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OACIQ

ORGANISME D'AUTORÉGLÉMENTATION
DU COURTAGE IMMOBILIER DU QUÉBEC

A NOTE OF CAUTION

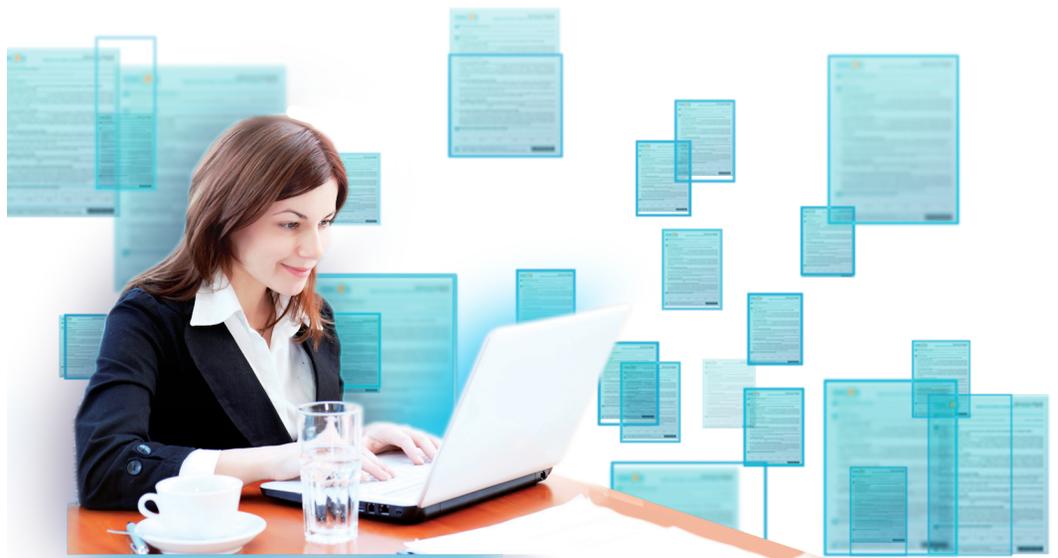
Profession Broker is a publication for real estate professionals, licence holders of the Organisme d'autorégulation du courtage immobilier du Québec (OACIQ). It covers various topics related to the application of the Real Estate Brokerage Act and its regulations, including legal and ethical issues related to the practice of real estate brokerage and the real estate market.

Any advertising appearing in this publication is intended for real estate brokerage professionals and does not in any way reflect the opinions, positions or actions of the Organisme d'autorégulation du courtage immobilier du Québec, whose primary mission under the law is the protection of the public.

The mandatory online training on the forms is underway

From April 23 to June 30, 2012, brokers with a full-service licence or a licence restricted to residential real estate brokerage are required to complete the online training on the new elements and amendments to forms. This is the last chance for agency executive officers, who have not attended this training between April 2 and April 20, 2012, to complete this mandatory training.

Continued on **page 2**



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Cont'd from **the front page**

The mandatory online training on the forms is underway

A format adapted to your needs

Thanks to the flexibility of this format, you can complete this 4-hour training without disrupting your business activities, and this is regardless of the time and place where you are. In addition to obtaining four (4) continuing education units (CEU), you will be prepared to use the new work tools as soon as they come into force on July 1, 2012.

Sign-up

To register, go to *Synbad* home page and then click on the "Access the online training" button on the right of the screen. Please note that the deadline to complete the online training is June 30, 2012. Do not waste time, act now!

Note that a broker who fails to complete this training will have his licence suspended and will no longer be authorized to engage in brokerage activities. To be able to practice again, you must complete the training, send an application to have the suspension lifted and pay the related fees.

Think about it.



Here is a summary table:

Training on the new elements and amendments to forms	
Duration	4 hours online
Number of continuing education units	4
Cost	\$75
Deadline to complete it	June 30, 2012



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Nowadays, we are facing a problem regarding the management of plastic waste proliferating in oceans, rivers, on our soil and in landfills.

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2012 Real Estate Summit:

a hit!

Read the message of Patrick Juanéda, Chairman of the Board of Directors of the GMREB and of Serge Brousseau, Chairman of the Board of Directors of the OACIQ.



View the video of Serge Brousseau, Chairman of the Board (of March 7, 2012)



Dear colleagues,

On February 9 and 10, 2012, the *Real Estate Summit* brought together many real estate professionals to reflect on the future of real estate brokerage in Québec and to define the best orientations to ensure success. Representatives of Québec real estate boards, *Organisme d'autoréglementation du courtage immobilier du Québec* (OACIQ), *Fonds d'assurance responsabilité professionnelle du courtage immobilier du Québec* (FARCIQ), Canadian Association of Accredited Mortgage Professionals (CAAMP), Québec Federation of Real Estate Boards (QFREB) and franchisors have attended this meeting, described as historic by many. Note that the vast majority of participants were practitioners like you, i.e. brokers and agency executive officers of all "banners", including independents.

High calibre speakers have fuelled the reflection. Jacques Nantel, a full professor in Marketing at HEC, spoke to the participants about the importance for businesses and industries to create a strong brand. He has greatly encouraged brokers to clearly define their strategic positioning if they want to attract consumers. On their part, Christian Bourque and Francine Roy, respectively from *Léger Marketing* and *Melanson Roy et Associés* survey firms have presented the results of their research conducted on behalf of GMREB and the OACIQ. These results revealed that the complexity of transaction remains the main reason that makes clients deal with a broker. Surveys have also revealed that clients' degree of satisfaction with brokers is 80% at the sale of a property and 88% at the purchase. In his turn, Pierre Léonard, on behalf of NATIONAL and *Parallèle* communication firms, has presented the results of work carried out following an important workshop held last January about the positioning of the real estate broker's profession. Finally, Paul Arseneault, Director, Tourism Intelligence Network at UQAM, has presented the successful repositioning strategy of Québec travel industry, threatened to disappear a few years ago.

As part of the three plenary sessions focusing respectively on the current situation of the profession, on possible solutions and concrete actions, the participants have had constructive and consensual discussions as rarely before. Among these discussions, six strategic orientations have been retained and will be on the agenda of priorities of our profession in the coming months:

- Increased awareness of the service offer
- Compulsory basic training
- Improvement of skills by the mandatory continuing education
- Enhanced accountability of agency executive officers
- Integrated communication program
- Collaboration

In the coming weeks, mechanisms will be put in place so that each of these orientations leads to concrete and specific actions. We will keep you informed.

Today, Québec real estate brokerage is at a crossroads. The strong cohesion and the great ability of consultation noted at the 2012 *Real Estate Summit* must permeate our profession, which must mobilize itself around common and constructive goals to successfully meet the challenges facing it and be a winner. We count on your commitment.

