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Report on the Application of the Real Estate  
**Brokerage Act**

# **Report on the Application of the Real Estate Brokerage Act**

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*Québec City, June 2004*

*Mr. Michel Bissonnet  
President of the National Assembly  
Parliament Building  
Québec City, Québec G1A 1A4*

*Mr. President,*

*As required by section 188 of the Real Estate Brokerage Act (R.S.Q., chapter C-73.1), I have the honour of tabling the first Report on the Application of the Real Estate Brokerage Act.*

*Yours truly,*

*Yves Séguin  
Minister of Finance*



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## WORD FROM THE MINISTER

In its current form, the *Real Estate Brokerage Act* became effective in 1994, although it was passed in 1991. Its basic objective, protecting the public, is still relevant. However, it is now appropriate to update it.

Québec society has changed substantially since 1991:

- Adoption of the *Québec Civil Code*
- Growth in the use of new technologies, in particular the Internet
- Major free trade agreements and economic globalization
- Adoption of the government's regulatory streamlining policy
- The growing importance of personal rights and freedoms

The real estate brokerage sector has also undergone changes, in particular the growing independence of real estate agents.

Revising the *Real Estate Brokerage Act* is a lengthy process.

During 1997, the Association des courtiers et agents immobiliers du Québec (ACAIQ) began revising all the rules regarding real estate brokerage. It consulted its members on the changes to be made to the Act. It also consulted consumer protection organizations and real estate boards, which bring together brokers on a regional basis. After consultation and analysis, the ACAIQ produced a detailed brief called *Fully responsible real estate brokers for greater protection of the public*.

Many organizations, including the Fédération des Chambres immobilières du Québec, also submitted briefs.

I mention these consultations and these briefs to acknowledge the contributions received from many quarters with a view to improving the law regarding real estate brokerage. These efforts were useful and the proposals submitted received serious consideration.

## WORD FROM THE MINISTER

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The preparation and publication of this report are another step towards the revision of the *Real Estate Brokerage Act*. The many proposals it contains focus on two major objectives: protection of the public and regulatory streamlining.

Regulatory streamlining means fewer rules, more flexible rules and rules that are simpler and better presented. This report shows the current government's determination to apply a regulatory streamlining policy.

In the interests of streamlining real estate brokerage regulatory structures, the report presents a new possibility in this regard: replacement of the ACAIQ with the Bureau du courtage immobilier, a body half-way between a self-regulatory body and a government body. In addition, the government will examine the possibility of making agents and brokers subject to the Professional Code and assigning oversight of this professional order to the Office des professions du Québec.

I expect real estate agents and brokers as well as the public to discuss the mode of regulation and advise me of their preference. I believe the public will be well protected, whether the existing self-regulatory structure or another is maintained or whether the decision is to opt for a hybrid non-governmental regulatory body, the Bureau du courtage immobilier.

In my view, the proposals in this report strike a fair balance between the protection of the public and regulatory streamlining. I also believe that they satisfy the needs of the public, brokers and regulatory and oversight organization, while respecting the purpose of real estate boards and educational institutions.

YVES SÉGUIN  
Minister of Finance

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# TABLE OF CONTENTS

Word from the Minister .....	v
Introduction .....	1
<b>CHAPTER 1</b>	
<b>THE REAL ESTATE BROKERAGE FIELD</b>	
<b>1.1. THE PERSONS AND ORGANIZATIONS CONCERNED .....</b>	<b>3</b>
The public .....	3
Real estate brokerage firms .....	3
Individual brokers and agents .....	4
Real estate franchisers .....	5
Real estate boards .....	5
Educational institutions .....	6
The Association des courtiers et agents immobiliers du Québec .....	6
The Fonds d'indemnisation du courtage immobilier .....	7
The Registraire des entreprises .....	8
The government .....	8
The Minister of Finance .....	8
<b>1.2. A CHANGING FIELD .....</b>	<b>8</b>
Agent independence .....	8
The role of the adviser .....	9
<b>CHAPTER 2</b>	
<b>ORIENTATIONS UNDER CONSIDERATION</b>	
<b>2.1. THE REGULATORY STRUCTURE FOR REAL ESTATE BROKERAGE .....</b>	<b>10</b>
The current situation .....	10
Problems regarding regulation .....	11
Options .....	11
<i>Option one: the Bureau du courtage         immobilier, a hybrid non-governmental regulatory body</i> .....	12
<i>Option two: improve the status quo</i> .....	18
<b>2.2. FIELD OF APPLICATION OF THE ACT .....</b>	<b>20</b>
<b>2.3. REAL ESTATE AGENCIES .....</b>	<b>21</b>
The notion of real estate agency .....	21
Obligations of agencies .....	22



