or the very object of the transaction.

84. A broker or agency executive officer must inform the party represented and all other parties to a transaction of any known factor that may adversely affect the parties or the object of the transaction.

85. A broker or agency executive officer must, to ensure that all the parties to a transaction are protected, see that their rights and obligations are recorded in writing. The broker or agency executive officer must reasonably inform all the parties to a transaction of the rights and obligations arising from the documents they sign.

86. A broker or agency executive officer must, before visiting or arranging to have an immovable visited, first obtain the consent of the licence holder having an exclusive brokerage contract or the owner-seller if no brokerage contract has been entered into for the immovable.

87. When meeting the party represented or a party to a transaction, a broker or agency executive officer must take all necessary measures to protect the confidentiality of information obtained in conversations with those parties.

88. A broker or agency executive officer must inform the party with whom he or she or the agency represented has a dispute of the possibility under section 34 of the Real Estate Brokerage Act of referring the matter to conciliation or mediation, or to arbitration of accounts between a broker or an agency and a client.

DIVISION IV DUTIES TOWARDS OTHER LICENCE HOLDERS

§1. General obligations

89. A broker or agency executive officer must not abuse another licence holder's good faith, use unfair practices against or seek to gain an unfair advantage over the other licence holder. In particular, the broker or agency executive officer must refrain from falsely claiming that a brokerage contract has been entered into or awarded exclusively or that an immovable or an enterprise is not available for visiting.

90. A broker or agency executive officer must use fair competition and customer solicitation practices.

91. A broker or agency executive officer must not denigrate or attempt to adversely affect the relations between another licence holder and the client represented, the other parties to a transaction or other licence holders.

92. A broker or agency executive officer must abstain from expressing an opinion on a transaction completed by another licence holder unless an opinion is solicited. The broker or agency executive officer must then give an informed and objective opinion that takes into account all the factors involved in the transaction.

93. A broker or agency executive officer must not use a discipline committee decision or any element brought to the broker's or agency executive officer's attention in connection with evidence disclosure for the purpose of harming a licence holder.

§2. Duty of collaboration

94. A broker or agency executive officer must, to facilitate the closing of a transaction, collaborate with every other licence holder who so requests, on reasonable terms agreed on beforehand.

In that context, the broker or agency executive officer must not share remuneration in a manner that is not conducive to the closing of a transaction. He or she must also not share or offer to share remuneration in a manner that is unfavourable to any of the parties to the transaction or that contravenes section 39.

95. Any other licence holder collaborating in a transaction must be informed by the broker or agency executive officer of the existence of every transaction proposal, whether accepted or not. The broker or agency executive officer may not, however, reveal the substance of the proposal.

96. When collaborating in a transaction, a broker or agency executive officer must reveal to the other licence holders all information relevant to the closing of the transaction.

§3. Exclusive brokerage contracts

97. A broker or agency executive officer must, before entering into a brokerage contract, take the necessary steps to ascertain whether the proposed transaction is not already covered by an exclusive brokerage contract.

98. A broker or agency executive officer must not perform any act that is incompatible with an exclusive brokerage contract made with another licence holder. In particular, the broker or officer may not set appointments, present transaction proposals or conduct negotiations in relation to a proposed transaction otherwise than through the licence holder under the exclusive brokerage contract, unless authorized to do so by that holder.

A broker or agency executive officer may, however, engage in general solicitation so long as it is not directly or specifically aimed at persons or partnerships already bound by an exclusive brokerage contract entered into with another licence holder. The solicitation may, for example, be made to all persons or partnerships that are owners in a particular geographic area or that are members of a particular profession, club or organization.

§4. Presentation of transaction proposals

99. A broker or agency executive officer must not prevent another licence holder who has obtained a written transaction proposal from participating in the presentation of the proposal, unless written instructions to that effect have been received from the party represented.

100. A broker or agency executive officer must not unduly delay presenting a transaction proposal received from another licence holder.

101. A broker or agency executive officer must present every transaction proposal to the prospective contracting party as soon as possible after receiving it. The presentation must take place through the licence holder retained by the prospective contracting party to act as a representative, unless written authorization allowing otherwise is given by the prospective contracting party.

A broker or agency executive officer receiving more than one proposal must present each proposal without preference, including as regards chronological order of receipt, identity of the licence holder receiving it and circumstances in which it was made.

DIVISION V DUTIES AND OBLIGATIONS TOWARDS THE PROFESSION

§4. Contribution to advancement of the profession

102. A broker or agency executive officer must contribute, insofar as is possible, to the development of the profession, including by sharing knowledge and experience with other licence holders.

103. A broker or agency executive officer must not allow or encourage in any manner a person or partnership not licensed by the Organization to illegally engage in brokerage or agency activities.

§2. Collaboration with the Organization

104. A broker or agency executive officer must collaborate in any inspection, inquiry conducted by the syndic or assistant syndic, process by the assistance service or the

indemnity committee to obtain information, or proceeding related to mediation, arbitration or conciliation conducted by the Organization, in particular by disclosing all the facts known personally, producing all relevant documents and replying as soon as possible to every request in the manner determined by the person making the request.