Yours truly,

Serge Brousseau
Chairman of the Board, OACIQ

Patrick Juanéda
Chairman of the Board, GMREB



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OACIQ ANNUAL GENERAL MEETING 2012

HÔTEL MORTAGNE, CENTRE DES CONGRÈS
1228 NOBEL STREET, BOUCHERVILLE

ATTEND REWARDING CONFERENCES

- *PROCÈS SIMULÉ – POURSUITE EN RESPONSABILITÉ PROFESSIONNELLE* (FARCIQ)
- *LE SENS POLITIQUE, JOUEZ POUR GAGNER* (BY PIERRE LAINEY, LECTURER – HEC)
- *LA JURISPRUDENCE RÉCENTE* (BY LUC PELLETIER, MANAGER, LEGAL AFFAIRS – OACIQ)

VISIT EXHIBITORS' BOOTHS ON SITE

FLOW OF THE DAY

- **RECEPTION AT 9:00 A.M.**
- **CHOICE OF THREE CONFERENCES**
MORNING AND AFTERNOON
PRESENTED BY BELL
- **LUNCH AND INTERACTIVE WORKSHOP**
PRESENTED BY DPMM
- **ANNUAL GENERAL MEETING**
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CONCERNING YOUR PRACTICE
- **NETWORKING COCKTAIL**
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FINAL AGENDA ANNUAL GENERAL MEETING 2012

WEDNESDAY, MAY 9, 2012 AT 2:45 P.M.
MORTAGNE HOTEL, ROOM: BOUCHERVILLE B AND C
1228 NOBEL STREET, BOUCHERVILLE • REGISTRATION: FOYER

(See attached Notice of meeting already transmitted)

1. **Opening of meeting and declaration of quorum**
2. **Adoption of the minutes**
 - 2.1 General Meeting held on May 9, 2011
3. **Matters pertaining to the last minutes**
4. **Deposit of the following Annual Reports:**
 - 4.1 Report from the Chairman of the Board of Directors
 - 4.2 Report from the President and Chief Executive Officer
 - 4.3 Report from the Syndic
 - 4.4 Report from the Chairman of the Inspection Committee
 - 4.5 Report from the Chairman of the Discipline Committee
 - 4.6 Report from the Chairman of the Indemnity Committee
 - 4.7 Report from the Chair of the Syndic Decision Review Committee
 - 4.8 Report from the Chairman of the Licence Issue and Maintenance Committee
 - 4.9 Report from the Treasurer of the Organization
 - 4.10 Report from the Auditors, Samson Bélair/Deloitte & Touche s.e.n.c.r.l.
 - 4.11 Report from the Fonds d'assurance responsabilité professionnelle du courtage immobilier du Québec (FARCIQ)
5. **Ratification of the Internal By-Laws of the OACIQ**
(see notice attached)
6. **Questions and comments**
 - 6.1 Examination for brokers wishing to act on their own account
 - 6.2 Other questions and comments
7. **Closing of Meeting**



Claude Barsalou, lawyer
Secretary

A licence holder must show that he is a licence holder of the OACIQ when attending the meeting, in particular by bearing a piece of identification determined by resolution of the Board of Directors, failing which the licence holder may be refused access to the meeting. For this purpose, one of the following pieces of identification may be presented: licence issued by the OACIQ, driver's licence or health insurance card. (Section 11 of the Internal By-Laws of the OACIQ)

A licence holder who is not present or does not physically attend the meeting may, under certain conditions, be able to express himself in view of a decision via a web conference, which shall include authentication of participating licence holders and a chat session allowing the participant to vote.



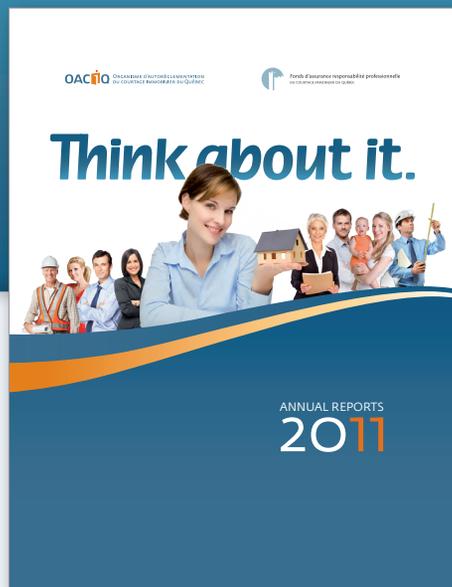
For more details on item 5 of the agenda regarding the OACIQ Internal By-Laws ratification, go to *Synbad* home page and then click on the "AGM 2012" button on the right of the screen.

NOTICE OF MEETING 2012 ANNUAL GENERAL MEETING

TO ALL LICENCE HOLDERS HAVING THE RIGHT TO VOTE OF THE
ORGANISME D'AUTORÉGLEMENTATION DU COURTAGE IMMOBILIER DU QUÉBEC

WEDNESDAY, MAY 9, 2012 AT 2:45 P.M.
MORTAGNE HOTEL, ROOM: BOUCHERVILLE B AND C
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View the 2011 Annual Report



A **licence holder** must show that he is a licence holder of the OACIQ when attending the meeting, in particular by bearing a piece of identification determined by resolution of the Board of Directors, failing which the licence holder may be refused access to the meeting. For this purpose, one of the following pieces of identification may be presented: licence issued by the OACIQ, driver's licence or health insurance card. (Section 11 of the Internal By-Laws of the OACIQ)

Any resolution proposed by a licence holder, for consideration by the general meeting, must be sent, by any means that proves its date of receipt, to the Secretary of the Organization, at least forty five (45) days before the date fixed for the general meeting. The Secretary of the Organization shall determine the admissibility of the proposed resolution. If it is deemed admissible, its subject will be included in the agenda and the resolution will be attached to it.

The licence holder proposing a resolution for consideration by the general meeting must always be a licence holder on the date the meeting is held and be present to put forward the proposed resolution. Otherwise, the proposed resolution may not be put forward. (Section 13 of the Internal By-Laws of the OACIQ)

A **final agenda** of each general meeting shall be given by the Secretary of the Organization to the licence holders who have the right to vote, by notice transmitted to licence holders, at least 30 days before the date of the meeting. (Section 14 of the Internal By-Laws of the OACIQ)

A licence holder who is not present or does not physically attend the general meeting may, under certain conditions, be able to express himself in view of a decision via a web conference, which shall include authentication of participating licence holders and a chat session allowing the participant to vote.



Claude Barsalou, Lawyer
Secretary

What the **OACIQ** is doing for **YOU**

A forum for mortgage brokers within the OACIQ

Are you a mortgage broker? You will be pleased to learn that the OACIQ set up a mortgage brokerage task force in collaboration with the Canadian Association of Accredited Mortgage Professionals (CAAMP). Consisted of various "banners" and members of the CAAMP, this group represents the vast majority of mortgage brokerage professionals.



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Topics of current interest

The members of the group will meet regularly to discuss issues that concern and interest you. For this purpose, they have held their first meeting on January 24, 2012. Many topics were discussed, which augurs well for what is coming next. These will lead to further work and information documents. Here is an overview:

- Developments regarding certain legislative and regulatory amendments including contracts and declarations as well as Bill 24;
- Advertising campaign including a capsule about mortgage brokerage;
- Collaboration and ongoing work regarding examinations with content experts and representatives of educational institutions;
- Continuing education:
 - Reminder to mortgage brokers informing them that in order to keep the three fields of activity, they must take the training on the new elements and amendments made to forms;
 - Development of an education activity in the form of “start-up session” specific to new mortgage agencies in 2012;
- And other topics such as:
 - Incorporation of brokers within agencies,
 - Compliance with the exclusivity of a mortgage brokerage contract,
 - Some issues relating to the advertising of interest rates,
 - Electronic document management,
 - Identity verification and mortgage broker responsibility.

