

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 1 May 2010.

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.

9758

Gouvernement du Québec

O.C. 297-2010, 31 March 2010

Real Estate Brokerage Act
(2008, c. 9)

Disciplinary proceedings of the Organisme d'autoréglementation du courtage immobilier du Québec

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

WHEREAS the second paragraph of section 82 of the Real Estate Brokerage Act (2008, c. 9) provides that the Organisme d'autoréglementation du courtage immobilier du Québec (the Organization) determines, by regulation, the rules for appointing the syndic and any replacements;

WHEREAS the second paragraph of section 90 of the Act provides that the Organization determines, by regulation, the operating rules of the syndic decision review committee, including those applicable to its decision-making process;

WHEREAS the first paragraph of section 95 of the Act, amended by section 148 of chapter 58 of the Statutes of 2009, provides that the Organization determines, by regulation, the discipline committee's operating rules, including those applicable to the filing and hearing of complaints and those applicable to its decision-making process, such as the imposition of provisional measures;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation respecting disciplinary proceedings of the Organisme d'autoréglementation du courtage immobilier du Québec was published in Part 2 of the *Gazette officielle du Québec* of 13 January 2010 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS it is expedient to approve the Regulation with amendments that clarify certain regulatory provisions or correct references;

IT IS ORDERED, therefore, on the recommendation of the Minister of Finance:

THAT the Regulation respecting disciplinary proceedings of the Organisme d'autoréglementation du courtage immobilier du Québec, attached to this Order in Council, be approved.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

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

Real Estate Brokerage Act
(S.Q. 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 board of directors of the Organisme d'autoréglementation du courtage immobilier du Québec.

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. The review committee must inform in writing the syndic and the person who requested a review of the syndic's decision of the date on which the request is to be heard at least 15 days before that date.

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 person or partnership against which it is lodged, 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 or a vice-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 and allowances 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 1 May 2010.

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.”

9759

Gouvernement du Québec

O.C. 298-2010, 31 March 2010

Real Estate Brokerage Act
(2008, c. 9)

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

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

WHEREAS paragraphs 15 to 17 of section 46 of the Real Estate Brokerage Act (2008, c. 9) provide that the Organisme d'autoréglementation du courtage immobilier du Québec (the Organization) may, in addition to its regulatory powers under the Act, determine, by regulation, the terms and conditions governing the eligibility of claims submitted to the indemnity committee and the payment of indemnities, the maximum amount of indemnities that may be paid with regard to the same claim, and the fee that must be paid by brokers and agencies to the Organization for payment into the Real Estate Indemnity Fund, according to the licence they hold and the date of their registration with the Organization, as well as the terms of payment for that fee;

WHEREAS section 52 of the Act provides that the Organization determines, by regulation, the criteria to be used to fix the premium to be paid into the insurance fund established by the Organization and to which licence holders are required to subscribe;

WHEREAS section 107 of the Act, amended by section 153 of chapter 58 of the Statutes of 2009, provides that the Organization determines, by regulation, the operating rules of the indemnity committee, including those applicable to its decision-making process;

WHEREAS section 109 of the Act provides that the Organization determines, by regulation, the fees paid by licence holders into the Real Estate Indemnity Fund and the fees so as to offset any insufficiency of assets in the Fund;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation respecting the Real Estate Indemnity Fund and determination of the professional liability insurance premium was published in Part 2 of the *Gazette officielle du Québec* of 13 January 2010 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS it is expedient to approve the Regulation with amendments that clarify certain regulatory provisions or correct references;

IT IS ORDERED, therefore, on the recommendation of the Minister of Finance:

THAT the Regulation respecting the Real Estate Indemnity Fund and determination of the professional liability insurance premium, attached to this Order in Council, be approved.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

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 to 17; ss. 52, 107 and 109;
2009, c. 58, s. 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 board of directors of the Organisme d'autoréglementation du courtage immobilier du Québec.

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