## TABLE OF CONTENTS

---

<b>2.4. BROKERS</b>	<b>23</b>
Elimination of the title “agent”	23
Independence of agents	24
Training	25
Permit	26
Novice brokers	28
Brokers representing an agency	28
Representations and advertising	28
Prohibited activities	29
Conflicts of interest	30
<b>2.5. REAL ESTATE FRANCHISERS</b>	<b>30</b>
<b>2.6. INSPECTION AND DISCIPLINE</b>	<b>31</b>
Inspection	31
Syndic	32
Discipline committee	32
<b>2.7. REGULARORY POWERS OF THE ACIQ OR THE BUREAU</b>	<b>33</b>
<b>2.8. RULES CONCERNING CONTRACTS</b>	<b>34</b>
Use of new technologies by the ACIQ or the Bureau	34
Standard contracts and forms	35
Brokerage contract for selling a residential property	36
<b>2.9. THE FONDS D’INDEMNISATION DU COURTAGE IMMOBILIER</b>	<b>38</b>
Nature and mission of the Fonds d’indemnisation	38
Contributions to the Fonds d’indemnisation	41
<b>CHAPTER 3 MAKING AGENTS AND BROKERS SUBJECT TO THE PROFESSIONAL CODE</b>	<b>42</b>
<b>Conclusion</b>	<b>43</b>
<b>Appendix 1 – List of proposals</b>	<b>45</b>

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## INTRODUCTION

In Québec, the *Real Estate Brokerage Act* (the Act) and its regulations govern the activity of real estate brokerage. Any person wishing to exercise this activity or use the title real estate broker or real estate agent must hold a certificate issued by the Association des courtiers et agents immobiliers du Québec (ACAIQ).

The chief purpose of this “*Report on the Application of the Real Estate Brokerage Act*” (the Report) is to describe and justify the main changes that should be made to the Act. It should be noted that many issues raised in the briefs submitted by organizations are not settled here since they will be by regulation.

The basic objectives of the legislative revision are to protect the public and streamline regulation.

Regarding the first objective, some of the Report’s proposals are designed to bolster the transparency that must characterize relations between brokers or brokerage firms and the public. Accordingly, they stipulate ways, regarding advertising, to strengthen the general rule that the public must not be misled.

As for the regulatory streamlining objective, some of the Report’s proposals call for eliminating legislative provisions that hamper the development of the practice of real estate brokerage activities. Accordingly, the Report proposes eliminating the requirement that agents must represent a brokerage firm, subject to satisfying qualification requirements. Other proposals, were they to be incorporated into the Act, would allow shifting many rules from the Act to a more appropriate normative vehicle, such as the Act’s regulations.

The possibility of transforming the Association des courtiers et agents immobiliers du Québec (self-regulatory body) into a real estate brokerage regulatory body (the Bureau du courtage immobilier) is mentioned chiefly with a view to the regulatory streamlining objective.

REPORT ON THE APPLICATION OF  
THE *REAL ESTATE BROKERAGE ACT*

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## **THE REAL ESTATE BROKERAGE FIELD**

Most real estate transactions are quite important because they involve buying or selling a house, an asset that is often the largest component of an individual's wealth. Similarly, the purchase or sale of a building is generally a major economic operation for a business. Hence the importance of the role of real estate agents and brokers.