Finally, be assured that we will keep you informed of the work progress of this group.

March 12, 2012

As an eloquent example of the good cooperation between the OACIQ and mortgage brokerage professionals, please note that the Organization has contributed directly to the development of content of Quebec Mortgage Fraud Summit, which was held on March 12, 2012, at Sheraton Laval hotel.

Industry leaders, policemen, senior officials and jurists spoke about various forms of mortgage fraud and how to detect and prevent them.

The OACIQ will also participate in the symposium organized by CAAMP, which will be held on May 3, 2012.

Stay tuned! ●

Telephone Information Centre

I N F O

OACIQ

The information agents in our OACIQ Info Centre are there to answer your questions and guide you to our various services.

Please contact the OACIQ Info Centre by email at info@oaciq.com, making sure to include your complete contact information so an information agent can call you back.

You can also reach the Centre at **450 462-9800** or **1 800 440-7170** between 9:00 a.m. and 4:00 p.m. on Monday, Tuesday, Thursday and Friday, and between 10:00 a.m. and 4:00 p.m. on Wednesday. ●

Disclosure of remuneration: The Inspection Department is keeping a close eye on things

Transparency is required in any real estate transaction. Since May 1, 2010, an element has been added to your disclosure ethical duty: you must now disclose in writing to the party you represent the conditions of remuneration sharing offered to agencies or brokers collaborating in this transaction, and the consequences generated by the proposed conditions.

Currently provided in clause AT3 of the transitional annex, this element will be integrated in the brokerage contract new form, which will come into force in July 1, 2012.

Inspection Department's role

When examining records, the inspector who will find that the sharing offered on the description sheet is inferior to the one specified on the transitional annex, without any amendment on this point in the brokerage contract, will take the necessary measures in either of the following cases:

Listing still in effect

If the listing is still in effect, the inspector will require from the broker to correct the description sheet on the spot so that the remuneration share offered to the agency or broker collaborating in the transaction complies with the brokerage contract and its transitional annex.

Completed transaction

When transaction was completed and that the share received by the agency or broker collaborating in the transaction is less than the one that was disclosed to the seller, the inspector will take a copy of the record. This record will be presented to the inspection committee, which can make all recommendations deemed appropriate. In addition, if he notices that a violation to the Real Estate Brokerage Act or to one of its regulations is committed, he can notify the OACIQ's syndic.

Trust inspection

The Inspection Department maintains vigilance for possible inconsistencies in remuneration sharing in order to react quickly and ensure that you are entitled to a share of remuneration to which the seller agrees.

Beyond the Inspection Department's monitoring, it is the question of honesty, integrity and compliance with contractual obligations that should be considered in these precautions.

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What to do when you are interested in acquiring an immovable to which you are bound by a contract



You have a current brokerage contract and you are interested in the house or immovable, which is the subject of the contract. You are wondering how to act in this situation... Are you entitled to remuneration?

This is a delicate question, which is legitimate to ask. The OACIQ's Inspection Department is often faced with situations where a broker has purchased the immovable or enterprise which was the subject of the brokerage contract without terminating this contract. This shows that things are not always absolutely clear in brokers' minds.

Rule

Sections 22 and 23 of the Regulation respecting brokerage requirements, professional conduct of brokers and advertising, in force since May 1, 2010, are clear: the broker must terminate his or her brokerage contract if he or she intends to acquire a direct or indirect interest in an immovable.

The principle behind the rule

In practice, this means that you cannot represent the seller, since you are yourself a party engaged in the transaction. Therefore, the brokerage contract under which you must promote and protect the interests of your client cannot be maintained, unless transactions on the immovable are in progress or if you are collaborating with another broker.

In the latter case, you should continue executing the brokerage contract until there are no more transactions in progress or until the collaboration with the other broker is over. Of course, you will not be able to purchase the immovable or propose to acquire it during this period.

Right to remuneration

What about your right to remuneration? Please remember: by acquiring an interest in an immovable or an enterprise, you are not acting as an intermediary in this transaction. Therefore, you cannot claim remuneration.

The Inspection Department is surprised to see that some brokers are paid, in whole or in part, the remuneration specified initially in the brokerage contract. Other brokers, through the back door, choose to be represented by a colleague and obtain a share of remuneration which the latter will receive as part of this transaction. Again, at the risk of repeating ourselves: the broker who acquires a direct or indirect interest in an immovable or enterprise that he was or not in charge of selling, leasing or exchanging, is not entitled to any remuneration.

These rules aim at protecting the public. Comply with them, it is the profession's image that is at stake! ●



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How to prepare for an inspection

An inspection should be seen as a privileged opportunity for training and prevention. The Inspection Department is responsible for overseeing the activities of the members of the OACIQ, specifically by verifying their records, books and registers.

The steps of an inspection

First, the Inspection Department sends a notice to the broker acting on his own account or to the agency executive officer. This notice is sent to the establishment to be inspected. The presence of the broker or agency executive officer is required during this visit. The inspection visit takes place at the establishment itself.

When a notice of inspection is received, the broker acting on his own account or the agency executive officer must review the list of documents required. These are the documents which the inspector will examine during his visit; they include transaction records, the register of brokerage contract and the register of transactions, the register of operations in the trust account, if applicable, the trust account (deposit books, cheques, receipts, bank statements for the last 12 months), and other bank accounts, the register of disclosure notices and brokers' register, if applicable.

At the beginning of the visit, the inspector may verify several aspects of the broker's or agency's professional practice, including:

- Registers: keeping records and verifying their conformity;
- Trust account: verify register of operations in the trust account and its conformity, verify bank accounts and conformity of withdrawals;
- Competence of broker acting on his own account or of brokers acting on behalf of the agency:
 - Keeping records: verify important elements of the record and content thereof;
 - Transaction records: analyse each step in a transaction, if applicable;
- Remuneration: verify methods of payment to brokers;
- Conflicts of interests: verify understanding of conflict of interest situations and disclosure forms to be completed;
- Confidentiality, conservation and destruction of documents: verify existing procedures;
- Supervision of novice brokers and brokers acting on behalf of the agency or administrative staff: verify existing procedures.

In addition to being on hand himself, the broker acting on his own account or the agency executive officer usually designates someone in his establishment to help fulfill the inspector's requests, including fetching records, etc. Note that the broker or the executive officer must provide access to all books, registers,

accounts, records and other documents pertaining to his activities and the inspector is authorized to make copies thereof.

At the end of the visit, the inspector meets with the broker or the executive officer and provides a brief verbal summary of his observations and any actions required. The information is then put in writing in an inspection report and in the competence reports of brokers acting on behalf of the agency. These reports will be sent to the broker's or agency's establishment in the following weeks.

It is important for the broker or agency executive officer to read these reports. It contains the observations made by the inspector and the actions required to correct any discrepancy noted.