105. A broker or agency executive officer may not exaggerate, conceal or misrepresent the information or documents provided during an inspection, an inquiry conducted by the syndic or assistant syndic, the assistance service or the indemnity committee, or in any proceeding related to mediation, arbitration or conciliation conducted by the Organization.

106. A broker or agency executive officer may not urge a person holding information concerning the broker or agency executive officer, another licence holder or a transaction not to collaborate with a person referred to in section 104.

The broker or agency executive officer may not refuse to authorize a person to disclose information concerning the broker, the agency executive officer or the agency once a disclosure request has been made by a person referred to in section 104.

107. A broker or agency executive officer who is aware that no offence has been committed may not request an inquiry by the syndic or assistant syndic, request an intervention by the assistance service, or allow such an inquiry or intervention to continue with regard to a licence holder's conduct.

108. A broker or agency executive officer who is informed that a request for an inquiry or intervention has been made in his or her regard, that an inquiry in his or her regard is being conducted by the syndic or assistant syndic or by an investigator hired by the syndic, or that an intervention by the assistance service is under way, or on whom a disciplinary complaint has been served, may not communicate with the person who requested the inquiry or intervention without prior written permission of the syndic, an assistant syndic or an analyst with the assistance service.

CHAPTER IV REPRESENTATION, ADVERTISING AND INFORMATION ON IMMOVABLES

DIVISION I REPRESENTATION AND ADVERTISING

109. The goods or services provided by a broker or an agency must conform to any statement or advertisement made concerning the goods or services.

110. A broker or an agency may make representations or engage in advertising in connection with a brokerage transaction described in section 1 of the Real Estate Brokerage Act or disseminate information concerning an immovable only with the express written authorization of the person or partnership on whose behalf the broker or agency undertook to do so.

111. No licence holder or person promoting real estate or mortgage brokerage services may in any manner make representations or engage in advertising that is false, misleading or incomplete or that leaves out a material fact.

Any dissemination of false, misleading or incomplete information is therefore prohibited, in particular with regard to

- (1) the licence holder's level of competence;
 - (2) the extent or efficiency of the services provided or those generally provided by brokers and agencies;
 - (3) the costs of a loan secured by immovable hypothec;
- or
- (4) the selling price of an immovable, which must be the price set in the brokerage contract or the transaction proposal.

112. No licence holder or person promoting real estate or mortgage brokerage services may make, engage in or allow any representation or advertising that

- (1) suggests the licence holder or person is authorized to engage in a brokerage transaction described in section 1 of the Real Estate Brokerage Act when in fact he or she is not legally qualified to do so at the time of the representation or advertising;
 - (2) falsely suggests that he or she holds a specialist's title;
 - (3) contains information or uses a formulation, name, trademark, slogan or logo likely to be confusing;
 - (4) contains a statistic for which no source is given;
- or
- (5) contains a photograph of the licence holder taken more than five years earlier.

DIVISION II IDENTIFICATION OF BROKERS AND AGENCIES

113. Representations and advertising relating to a broker must state

- (1) the broker's full name, as it appears on the broker's licence;
- (2) the licence held by the broker, except if the advertising is in a periodical, in which case a recognized abbreviation may be used; and
- (3) if applicable, the name of the agency for which the broker carries on activities and, after the name, the licence held by the agency, except if the advertising is in a periodical, in which case the name of the agency is sufficient.

A holder of a real estate broker's licence and a mortgage broker's licence may specify only one of those licences, but must specify only the mortgage broker's licence if, in representations or advertising, the agency represented is designated solely as a mortgage agency.

114. To describe the licence held, a real estate broker must specify one or more of the following designations:

- (1) real estate broker;
- (2) residential real estate broker;
- (3) commercial real estate broker;
- (4) real estate mortgage broker.

If the broker holds a real estate broker's licence with a restriction described in section 2 of the Regulation respecting the issue of broker's and agency licences, the broker may specify only the designation or designations in subparagraphs 2 and 3 that describe the broker's legal qualification.

115. An agency must, in representations and advertising, specify

- (1) the name indicated on its licence; and
- (2) the licence held, except for advertising in a periodical, in which case a recognized abbreviation may be used.

The holder of a real estate agency licence and a mortgage agency licence may specify either or both of those licences.

116. To describe the licence it holds, a real estate agency must use one or more of the following designations:

- (1) real estate agency;
- (2) residential real estate agency;
- (3) commercial real estate agency; and
- (4) real estate mortgage agency.

DIVISION III INFORMATION ON IMMOVABLES

117. Whatever the medium, a property description or similar document intended for the public in which the details of an immovable subject to a brokerage contract are provided must specify

- (1) if applicable, the existence of a statement from the owner of the immovable for sale or lease and the availability of any document containing that statement;
- (2) if applicable, that the immovable is being sold with no legal warranty;
- (3) the name of the broker or agency under the brokerage contract and the licence held, displayed prominently in type of the same colour at least the size of the other information appearing in the document or property description;
- (4) if applicable, that the holder under the brokerage contract has a direct or indirect interest in the immovable and that the notice required by section 18 is available;
- (5) if the brokerage contract is for the sale of the immovable, that the document or property description is not an offer or a promise that may bind the seller, but is an invitation to submit such offers or promises; and
- (6) unless the owner of the immovable gives written instructions regarding non-disclosure of the owner's identity, information on the subject of the brokerage contract or the parties to it that is necessary to complete a transaction proposal.