Every transaction has indirect economic effects. For instance, the buyer is likely to apply to a financial institution for a loan and to do business with a variety of persons, including a real estate agent or broker, a notary, an appraiser and building inspector. In April 2003, the incidental expenses of each transaction were estimated at an average of \$16 590<sup>1</sup> in the residential sector. In all, these incidental expenses total more than a billion dollars annually.<sup>2</sup>

### **1.1. THE PERSONS AND ORGANIZATIONS CONCERNED**

#### **The public**

The public concerned by real estate brokerage are individuals (consumers) and firms, and their protection is the essential purpose of the *Real Estate Brokerage Act*. That is also the chief mission of the Association des courtiers et agents immobiliers du Québec (ACAIQ).

To protect consumers more particularly, the Act stipulates rules regarding the brokerage contract for selling a house. They are similar to certain rules of the *Consumer Protection Act*.

#### **Real estate brokerage firms**

As at March 31, 2003, there were 1 566 real estate brokerage firms holding a certified real estate broker certificate. These firms were legal persons, partnerships lacking legal personality and natural persons (total of 483 natural persons). These firms were represented by a grand total of 10 250 natural persons holding a real estate agent's certificate and 77 natural persons holding an affiliated real estate agent's certificate.

Also as at March 31, 2003, a total of 1 140 certified real estate brokers did not exercise their activities under a franchiser's name (under a "banner"). These brokers were represented by 2 933 real estate agents and 15 affiliated real estate brokers. This means that only 426 real estate brokerage firms

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<sup>1</sup> Economic study by Clayton Research for the Greater Montréal Real Estate Board. The amount of \$16 590 relates to an average transaction conducted through a multiple listing service of a real estate board.

<sup>2</sup> Id.

used the name of a franchiser at that time. However, the latter have the largest number of agents representing them, as shown in Table 2 below in the subdivision on real estate franchisers.

### **Individual brokers and agents**

Individuals who carry out real estate brokerage activities are divided into two groups: real estate brokers and real estate agents. Corporations and legal persons are necessarily brokers while natural persons can be either agents or brokers.

Two groups of individuals are real estate brokers: affiliated real estate brokers and certified real estate brokers. Affiliated brokers represent either a broker or a multidisciplinary firm covered by the *Act respecting the distribution of financial products and services*.

By regulation, there are two categories of real estate agents: affiliated real estate agents and certified real estate agents. Both act for a brokerage firm: they represent it. The certified agent has more extensive training than an affiliated agent and has more experience (at least three years). However, they both have the same obligations to the public.

All real estate brokers and real estate agents must be members of the ACAIQ.

**Table 1**  
**Number of natural persons who were real estate agents or brokers,  
as at March 31, 2003**

<b>REAL ESTATE AGENTS AND BROKERS</b>	<b>NUMBER</b>
Certified real estate agents	2 120
Affiliated real estate agents	8 130
Certified real estate brokers (individuals) *	483
Affiliated real estate brokers	77
<b>Total</b>	<b>10 810</b>

\* These brokers can be represented by real estate agents or affiliated real estate brokers.

### **Real estate franchisers**

Real estate franchisers do not exercise real estate agent or broker activity, nor do they use the title. Accordingly, they are not governed by the Act. Franchisers grant another person the right to carry on its business using their

name or their trademark in accordance with certain conditions. The person or partnership that holds this right in the real estate brokerage field is the franchised broker. Franchisers often offer services to their franchisees, including advertising services.

In Québec, Re/Max had granted the most franchises as at March 31, 2003.

**Table 2**  
**Breakdown of affiliated real estate brokers and real estate agents,**  
**by franchiser, if any, as at March 31, 2003**

	<b>Number of real estate brokers (brokerage firms)</b>	<b>Number of affiliated or certified real estate agents representing them</b>	<b>Number of affiliated real estate brokers</b>
<b>Non-franchised brokers</b>	1 140	2 933	15
<b>FRANCHISERS:</b>			
<b>Century 21</b>	25	583	3
<b>Sutton Group</b>	45	1 762	15
<b>La Capitale</b>	53	872	9
<b>Le Permanent</b>	2	9	1
<b>Re/Max</b>	186	2 434	27
<b>Royal LePage</b>	50	1 223	3
<b>Trans-Action</b>	58	347	4
<b>Exit</b>	7	87	0
<b>Total</b>	<b>1 566</b>	<b>10 250</b>	<b>77</b>

### **Real estate boards**

There are twelve real estate boards in Québec. They are represented by the Fédération des Chambres immobilières du Québec. Each board defends and promotes the socio-economic interests of its members.