Finally, the broker or the agency executive officer is encouraged to complete the "Appreciation questionnaire" accompanying the reports. The comments provided on this form are very useful to help the Inspection Department make ongoing improvements to the inspection process. It is important to remember that the approach adopted by the OACIQ during an inspection is meant to be constructive. Therefore, a visit by an inspector is considered a privileged opportunity to provide brokers and agencies with assistance and support. The inspector will suggest tools, continuing education activities or any other means of maintaining or improving their current level of competence. This ensures that the public has access to quality real estate brokerage services at all times. ●

CLARIFICATIONS regarding BROKERAGE CONTRACT - PURCHASE as of July 1, 2012

On February 16, 2012, *La Presse* published an article entitled *Courtage immobilier : bientôt un meilleur encadrement* (Real Estate Brokerage: soon a better supervision) in which it is stated that it will be mandatory to sign an exclusive brokerage contract when a buyer wishes to be represented by a broker. This statement has raised many questions and needs to be qualified.

As of July 1, 2012

As it is the case now, as of July 1, 2012, you can still represent a buyer without being bound with him by a brokerage contract - purchase.

However, if you wish to be remunerated by the buyer (natural person) in connection with the purchase of a chiefly residential immovable of less than five dwellings, you must then be bound with this buyer by a contract and use the Brokerage Contract - Purchase, edited by the OACIQ.

Consequences of the absence of contract

You will not be able to require the buyer to comply with any obligations whatsoever, such as the payment of remuneration or the exclusivity of your services, if you have not signed any Brokerage Contract - Purchase with him.

FSBO's case

If the immovable the buyer wishes to purchase is an FSBO (For sale by owner), you will not be able to sign a Brokerage Contract - Sale with the seller to ensure the payment of remuneration.

In this case, you must agree on remuneration with the buyer by signing a Brokerage Contract - Purchase. This rule is consistent with reality since your client is the buyer and not the seller.

In short

To clarify the article of *La Presse*, the use of the *Brokerage Contract - Purchase* form, edited by the OACIQ, will be mandatory only if you wish to be remunerated by the buyer (natural person) for the purchase of a chiefly residential immovable of less than five dwellings.

Think about it! ●



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Why Mortgage Statement?

Rules surrounding the discharge of an hypothec

To make real estate transactions more secure for all stakeholders, notaries are subject to strict rules regarding the requesting of account statements for the repayment of a loan balance to discharge an hypothec on an immovable. Today clients have access to different types of credit that can be secured by an immovable hypothec. Faced with this diversity, mortgage lenders have issued directives under which they will only discharge the hypothec on the immovable once the seller has satisfied all loans and other forms of credit granted and secured by the immovable in question. We already understand the possible impact on a real estate transaction, an even greater impact if this is one of the links in a chain transaction.

A simple example

An owner has an immovable worth \$210,000 which he acquired using a \$190,000 loan secured by a hypothec on the immovable. When the owner got his mortgage loan, the lender offered him a \$10,000 line of credit and a credit card with a \$5,000 limit, also secured by hypothec. The total amount secured by immovable hypothec is therefore \$190,000 plus the line of credit and the credit card limit, for a potential maximum of \$205,000.

The notary must obtain a CERTIFIED STATEMENT OF ACCOUNT from the mortgage lender in order to discharge the mortgage guarantees on a given residential immovable. To do the discharge, all the debts secured by immovable hypothec (in our example, the mortgage loan, the line of credit and the credit card) must be repaid.

It is easy to see the difficulties that can be created if the sale of the immovable does not cover all the sums due under the various types of credit. The notarial rules imply that unless this certified account statement is received showing that all sums due have been repaid and including a firm commitment to sign the discharge of the hypothec within forty-five (45) days following repayment of the sums indicated on the statement, the notary will automatically withhold the funds until the discharge of the guarantee(s) is published.

IN CONCRETE TERMS, THIS MEANS THAT THE TRANSACTION CANNOT BE CONCLUDED UNTIL THE TOTALITY OF SUMS OWING HAVE BEEN REPAYED.



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Duties of the real estate broker

Real estate brokers have an obligation to obtain the balance of the selling client's loan secured by hypothec as part of their duty to verify. Beyond that, they must also verify with the selling client whether the hypothec is securing any debts other than the mortgage loan, for example a credit card or a line of credit.

The surest way to obtain accurate and up-to-date information is by looking at the MORTGAGE ACCOUNT STATEMENT.

The OACIQ therefore recommends that real estate brokers ask their selling clients to obtain an account statement from their mortgage lender as soon as the brokerage contract is signed. This statement should contain the detail of all the products covered by the mortgage guarantee. If they wish, real estate brokers can also use the "Request for information relating to a hypothecary loan" recommended form, which should be signed by owner(s) and by the financial institution representative.

In terms of his duty to inform and advise, the real estate broker will have to explain to his selling client the problems he will face if his hypothec was used to secure several types of credit, and the choice he must make when selling the immovable put up as security for this credit.

When the 72-hour notice mechanism is set in motion

In the case of a promise to purchase that is conditional upon the sale of the buyer's home and once the 72-hour notice mechanism is set in motion, the proof of financing provided by the first buyer will have to include a mention that the mortgage lender will discharge the mortgage and consequently that all loans linked to the hypothecary guarantee will be repaid by the buyer.

In summary, the OACIQ recommends that real estate brokers take the following steps:

- obtain the balance of the loan secured by hypothec from the selling client;
- verify with the selling client's whether the hypothec is being used to secure anything other than the mortgage loan (e.g. a line of credit);
- ask the selling client to obtain a statement of account from the mortgage lender, or to have him sign the "Request for information relating to a hypothecary loan" recommended form, as soon as the brokerage contract is signed;
- explain to the selling client the problems he may face if his hypothec is being used to secure several types of credit and should the product of the sale not be sufficient to cover all the sums owed to the mortgage lender. ●

DuProprio : news about the appeal

On December 21, 2012, the OACIQ announced its intention to overturn the decision of the Court of Québec concerning DuProprio case. To read the full article about the decision of the Court, go on our website (Articles n° 120479 / 120369).

The appeal will be heard on June 22, 2012 before the Superior Court of Québec. The entire day will be reserved for pleadings. The judge may render his judgment from the bench, which would however be exceptional, or take the case under advisement. Then the judgment could be rendered only many months later.

Be assured that we will keep you informed of all developments in this important case. ●

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Chain transactions..

allow a time period for the signing of the deed of sale

When it comes to signing the act of sale before the notary, a common concern for the seller is to get his money as quickly as possible or to schedule a quick signing date. Remember that before distributing funds, the notary must always publish acts and perform many checks in the Land register, in addition to obtaining from the creditor a commitment to cancel the existing charges (for example the seller's mortgage).

Before disposing of the sums he receives, the notary must take into account the clearing times required by the Canadian banking system. It is important that all real estate brokers know these rules to properly advise the parties when it comes to determining the date of signing the act of sale, taking into consideration the clearing times. The determination of this date is even more important when there is a chain of transactions.

Impact of clearing times on chain transactions

Here is an example allowing a better understanding of the issue.

