

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.

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. Sittings 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 on which the indemnity committee has already ruled and, if applicable, has already determined the amount of the indemnity is inadmissible, 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 in respect of fraud, fraudulent tactics or misappropriation of funds committed as of 1 May 2010. For an act committed before that date, the maximum indemnity is the maximum compensation provided for in section 37 of the Regulation respecting the application of the Real Estate Brokerage Act, made by Order in Council 1863-93 dated 15 December 1993 (1993, *G.O.* 2, 7041).

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 the issue of 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 1 May 2010.

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.”

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Gouvernement du Québec

O.C. 299-2010, 31 March 2010

Real Estate Brokerage Act
(2008, c. 9)

Brokerage requirements, professional conduct of brokers and advertising

Regulation respecting brokerage requirements, professional conduct of brokers and advertising

WHEREAS section 7 of the Real Estate Brokerage Act (2008, c. 9) provides that the Organisme d'auto-réglementation du courtage immobilier du Québec (the Organization) determines, by regulation, the period during which a new broker must carry on brokerage activities for an agency before the broker may work for the broker's own account or become an executive officer of an agency;

WHEREAS the second paragraph of section 21 of the Act provides that the Organization makes regulations setting out rules governing the brokers' obligation to disclose any conflicts of interest;

WHEREAS, under the first paragraph of section 22 of the Act, the Organization makes regulations setting out rules respecting representations made by brokers and agencies, and the real estate advertising and information they disseminate to the public for promotional purposes and, under the third paragraph, the Organization may also set out specific or supplementary rules to govern advertising by franchisers, franchisees and sub-franchisees;

WHEREAS paragraphs 5 and 8 of section 46 provide that, in addition to its regulatory powers under the Act, the Organization may determine, by regulation, the rules of professional conduct applicable to brokers and to executive officers of an agency and the requirements to be met in order to engage in a brokerage transaction described in section 1 of the Act;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation respecting brokerage requirements, professional conduct of brokers, advertising and additional training 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;