The boards have a total membership of roughly 8 700. Almost all the brokers and agents acting as intermediaries for the sale of residential buildings are members of a board. Membership enables them to use the multiple listing service (M.L.S.) or a similar service. In this way, the broker or agent can make available to his colleagues relevant information on his clients' properties, thus facilitating their sale.

## **Educational institutions**

Training for becoming a real estate agent or real estate broker is given by college-level institutions.

The Greater Montréal Real Estate Board operates a college, namely the Collège de l'immobilier du Québec, that provides training in real estate.

A new college was recently formed. This is the Collège de l'enseignement immobilier whose major shareholder is the franchiser Re/Max.

## **The Association des courtiers et agents immobiliers du Québec**

The Association des courtiers et agents immobiliers du Québec was constituted by the Act. Its chief mission is to protect the public. It ensures that brokers and agents, who are necessarily members, comply with the Act and the regulations, in particular through inspections. It can also provide continuing education courses.

The ACAIQ is governed by an eleven-member board of directors, nine of whom are elected by members of the ACAIQ. The other two directors are appointed by the Minister of Finance. The ACAIQ is a private legal person.

ACAIQ members elect the chairman of the board of directors. In practice, the ACAIQ also has a CEO who runs its operations.

The ACAIQ has a regulatory power, like the government, but which is divided between its board of directors and its meeting of members. All the regulations of the ACAIQ are subject to the government's approval.

The ACAIQ oversees protection of the public in particular by ensuring that the activities of brokers and agents comply with the Act and the regulations (inspection and discipline). In 2002, 434 brokers were inspected.<sup>3</sup>

The ACAIQ also encompasses a syndic and a discipline committee.

The discipline committee had 60 active complaint files as at January 1, 2002. During 2002, 63 new files were added. However, by December 31, 2002, only 49 files remained active. The great majority of complaints were submitted by the syndic or the assistant syndic; exceptionally, some were submitted by individuals from the public.<sup>4</sup> A complaint may include more than one charge. Complaints submitted in 2002 included a total of 187 charges. Almost all the charges involved breaches of the code of ethics or the *Regulation of the Association des courtiers et agents immobiliers du Québec*. In 2002, the

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<sup>3</sup> ACAIQ, 2002 annual report, p. 17.

<sup>4</sup> Id., p. 12.

discipline committee ruled as follows on the charges concerned: 117 findings of guilty and 8 findings of not guilty.<sup>5</sup>

Recognizing among other things that protection of the public depends on the skill of brokers and agents, the ACAIQ offers training activities on a regular basis. In 2002, roughly 8 500 people registered for any one of the 230 training activities.

At the end of 2002, the *Act respecting the Agence nationale d'encadrement du secteur financier* transferred regulation and oversight of mortgage lending brokerage to the Agence nationale d'encadrement du secteur financier. Accordingly, once the relevant provisions are in effect, i.e. as of January 1, 2005, the ACAIQ will no longer regulate or oversee this activity of the financial services sector.

### **The Fonds d'indemnisation du courtage immobilier**

The Fonds d'indemnisation du courtage immobilier was constituted in 1985 under the former *Real Estate Brokerage Act*. It is a public legal person since the government appoints all its directors.

The first paragraph of section 55 of the Act specifies its mission as follows:

The purpose of the fund is to administer the sums of money deposited into it to guarantee any liability that may be incurred by a broker or agent owing to fraud, a dishonest transaction, or the misappropriation of funds or other property which, under this Act, must be deposited in a trust account.

The government determines by regulation the conditions of admissibility of claims submitted to the Fonds, the maximum amount of compensation and the contributions that agents and brokers must pay. The maximum amount the Fonds can pay for a single claim is currently \$15 000.

The Fonds passes by-laws that are subject to the government's approval.

During 2001, two cases gave rise to compensation awards for a total of \$30 000. In 2002, two claimants were awarded compensation totalling \$7 250.

As at January 1, 2002, 32 compensation files were under consideration. The Fonds received 17 new compensation claims in 2002. As at December 31, 2002, only six cases remained unresolved.<sup>6</sup>

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<sup>5</sup> Id., p. 13.