Transaction A - a promise to purchase is signed between a seller (Mr. B) and a buyer (Mrs. C). The signing of the deed of sale is scheduled for June 1st before notary D.

Transaction K - Mr. L, seller, accepts a promise to purchase made by Mr. B who is acting this time as a buyer. The funds from transaction A will be used in the purchase made by Mr. B. The signing of the deed of sale is scheduled for June 3rd before notary L.

The time period between the signing of the two deeds of sale is much too short. Here is why. In an ideal situation, the funds from transaction A will be available after publication i.e., within a time period of 24 to 48 hours from the signing of the deed of sale. At best, Mr. B will therefore receive the totality of his sum following the sale of his property only on the 2nd or the 3rd of June. At worst, if the notary was unable to obtain from the mortgage creditor the commitment to provide a release upon receipt of sums due, the time period can take up to 30 days or more. For more information on this topic, read "Why mortgage statement? The rules surrounding the discharge of an hypothec" article on page 12.



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To carry out transaction K, the notary L must deposit and keep in his trust account the cheque received from Mr. B (or from notary D). Since the cheque drawn on the trust account of a notary is subject to the same clearing rules as another cheque, the signing of the deed of sale of transaction B cannot be made before a minimum time period of 72 hours to 10 days excluding Saturdays, Sundays and bank holidays. We can easily note that June 3rd date initially scheduled in transaction K for the signing the deed of sale cannot be complied with.

The nature of sums paid and clearing times

More often, the money for the purchase of an immovable comes from:

- the mortgage lender; and
- the buyer himself, for the down payment.

This money can be sent to the notary in different ways, including:

- Electronic funds transfer;
- Electronic circulation of money;
- Bank draft;
- Certified or regular cheque.

It is important to know that bank clearing times vary depending on the type of payment.

Electronic funds transfer

The simplest and quickest situation for the parties is when the notary receives all the funds required for the transaction by electronic transfer, both the portion coming from the mortgage lender and the buyer's down payment via his financial institution. In this situation, the funds received by electronic transfer can be redistributed by the notary on the same day. He can disburse the funds as soon as he sees the deposit go through in his trust account.

Electronic circulation of money

Unlike the electronic transfer, the electronic circulation of money is subject to bank clearing rules of which the time ranges from one to two business days. Therefore, we should expect that the notary requests to receive the electronic funds transfer three business days before the signing of the deed of sale.

Bank draft

Often, the acting notary receives the funds required for the transaction by bank draft, whether it is the portion coming from the mortgage lender or the buyer's down payment. Bank drafts must be requested and deposited in the notary's trust account at least 24 to 72 business hours before the transaction. Only after this time can the notary disburse the funds, after checking with the financial institution, of course, that the draft was honoured during this time. Note that if the financial institution receiving the deposit decided to withhold funds in the notary's trust account, the 24 to 72-hour time period could be 7 to 10 business days.

Certified cheque

The situation most likely to create delays is when the notary receives the funds required for the transaction by certified cheque, either the portion coming from the lender, or the down payment.

Certified cheques must be requested and deposited in the notary's trust account between 72 hours and up to 10 working days before the transaction. Only after this time can the notary disburse the funds. This variable delay is explained by the various steps required between banks of the different parties involved. Within 72 hours, the notary will be notified if the cheque cannot be cleared, but the reasons and the actual return of the instrument can take up to 10 days. The notary must validate the transactions in his trust account and make sure the funds are available before proceeding with the transaction.

Although a certified cheque results in the freezing of the amounts in the issuer's account, this freeze is not final. In case of death of the cheque signatory, or if the account is blocked due to seizure, bankruptcy, unpaid alimony, or simply because the signatory has put a stop-payment on the certified cheque, the cheque will not clear and, consequently, a notice will be sent to the payee indicating the reasons why the funds were not disbursed. This last example means that a certified cheque does not completely guarantee the presence of the funds, unlike the bank draft or the electronic transfer, which is why the clearing time is much longer, therefore requiring the signing date to be set accordingly.

Particular attention must be paid when the buyer deposits the funds to cover the cheque in an ATM or night deposit. This can further increase the clearing time. In those rare cases where a regular cheque is used, the minimum clearing time is 10 days.

International money transfer

Special procedures apply for a transaction involving funds from a foreign source. For example, current clearing times are at least 30 days for any international paper instrument. The licence involved in such a transaction should always notify the acting notary so that an appropriate signing date can be set for the act of sale.

In conclusion, given the clearing dates, the quickest way for the notary to free up the funds is by electronic funds transfer. This will make it possible for the act of sale to be signed much more quickly, and the seller will have his funds almost instantly, to the great satisfaction of all involved.

In short, what is the time frame to allow for the signing of the deed of sale?

When two or several real estate transactions are interrelated, it is important that the real estate broker ensures to allow a reasonable time period between the dates of the signing of the deed of sale of various transactions. From the point of view of the Chambre des notaries du Québec, this minimum time period could be 10 business days given the clearing times required by the Canadian banking system. Depending on circumstances, brokers should of course adjust this time frame upwards if circumstances so require. ●

When the real estate broker

is an employer

The phenomenon of brokers who hire “assistants” has grown over the past few years. Although this situation may appear to be legitimate in itself, its application poses problems of consistency with the Real Estate Brokerage Act. What can be done to meet these brokers’ needs while respecting the legal framework?

Secretary or assistant

Two types of assistants are generally sought by these “overworked”, brokers. Some want access to competent secretarial services, while others have more need of an assistant - a person who can represent them with their clients. If no legal requirement is imposed for secretarial tasks, the duties of an assistant require that he hold a licence issued by the OACIQ (section 4 of the Act).

Thus, a broker who requires additional help for telephone or door-to-door solicitation, to participate in open houses, to open a door to a collaborating broker or to carry out a real estate transaction in his absence, such as receiving clients, must necessarily use a licence holder. This obviously will not be the case for an assistant who is exclusively assigned to office tasks, such as putting a sign, bringing documents to the notary, taking measurements or pictures, confirming the broker’s appointments or answering telephone calls without providing information on the immovables, that is, without engaging in representation. However, we must remember that office technical assistance may incur the broker’s liability. Indeed, an incorrect entry, made the assistant, on the property’s description sheet will incur broker’s liability, in which case the insurer may be required to examine the case.

A broker cannot employ another broker

Now that we have distinguished between the roles, the question is whether a broker can legally employ another broker. The answer is no. In fact, only a real estate agency may employ or authorize to act on its behalf a natural person holding a real estate broker’s licence. The OACIQ regulations also specify that it is impossible for a real estate broker to employ another broker.

Allowing a broker to hire another broker would be the equivalent of assigning him the role of a real estate agency. This is obviously contrary to the spirit and the letter of the Act. Few options are therefore available to a broker who wishes to obtain the services of another broker. The most obvious would be for him to become a real estate agency. He would then be allowed to employ a broker, compensated by salary or commission, to provide him with exclusive services.



