

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.”

9760

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;

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 brokerage requirements, professional conduct of brokers and advertising, attached to this Order in Council, be approved.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation respecting brokerage requirements, professional conduct of brokers and advertising

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 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 that may place the interest of the licence holder in conflict with that of a party to a transaction must be disclosed to the party in writing.

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 295-2010 dated 31 March 2010, 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. This Chapter does 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.

48. A 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

49. 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.

50. 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.

51. 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, chapter 48).

52. 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) the fact that 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

53. 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.

54. 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 55;

“disbursement charge” means a charge, other than the one referred to in the first paragraph of section 58, 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 58;

“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.

55. The cost of borrowing is calculated using the formula

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

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.

56. 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.

57. 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.

58. 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

59. A licence holder may not 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.

60. 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

61. 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

62. 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.

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

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

65. 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.

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

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

68. A broker or agency executive officer must not attempt to intimidate a person dealt with, including to urge that person to withdraw a request made to the Organisme d'autoréglementation du courtage immobilier du Québec or to alter testimony.

69. 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.

70. 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.

71. 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.

72. 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.

73. 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 skills.

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

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

76. 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

77. 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.

78. A broker or agency executive officer must provide all explanations necessary to enable a person to understand and evaluate the services proposed or provided by them or the agency for which they act.

79. 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.

80. 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.

81. 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.

82. 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.

83. A broker or agency executive officer must act with objectivity whenever advising or informing the party represented by them or the agency for which they act 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.

84. 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 by them or the agency for which they act, the parties to the transaction or the very object of the transaction.

85. 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.

86. 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.

87. 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.

88. When meeting the party represented by them or the agency for which they act 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.

89. 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

90. 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.

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

92. 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.

93. 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.

94. 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

95. 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 could compromise 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.

96. 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.

97. 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

98. 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.

99. 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

100. 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.

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

102. 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

§1. Contribution to advancement of the profession

103. 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.

104. 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 Organisme
d'autoréglementation du courtage immobilier
du Québec*

105. 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.

106. 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.

107. 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.

108. 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.

109. 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 such an inquiry is being conducted by the syndic or assistant syndic or by an investigator hired by the syndic, or that such 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 an 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

110. The goods or services provided by a broker or an agency must conform to statements or advertisements made concerning the goods or services.

111. 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.

112. 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 competence of a licence holder;
- (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.

113. 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**

114. 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.

115. 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.

116. 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.

117. 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**

118. 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.

119. This Regulation comes into force on 1 May 2010.

9761

Gouvernement du Québec

O.C. 300-2010, 31 March 2010

Real Estate Brokerage Act
(2008, c. 9)

Contracts and forms

Regulation respecting contracts and forms

WHEREAS section 9 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 conditions on which a broker may have the suspension of his or her licence lifted;

WHEREAS section 26 of the Act provides that the Organization sets out, by regulation, rules governing contracts concerning certain residential immovables;

WHEREAS paragraph 13 of section 46 of the Act provides that, in addition to its regulatory powers under the Act, the Organization may determine, by regulation, the form of contracts or forms, other than a contract referred to in section 26, how and when they may be used, the particulars and stipulations which must or must not appear in certain contracts or forms and those that supplement intention;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), the draft Regulation respecting contracts and forms 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 contracts and forms, attached to this Order in Council, be approved.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation respecting contracts and forms

Real Estate Brokerage Act
(2008, c. 9, ss. 26 and 46, par. 13)

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.