<sup>6</sup> Fonds d'indemnisation du courtage immobilier, 2002 activity report, p. 3.



## **The Registraire des entreprises**

Administration of the Act is the responsibility of the Registraire des entreprises, which took the place of the Inspector General of Financial Institutions on February 1, 2004. This organization has an inspection and investigation power regarding the ACAIQ. It ensures that it conducts itself in compliance with the Act and the regulations.

## **The government**

The government has power to regulate over a wide range of matters, in particular the qualifications required to become a real estate agent or real estate broker.

In addition, the government approves the regulations of the ACAIQ. It also has the power to require the ACAIQ to adopt regulations if it considers it necessary.

Furthermore, the government has the power to appoint two members to the board of directors of the ACAIQ. It also appoints the seven directors of the Fonds d'indemnisation du courtage immobilier, of whom four are selected from among agents and brokers, after consultation with the ACAIQ.

## **The Minister of Finance**

The government has designated the Minister of Finance as responsible for the application of the *Real Estate Brokerage Act*. This means that he is responsible for the Act before the National Assembly. He is also responsible for submitting draft amendments to the Act to the National Assembly.

The Act stipulates that the Minister must periodically submit a report to the government on whether it is appropriate to maintain the Act in force or amend it.

## **1.2. A CHANGING FIELD**

### **Agent independence**

The existing legislation stipulates that real estate agents must be employed by a brokerage firm or be authorized to act for them. Today there are almost no salaried agents; instead, almost all are authorized to act on behalf of a brokerage firm. These agents remain subject to the obligation to report to the establishment of the firm, which is supposed to supervise their activities. The brokerage firm is responsible for the brokerage acts of its representatives.

Real estate brokerage practice has developed in a way that firms now allow their agents a great deal of independence. This change was initiated by brokerage firms operating under the banner of a real estate franchiser.

### **The role of adviser**

New technology (Internet, email) makes remote communications, data transmission and conclusion of contracts much easier. These technologies have the potential to revolutionize real estate brokerage practice. Previously, a person wishing to sell his house generally needed a broker to advertise it. People looking to buy a house also appreciated doing business with an agent or broker to readily obtain information on most houses for sale in a region or a city.

With new technology, a person wishing to sell his home has a number of ways to advertise it. And a person looking to buy a house can find an incredible amount of relevant information on the Internet.

However, buying or selling real estate remains an extremely important contract. Accordingly, the public still frequently turns to agents and brokers to ensure that the real estate transaction is carried out safely. Agents and brokers can therefore rely on their expertise to meet the needs of the public.

## **ORIENTATIONS UNDER CONSIDERATION**

### ***2.1. THE REGULATORY STRUCTURE FOR REAL ESTATE BROKERAGE***

#### **The current situation**

Briefly, the current regulatory system for real estate brokerage is as follows.

The ACAIQ, as its name indicates, is an association of members. The Act stipulates that “the primary role of the Association is to ensure the protection of the public by the enforcement of rules of professional ethics and the professional inspection of its members, and in particular by seeing to it that its members pursue their activities in accordance with the Act and the regulations” (s. 66). The government appoints two of the eleven directors of the ACAIQ. The nine others are elected by agents and brokers. These agents and brokers elect the chairman of the board of directors. The board of the ACAIQ has regulatory power over a wide range of matters.

The meeting of members has regulatory power regarding the rules of professional ethics, fees payable for issuing the certificate and specialist titles. All the regulations of the ACAIQ are subject to the government’s approval.

The Registraire des entreprises is charged with administering the *Real Estate Brokerage Act* although in fact, the ACAIQ administers the legislation on a day-to-day basis. The Registraire des entreprises supervises the ACAIQ because the latter is a self-regulatory body. By comparison, professional orders are supervised by the Office des professions du Québec. The Registraire des entreprises has the power to inspect the ACAIQ. It also has the power to exercise the powers of the ACAIQ if it considers that the latter is neglecting to fulfil its duties.

The purpose of the Fonds d’indemnisation du courtage immobilier is to administer “the sums of money deposited into it to guarantee any liability that may be incurred by a broker or agent owing to fraud, a dishonest transaction, or the misappropriation of funds or other property which, under this Act, must be deposited in a trust account” (s. 55). The Fonds is a legal person all of whose directors are appointed by the government. Accordingly, it is a public legal person, a government organization.