In practice, however, it often happens that a broker who needs an assistant works within a recognized agency, from which he does not intend to dissociate himself. One solution would then be for the broker to have an agreement with his agency to provide him with the services of an assistant, on a contractual basis. This could also include a non-competition clause, providing that the clients served by the assistant belong to the broker this assistant supports. The assistant would thus be a broker with the same status as the others, a full member of the profession subject to the rules applicable to everyone. But this person's use of time and method of compensation could differ. The agency can compensate its brokers in different ways.

The assistant is only answerable to his agency

Legally, a real estate agency is responsible for all real estate transactions carried on in its name. Section 70 of the Regulation respecting brokerage requirements, professional conduct of brokers and advertising states that an agency "must take all reasonable measures to ensure that the persons employed by or authorized to act on its behalf comply with the Real Estate Brokerage Act (R.S.Q., c. C-73.2) and the regulations made under it."

The assistant is also employed by an agency, and not by the broker for whom he acts as an assistant. The real estate transactions he concludes are on behalf of his agency, as is the rule for any broker. Thus, an assistant (licence holder) of a broker drafts contracts and enters into transactions with clients as the agency's representative, but obtains his compensation according to the contractual agreement signed between his agency and the broker to whom he provides exclusive assistance.

Since clients generally expect to receive marketing services from the broker and not from the assistant, the brokerage contract made by the main broker may contain a provision whereby another broker may participate in marketing the property, in this instance, the person who directed the assistant to this client. An addition can be made to the brokerage contract, to the effect that the assistant broker may participate in the execution of the brokerage contract. Therefore, he will have the same obligations. If a promise to purchase made through the intermediary of the assistant is accepted, the compensation will be paid to the agency which will divide it among its brokers in accordance with the contractual agreements.

It should be noted that the broker, like the assistant, must sign only his name, and not "for and on behalf of" another agent as has been seen in some cases. Moreover, when the assistant signs as a witness, he signs his name on his own behalf.

In the case of a network of agencies with sub-franchising, if the assistant is employed by the franchisee and not by the sub-franchisee, the brokerage contracts will have to be jointly listed by the two agencies. The compensation resulting from the transactions will have to be treated as compensation shared between separate agencies.

In conclusion

This practice of brokers hiring assistants is encountered more and more frequently. The regulatory framework is not well suited to this situation, but the procedure we have just described should allow brokers to achieve their objectives in complete legality. ●



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Factors that may affect the decision of a buyer

All brokers have the obligation to inform the parties engaged in a transaction of any known factor that may adversely affect buyers or sellers or the very object of transaction.

However, the importance of a factor depends on each person according to his or her values, perceptions, religion, age, etc. Certain events can be related to a property without specifically affecting its appearance, quality or functionality; for example, an owner who is suspected of being a member of a criminal organization, a death on the property, a property which has been vandalized, presence of a ghost according to occupants, a house used to grow cannabis, but having been restored and approved by an authority.

Disclosure

Brokers' obligation towards buyers is clear on this subject. The aim is to make a disclosure of absolutely anything that may influence the decision or conduct of a prospective buyer after his or her verifications.

Once a broker has knowledge of a factor which may adversely affect a buyer, regardless of the source of information, he or she must inform the buyer about it, after making his or her diligent verifications.

A broker is even required to be proactive i.e. he should not wait for the buyer's questions in this regard. After all, the buyer has no reason to think of such a situation or ask questions about it. Note also that the information must be disclosed no matter

when or where on the property the event took place.

One of the main roles of a broker is to protect his client's interests and to disclose to the buyer any information that may assist him in making a better decision. To fulfill this role, the broker must particularly question the seller about this subject when the brokerage contract is taken up and advise him to disclose it on the Declarations by the Seller form, which he will complete with him.

The seller must also be advised that his broker has an ethical obligation to disclose this information to any interested buyer or to the broker representing such buyer, before a promise to purchase is signed.

Although under the Civil Code certain factors may not represent a latent defect that can jeopardize the integrity of an immovable, a broker has ethical obligations under the Real Estate Brokerage Act, especially concerning his duty to advise and inform.

This duty is notably set forth in section 85 of the Regulation respecting brokerage requirements, professional conduct of brokers and advertising, which states that a broker must inform the buyer of any "known" factor that "may" adversely affect the parties or the object of the transaction (section 85). Consequently, a broker must "objectively" advise and inform the buyer about all the facts surrounding the transaction and the object thereof, without "exaggeration", "concealment" or "misrepresentation" (sect. 83).

To conclude, transparency is required in all circumstances. This practice helps maintain and reinforce public's trust in the profession, giving it an added value. ●

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Collaborating with the Inspection Department - An obligation reiterated in a recent Court of Appeal decision

Very often following a visit to an establishment, the Inspection Department will request certain adjustments to be made or corrective action to be taken right away or within a given period, depending on the urgency of what has been observed. These requests can be forwarded directly to the broker working on his own account, the executive officer of the agency, or the representing brokers. Whereas the majority of brokers easily comply with the Inspection Department's requests and follow up on matters quickly, some executive officers or brokers unfortunately ignore the requests made to them.

Is the negligence worth the cost?

Some time ago, the Discipline Committee rendered a decision in a case involving seven accusation counts. These essentially had to do with instances of non-compliance with advertising and brokerage register requirements, as well as a lack of consideration for various OACIQ departments. The executive officer had ignored repeated requests from the Inspection Department, the Inspection Committee and the Office of the Syndic. In its decision, the Discipline Committee clearly stated that such an attitude on the part of a broker could not be tolerated and warranted fines of up to \$8,400, and even a suspension of the broker's licence. On December 7, 2011, the Québec Court of Appeal upheld the Discipline Committee's decision.

The Court of Appeal's decision is a reminder that brokers always have an obligation to collaborate with the Organization's authorities, even if a request may at first glance appear unimportant, for example concerning how names and professional titles appear on business cards, or missing information in brokerage registers. In truth, worse than the breach itself is an executive officer failing to act quickly on specific requests received from the various OACIQ departments, and persisting in not following through. By so doing, the executive officer is showing contempt for the Organization responsible for protecting the public by overseeing real estate professionals and their practices.

Make sure you don't lose out... collaboration is always a win-win situation.

For more information, you can review the Québec Court of Appeal's decision. ●



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Brokers wishing...

... to buy or sell a property for themselves

Each year, the OACIQ Info Center receives many calls from real estate brokers who wish to buy or sell a property for themselves and want to know what the Real Estate Brokerage Act has to say in this regard, in order to make sure that the transaction complies with the regulations. Please note that under section 18 of the Regulation respecting brokerage requirements, professional conduct of brokers and advertising, a broker must disclose his quality as broker in all cases. Based on the principle that a broker who buys for himself or sells his own property is not acting as an intermediary, here is a brief summary of six potential scenarios:

1. A broker wishing to buy directly from an owner (FSBO)

In this scenario, there is no brokerage contract and no intermediary. Therefore, there can be no remuneration. In addition to section 18, section 21 of the Regulation states that the broker acquiring a direct or indirect interest in an immovable or enterprise cannot represent the seller. Here, the broker has the following obligations:

- Disclose his quality as broker in accordance with section 18 of the Regulation.
- Act in good faith.
- Take all necessary measures to avoid causing a prejudice to the seller.
- Advise the seller to seek representation by a licence holder of his or her choice.