The property description or document may contain other information that conforms to the Real Estate Brokerage Act or of this Regulation.

118. This Regulation comes into force on (*insert the date of coming into force of the Real Estate Brokerage Act (2008, c. 9)*).

Regulation respecting contracts and forms

Real Estate Brokerage Act
(2008, c. 9, ss. 26 and 46, par. 13; 2009, c. 58, s. 145)

CHAPTER I TERMS AND CONDITIONS OF USE

1. A licence holder must complete a contract, a transaction proposal or a form clearly and legibly.

The licence holder must not use any abbreviation incomprehensible to the parties or leave any ambiguity as to whether certain terms and conditions in the contract, transaction proposal or form apply.

2. Where a licence holder completes a contract, a transaction proposal or a form by hand, he or she must use ink and write neatly to facilitate reading.

3. Where a licence holder completes a contract, a transaction proposal or a form using a computer system or a printing system, he or she must use at least 10-point type.

Moreover, in the case of a form, the licence holder must use type that is different from the type used for mandatory particulars or stipulations, so as to enable the parties to easily distinguish the particulars or stipulations from any addition or amendment.

4. Where a licence holder strikes out an entry in a mandatory particular or stipulation, he or she must have the strikeout initialled by the parties before they sign at the bottom of the form.

5. The additions or amendments that a licence holder may make to a contract, a transaction proposal or a form must pertain only to the object of the terms and conditions of that contract, transaction proposal or form.

6. A licence holder must, before having a contract, a transaction proposal or a form that he or she has completed signed, allow the parties to take cognizance of its terms and conditions and, before the signing, provide all the explanations and answers to questions that the parties may ask.

7. A licence holder must not add anything to, amend or strike out anything from a contract, a transaction proposal or a form after the parties have signed at the bottom of the contract or form.

CHAPTER II
PARTICULARS AND STIPULATIONS WHICH
MUST OR MUST NOT APPEAR IN CERTAIN
CONTRACTS, TRANSACTION PROPOSALS
OR FORMS

DIVISION I
BROKERAGE CONTRACT

8. A brokerage contract made by a broker acting on his or her own account must include the following particular:

“If the BROKER ceases to carry on brokerage activities on his or her own account, (IDENTIFICATION OF THE BROKER’S CLIENT) may elect to continue to do business with the broker and to be bound to the agency for which the BROKER will carry on brokerage activities, by sending the broker a notice to that effect. This contract is then transferred to that agency. (IDENTIFICATION OF THE BROKER’S CLIENT) is then bound to the agency under the same terms and conditions as those provided for in this contract.

Should such a notice not be sent by the day on which the BROKER begins to carry on brokerage activities for the agency, this contract will be terminated”.

9. A brokerage contract made by an agency must include the following particular:

“If the broker mentioned in this contract as the AGENCY’s representative ceases to carry on brokerage activities for the agency, (IDENTIFICATION OF THE AGENCY’S CLIENT) may elect to continue to do business with the broker, whether the broker now acts on his or her own account or for a new agency, or to continue to do business with the AGENCY in accordance with this contract, by sending the AGENCY a notice stating his or her choice.

This contract is transferred to the broker or, as the case may be, to the agency for which the broker now carries on brokerage activities, as of receipt of the notice to that effect by the AGENCY. (IDENTIFICATION OF THE BROKER’S CLIENT) is then bound to the broker or agency, as the case may be, under the same terms and conditions as those provided for in this contract.

Should the notice required under the first paragraph not be sent by the day on which the BROKER ceases to carry on brokerage activities for the AGENCY, this contract will be terminated”.

10. A brokerage contract made by an agency must include the following particular:

“Except on contrary notice from (IDENTIFICATION OF THE BROKER’S CLIENT), if the AGENCY ceases its activities, this contract is transferred to the broker mentioned in this contract as the AGENCY’s representative, if the broker now carries on brokerage activities on his or her own account, or, as the case may be, to the agency for which the broker now carries on brokerage activities. (IDENTIFICATION OF THE BROKER’S CLIENT) is then bound to the broker or the new agency, as the case may be, under the same terms and conditions as those provided for in this contract.

In case of notice to the contrary, this contract is terminated on the date on which the agency ceases its activities”.

11. A contract referred to in section 23 of the Real Estate Brokerage Act must not contain a stipulation for automatic renewal.

12. A contract referred to in section 23 of the Real Estate Brokerage Act must specify that the licence holder has an obligation to submit to the contracting party every promise to purchase, lease or exchange the immovable in question.

DIVISION II
PARTICULARS THAT SUPPLEMENT INTENTION

13. Failing a stipulation as to the time of expiry of a contract referred to in section 23 of the Real Estate Brokerage Act, it expires 30 days after its making.

14. This Regulation comes into force on (*insert the date of coming into force of the Real Estate Brokerage Act (2008, c.9)*).