The government has regulatory power over a wide range of matters, including the qualifications required to become a real estate agent or real estate broker. It controls the regulations of the ACAIQ since they are submitted to its approval. In addition, the government has the power to force the ACAIQ to adopt regulations should it consider necessary to do so.

The Minister of Finance is essentially charged with the application of the Act.

In short, the current regulatory structure involves six authorities:

1. The Registraire des entreprises;
2. The board of directors of the ACAIQ;
3. The meeting of members of the ACAIQ;
4. The Fonds d'indemnisation du courtage immobilier;
5. The government;
6. The Minister of Finance.

## **Problems regarding regulation**

The real estate brokerage regulatory system is cumbersome and complex:

- A large number of authorities that can pass regulations: the board of directors of the ACAIQ, the meeting of members of the ACAIQ and the government.
- Supervision of the ACAIQ by the Registraire des entreprises and, for regulations of the ACAIQ, by the government.
- Existence of a separate legal person to compensate the public in the event of fraud or dishonest practice: the Fonds d'indemnisation du courtage immobilier, all of whose directors are appointed by the government.
- The internal by-laws of the Fonds d'indemnisation du courtage immobilier are subject to the government's approval.

In addition, the activities of the ACAIQ overlap with those of the real estate boards or of the Federation that represents them, especially regarding training activities.

## **Options**

In practice, while other options can be considered, such as the creation of a public regulatory body for instance, the following options are the most realistic because they maintain the industry's participation in its regulation:

1. Replace the ACAIQ with a hybrid non-governmental regulatory body, the Bureau du courtage immobilier.
2. Maintain the existing self-regulatory body with certain changes.

The government prefers the first option because of the regulatory streamlining it would afford, but it has no objection to the second if it is preferred by the industry and consumers, in spite of the resulting costs, because public protection would be adequate in both cases. It should also be noted that with either of these options, it would be possible to maintain most of the other measures proposed in the other subdivisions of this report, with the necessary adaptations.

***Option one: the Bureau du courtage immobilier, a hybrid non-governmental regulatory body***

**- Regulatory streamlining**

To streamline regulation while protecting the public, an option is submitted even though it was not proposed by any organization submitting a brief to the Minister.

The existing real estate brokerage regulatory structure could be substantially simplified by creating a hybrid private-public regulatory body: the Bureau du courtage immobilier (the Bureau). Its board of directors would consist of an equal number of brokers and of persons appointed by the Minister of Finance; and all these persons would have to appoint another director who is not a broker.

As pointed out below, the discipline committee would remain under the control of brokers so that a broker accused of a violation would continue to be judged by his peers.

Under this proposal, there would be no need for an authority like the Registraire des entreprises to supervise the Bureau, which would become solely responsible for administering the Act.

Accordingly the ACAIQ, which is a self-regulatory body, could be transformed into a regulatory body for the real estate brokerage sector. In other words, the nature of the ACAIQ could be changed so that it more closely resembles a governmental regulatory body charged with administering the Act, with a view to the protection of the public, without necessarily being a public body. Here are the main reasons:

- To focus the organization's mission more narrowly on its objective of protecting the public. This would make it possible to better define the role of the regulatory body. The role of defending the interests of agents and brokers would clearly be left to the associations formed for that purpose. Currently, the interests of agents and brokers are defended and promoted by associations such as real estate boards and the Fédération to which they belong.
- To streamline and simplify government supervision of the new organization.
- To confer on the new organization all the regulatory powers currently exercised either by the government or by the meeting of members of the ACAIQ.
- To confer on the new organization the current powers of the Fonds d'indemnisation du courtage immobilier.
- To confer on the new organization certain other powers that currently reside in the government.

- To better separate the rules that should be found in the Act from those that instead should be stipulated either by regulation or in the by-laws of the regulatory body.
- In short, to streamline and simplify the regulation of real estate brokerage in Québec.