The OACIQ recommends acting prudently. Licence holders should use OACIQ forms and amend the promise to purchase by crossing out the words "through _____, real estate broker, represented by _____" from clause 2.1 and to cross out clause 7.3.

2. A broker wishing to buy his own listing

In this second scenario, under section 22 of the Regulation, the broker must terminate the brokerage contract. At that point, there is no intermediary, and therefore there can be no remuneration. However, the broker cannot terminate the brokerage contract to present a transaction promise if he is collaborating with another broker or if there are transactions in progress on the immovable or enterprise. All OACIQ obligations and recommendations listed in scenario 1 above apply.

3. A broker wishing to buy a property listed by a broker from the same agency

In this third scenario, the buying broker is not an intermediary. He is not acting on behalf of the agency and is not entitled to remuneration since he is buying for himself, his spouse or a legal person controlled by him or his spouse (section 23 of the Regulation). However, since the contract is held by the agency, the latter is entitled to remuneration as seller's agency. The buying broker may be represented by another broker. In this case, the buyer's broker is entitled to remuneration. In addition to the obligation to disclose one's quality as broker, the OACIQ recommends that its forms be used. Clause 2.1 of the promise to purchase should indicate the name of the agency and the broker representing the buying broker or, if not represented, the name of the seller's broker. The name of the buying broker must never appear in clause 2.1 of the promise to purchase.

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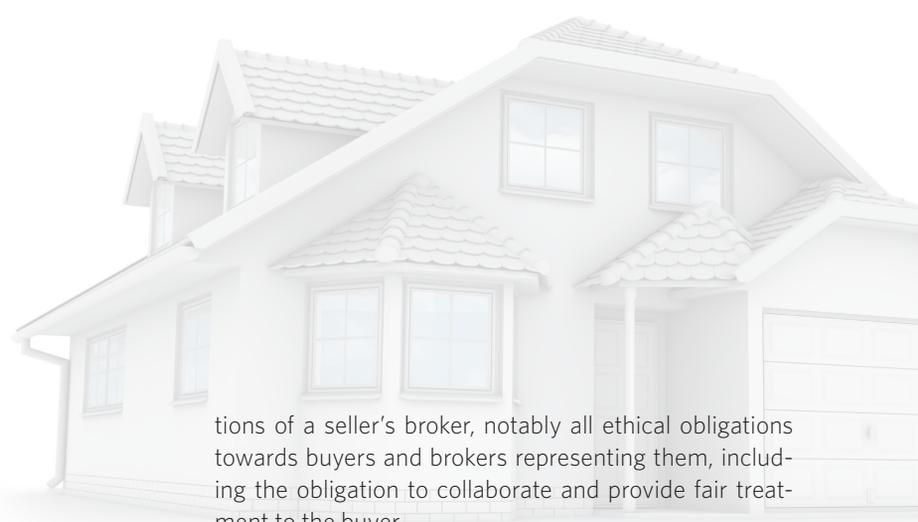
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The buying broker must complete the notice of disclosure and have it signed by the seller at the first opportunity i.e., before the seller enters a contract agreement. Therefore, he must complete the notice of disclosure and have it signed by the prospective contracting party (seller) prior to the acceptance of the promise to purchase.

4. A broker wishing to buy a property listed by another agency or another independent broker

Here again, a broker buying for himself is not an intermediary. He is not acting on behalf of the agency and therefore is not entitled to any remuneration. The buying broker may be represented by another broker. In this case, the buyer's broker is entitled to remuneration. Finally, the OACIQ recommends that its forms be used and that clause 2.1 of the promise to purchase be amended, depending on whether or not the broker is represented. Clause 2.1 of the promise to purchase should indicate the name of the broker representing the buying broker or, if not represented, the name of the seller's broker. The name of the buying broker must never appear in clause 2.1 of the promise to purchase.

The buying broker must complete the notice of disclosure and have it signed by the seller at the first opportunity i.e., before the seller enters a contract agreement. Therefore, he must complete the notice of disclosure and have it signed by the prospective contracting party (seller) prior to the acceptance of the promise to purchase.

5. A broker selling his own immovable on SIA/MLS systems

The selling broker is not an intermediary. He is not acting on behalf of the agency and is not entitled to any remuneration. The broker may give the brokerage contract to his own agency and be represented by a colleague. He may also give the contract to another agency or another independent broker. Either one is entitled to remuneration.

- IT IS NOT RECOMMENDED for a real estate broker to act as seller's broker for marketing his own immovable due to the conflict of interest. The legality of the brokerage contract when the broker designates himself as the seller's broker or agency representative could be called into question (contract concluded by the broker with himself and absence of intermediary).
- The broker who still chooses to act as seller's broker for his own immovable and completes a brokerage contract in which he is designated as his agency's representative is not covered by his professional liability insurance. As owner, the broker is not acting within the framework of his professional activities under the Real Estate Brokerage Act considering that the service is not provided to others. In addition, this broker is bound by all the obliga-

tions of a seller's broker, notably all ethical obligations towards buyers and brokers representing them, including the obligation to collaborate and provide fair treatment to the buyer.

- Due to the conflict of interest, NO BROKER listing his own property may represent the buyer (section 20 of the Regulation). The broker must inform the buyer that he may seek representation by a licence holder of his or her choice. If the buyer refuses, the broker may give the forms to the buyer (for example: Promise to Purchase, Annex G, Annex A, Annex B) to complete them himself. However, he should keep a proof in the file to the effect that he has informed the buyer that he could not represent him in any way or draft documents for him.
- The broker must disclose his quality as broker (section 18 of the Regulation) at the first opportunity i.e., before the buyer enters a contract agreement. Therefore, he must complete the notice of disclosure and have it signed by the prospective contracting party (buyer) before drafting the promise to purchase.

6. A broker selling his own immovable without intermediary (private sale)

Whether or not in the course of a broker's functions, regulations apply: instructions concerning disclosure must be followed (section 18 and 20 of the Regulation), as for the previous case.

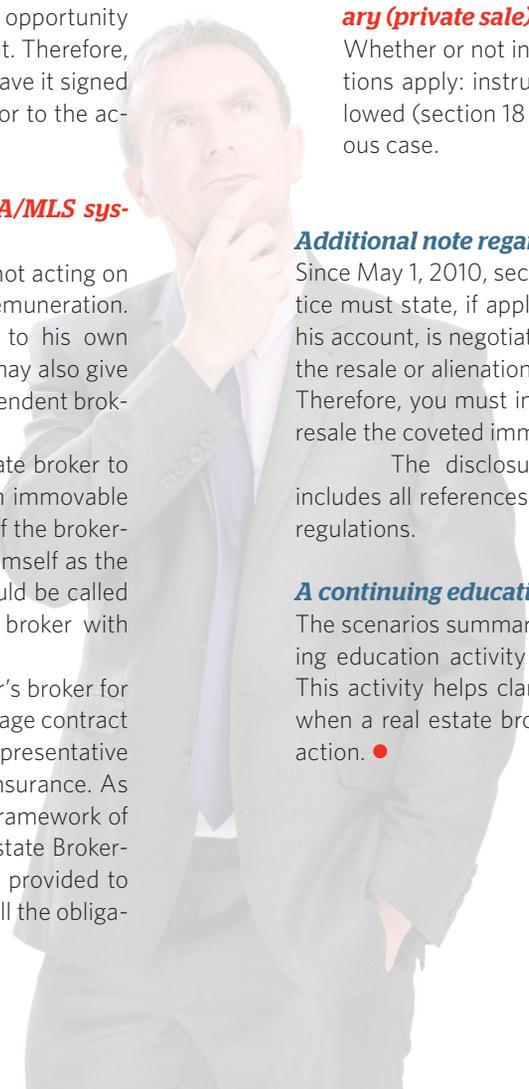
Additional note regarding disclosure

Since May 1, 2010, section 18 of the regulation states that the notice must state, if applicable, the fact that the licence holder, for his account, is negotiating, has negotiated or intends to negotiate the resale or alienation of the immovable he proposes to acquire. Therefore, you must inform the seller if you are already trying to resale the coveted immovable or if you plan to do so quickly.

The disclosure notice model edited by the OACIQ includes all references and declarations provided by the law and regulations.

A continuing education activity to find out more

The scenarios summarized above come from an OACIQ continuing education activity entitled "The broker who buys or sells". This activity helps clarify various principles that come into play when a real estate broker has an interest in a real estate transaction. ●





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Hélène Morand is appointed Chief Executive Officer of the QFREB



We are very pleased with the appointment of Mrs. Hélène Morand as Chief Executive Officer of the Québec Federation of Real Estate Boards (QFREB) and we would like to warmly congratulate her on this appointment.

Mrs. Hélène Morand's extensive experience in real estate field, particularly within the OACIQ where she held the Syndic position for four years, and within a real estate agency where she spent nearly 10 years as Agency Executive Officer, ensures that she will assume the important responsibility that has just been entrusted to her with distinction.

With all her energy and intelligence, we are deeply convinced that Mrs. Morand will masterfully face many challenges in the QFREB. Her appointment to this position will certainly help maintaining the vitality and the good health of real estate brokerage in Quebec, and this is something we are pleased about.

On behalf of the OACIQ board of directors, we wish great success to Mrs. Morand in her new role and assure her of our full cooperation in all issues, including those related to our respective organizations. ●

Agenda Notes

THE OACIQ'S OFFICES WILL BE CLOSED

May	June	July
May 21, 2012 Statutory holiday for National Patriots' Day	June 25, 2012 Statutory holiday for Québec's National Holiday	July 2, 2012 Statutory holiday for Canada Day

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Conversation with Jean-François Gagnon and Yves Tourangeau, lawyers



*M^{es} Gagnon and Tourangeau are lawyers who have developed specific expertise in the areas of real estate law and civil and professional liability. They are employed by external law firms and have been consulting on court cases with the **Fonds d'assurance responsabilité du courtage immobilier du Québec** since its inception. Their job is to defend the interests of real estate brokers involved in claims for fault, errors or omissions committed in the course of a real estate transaction.*

M^e Jean-François Gagnon is with the firm of Langlois Kronström Desjardins, and M^e Yves Tourangeau practices with Gilbert Simard Tremblay.

A few statistics

To illustrate, in the year 2010 alone the Insurance Fund handled 540 claims against its insured members. To date, 16% of these cases have been referred to higher courts (Court of Québec and Superior Court). In such cases, representation for the insured member is handled mainly by external lawyer teams from each firm, headed by M^{es} Gagnon and Tourangeau. About 10% of claims end up in Small Claims Court, where legal representation is not permitted.

For the same year, out of ten decisions rendered following a trial by a higher court, eight were in favour of Fund's policy holders, and two against.

Following are some of the topics that were discussed with M^{es} Gagnon and Tourangeau in an interview with the *Profession Broker* Newsletter.

Defending brokers: the process

When a claim is filed against a real estate or mortgage broker, Fund's analysts first investigate the circumstances and try to settle the dispute as soon as a formal notice is received. However, "when legal proceedings are initiated, the lawyers mandated by the Fund must intervene immediately," states M^e Tourangeau. In such cases, the file is transferred to external lawyers, who are not employees of the Fund. "Our role is to work with the insured member to prepare his defense, following guidelines provided by the Fund, which makes the legal decisions regarding the case."

As soon as the lawyer receives a file, he contacts the insured to get his account of the facts. He then reviews the evidence and the case in its entirety. This is followed by a second discussion with the insured to gather more evidence and information in order to plead the case. Some of the parties involved in

the dispute can sometimes be questioned to confirm the evidence, and it is customary at that point to verify the information obtained with the insured. One of the most crucial tasks for the lawyer is drafting a defense based on the evidence and factual elements gathered, and to obtain expert reports where necessary.

A well-supported defence

Very often, it is only after the real estate transaction is completed that the new owners notice errors, omissions or acts of negligence on the part of their broker and seek compensation. When this happens, "we have to work with the case and the evidence that already exists," says M^e Gagnon, "which is why it is always so important to keep a proof of the steps taken and the information or the decisions obtained from the buyers or the sellers. For instance, you should always document the buyers' decision not to have their future home inspected. Both lawyers agree that the best professional practice for all **real estate or mortgage brokers is to document their files as much as possible** (copies of letters and decisions, emails confirming requests - even if the result is negative, etc.)

M^e Tourangeau added that the broker "must take seriously the role of verifying information with the proper authorities, including cities and town planning departments, obtaining proof of the exact size of the lot or living area, getting inspection results, etc."

Avoidable stress

The court environment is not something that is familiar to brokers, and finding oneself before the courts can be a major source of anxiety. According to M^e Gagnon, "the initial stress experienced by brokers is due to the fact they are not in their element in this very formal environment, and they have no control over the situation: this goes against what they are used to as entrepreneurs, where they get to make their own decisions. There is a disconnect between these two realities that reflects the world in which we live. All professionals are bound by a moral and ethical code to which they must conform in the performance of their activities."

This means that brokers must develop a stronger self-protection reflex and realize that each new client presents a potential risk of lawsuit or claim. This will help them take precautions and ensure their own protection by keeping written proof of all their clients' decisions and email replies. This simple step will avoid many a dispute and help the broker preserve his credibility with his clientele and his peers.

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BROKERS' ACTIONS



MUNICIPAL AND SCHOOL TAX ACCOUNT



HOW TO AVOID THIS MISTAKE

Pay particular attention before entering the total amount of annual taxes on a description sheet to avoid confusing **the balance** of the account statement with **the total** of annual taxes.

TIP OF A PRO

Taking time to read all documents carefully can help you avoid a lot of trouble. Unfortunately, this error of inattention happens frequently and has significant financial impact on the client and yourself. **If in doubt, take a few minutes to validate tax amounts with the municipality.**



IMPACT

Do not forget that this type of error has consequences for the broker. If you are held responsible and that compensation is paid to claimant, you must pay a deductible. Also note that a lawsuit filed with courts has an impact on your personal credit report for as long as the dispute lasts, without taking into account the **waste of time that this entails**. In all cases, prevention is better than cure.