- **Influence and expertise of agents and brokers**

On the surface, by replacing a self-regulatory body (ACAIQ) with a hybrid regulatory body (the Bureau), some might think that agents and brokers would lose power regarding the regulation of their industry because they would no longer legally control their organization. In practice, that would not be the case, chiefly for the following reasons:

- The presence of brokers would be guaranteed on the board of directors where they would hold almost 50% of the seats.
- Currently, regulatory power is exercised in part by the government. Under the proposed system, the Bureau would exercise all regulatory powers, subject naturally to the government's approval, as is the case for other regulatory bodies in Québec.
- Currently, the Registraire des entreprises is officially responsible for the administration of the Act. It must approve the exams that the ACAIQ imposes on agents and brokers. The Registraire des entreprises may also inspect the ACAIQ when it considers it appropriate and demand that it take the corrective measures it also considers appropriate. Accordingly, in practice, the ACAIQ plays an important but limited role in the administration of the Act. Under this option, the Registraire des entreprises would no longer be involved.
- The discipline committee would remain controlled by brokers. Accordingly, a broker accused of violating the Act or its regulations would continue to be judged by other brokers.

While brokers would not have legal control of the board of directors under the "Bureau du courtage immobilier" option, the regulatory body would gain, on the whole, more independence or freedom of action regarding regulation. Unlike the current situation, the Bureau would be solely responsible for the administration of the Act.

- **Protection of the public**

On the other hand, some might think that the government would be neglecting protection of the public interest by no longer subjecting the organization to the supervision of the Registraire des entreprises. Such is not the case chiefly for the following reasons:

- The public interest would be safeguarded by the very composition of the board of directors: the majority of directors (6 out of 11) would be neither agents nor brokers.
- Supervision and control powers currently held by the Registraire des entreprises regarding the ACAIQ, like the power of investigation, would be transferred to the government. Accordingly, for serious reasons or in specific circumstances, the government could intervene in the affairs of the Bureau, as is currently the case for other regulatory bodies. In addition, the government would exercise control over the approval of regulations of the Bureau, as is currently the case for regulations passed by the ACAIQ.
- While the compensation fund would be administered by the Bureau, as proposed in a subsequent subdivision, the composition of the compensation committee would be determined by regulation of the Bureau, which would be subject to the government's approval.

In practice, there is no systematic conflict between the public interest and the private interests of brokers. Everybody wins when brokerage activities are carried out honestly and skilfully.

- **Independence and responsibility of the Bureau**

It must be understood that the power to regulate persons or an activity is a state responsibility. However, the state can delegate this power. When this power is delegated to an organization that is legally controlled by persons who are subject to regulation, it is called a self-regulatory body. In that case, the state must ensure that the self-regulatory body actually exercises its powers in the public interest and not in the private interest of its members. Accordingly, the supervisor of the ACAIQ is currently the Registraire des entreprises. By comparison, the supervisor of professional orders (self-regulatory bodies) is the Office des professions du Québec.

For a regulatory body not to require this kind of supervision, it must not be legally controlled by persons (e.g.: agents and brokers) who belong to the category of persons subject to the regulation. This is a necessary requirement to avoid regularly falling into uncontrolled situations of conflict of interest or at least the appearance of conflict of interest.

Option one is accordingly a “structural” reconciliation of private and public interests with a view to achieving significant regulatory streamlining. As far as possible it maintains the place of agents and brokers within the new regulatory body. In this sense, it preserves the self-regulating spirit while conferring the administration of the Act to a non-governmental and fully responsible hybrid regulatory body.

***Measures relating to option one (the Bureau du courtage immobilier)***

**- Nature, name and mission of the Bureau**

Under this option, the very nature of the ACAIQ would change.

**It is proposed that:**

- 1.1. The ACAIQ, an association of members, be replaced with a hybrid regulatory body, i.e. an organization that is neither governmental (the Minister appoints a minority of directors) nor self-regulatory (a minority of directors are brokers).
- 1.2. Consequently, the notion of members and that of meeting of members be eliminated.
- 1.3. The name “Association des courtiers et agents immobiliers du Québec” be replaced with that of “Bureau du courtage immobilier”.
- 1.4. The mission of the Bureau consist in protecting the public in the field of real estate brokerage.
- 1.5. The Bureau be responsible for the administration of the Act.

**- The board of directors of the Bureau**

To make the Bureau an organization mid-way between a government organization and a self-regulatory body, the Minister would appoint more members to the board of directors, but not a majority.

Whether appointed or elected, directors must act prudently and honestly to carry out the mission of the Bureau: protection of the public.

Accordingly, the Bureau would resemble a government regulatory body, with respect to protection of the public, but without necessarily being a public organization.

**It is proposed that:**

- 2.1. The board of directors of the Bureau du courtage immobilier consist of eleven directors.



- 2.2. The number of directors appointed by the government authority and having no ties to the real estate brokerage industry be raised from two to five.
- 2.3. These five directors be appointed by the Minister, not by the government.
- 2.4. Brokers must elect from among themselves five other directors according to terms and conditions determined by regulation of the Bureau.
- 2.5. A person shall not be elected a director or remain so if he holds a position as a director or manager with a real estate franchiser or a position as a director or manager in an association or a firm that defends the interests of real estate agencies (real estate brokerage firms), real estate franchisers or brokers, or a paid position within the Bureau.
- 2.6. The Bureau be granted the power to stipulate, by regulation, the terms and conditions of election by brokers of the five directors and the rules to ensure fair representation of brokers, including, if applicable, the possibility for brokers of a territory to elect a set number of directors and rules to ensure that directors do not use the same franchise.
- 2.7. The directors appointed by the Minister and those elected by brokers must, at a meeting, elect an eleventh director (an independent person) by a majority of at least two thirds of the votes cast.
- 2.8. The eleventh director shall not possess or have possessed interests in a real estate brokerage firm, or be or have been an agent or broker or work or have previously worked in another capacity in the real estate brokerage field.

- **Powers of the Bureau**

It would be appropriate to grant the Bureau new responsibilities regarding public assistance, like those granted to the Autorité des marchés financiers.

Furthermore, for practical reasons, the extent to which it can offer training should be clarified.

**It is proposed that:**

- 3.1. The Bureau receive complaints filed in the real estate brokerage field, unless they concern disputes between real estate agencies or real estate brokers regarding the sharing of compensation.
- 3.2. The Bureau must act as conciliator or mediator if the interested parties so wish, except for disputes between real estate agencies or real estate brokers regarding the sharing of compensation.
- 3.3. The Bureau act as an information and reference centre.
- 3.4. The Bureau du courtage immobilier may not provide training other than compulsory additional training if it is not otherwise available.
- 3.5. The Bureau may, by petition, apply to a judge of the Superior Court to issue an injunction in any matter relating to the Act or its regulations.

**- Government supervision of the Bureau**

The Act already stipulates that the government shall approve with or without amendment every regulation submitted for its approval. The Act also stipulates that the government may force the ACAIQ to pass a regulation.

Currently, the self-regulatory body (ACAIQ) is answerable to two authorities: the government and the Registraire des entreprises.

Many oversight and control functions of the Registraire des entreprises are justified by the fact that the ACAIQ is an association controlled by agents and brokers. However, were the ACAIQ to be transformed into an organization of a nature approaching that of a government organization, oversight by a supervisor would no longer be necessary. That would help simplify regulatory structures.

In practice, the result would be a more independent regulatory and oversight body that is fully responsible and accountable to the Minister.

**It is proposed that:**

- 4.1. In principle, the supervisory powers of the Registraire des entreprises over the ACAIQ, in particular its power of inspection, be transferred to the Minister.
- 4.2. The government approve with or without addition or amendment the regulations of the Bureau du courtage immobilier.

**4.3.** The admission exam of agents and brokers no longer be approved by a government authority.

***Option two: improve the status quo***

Option two for regulating real estate brokerage involves maintaining the current regulatory structure, but with improvements. For instance, many of the government's regulatory powers would be transferred to the board of directors of the ACAIQ, subject naturally to the government's approval.

Under this option, the various components of the existing regulatory structure would be maintained based on the fact that the ACAIQ is a self-regulatory body the majority of whose directors are agents or brokers. Generally, that also means, among other things, the continuation of a government authority to supervise it such as the Registraire des entreprises at present. This corresponds to the existing situation within professional orders. Professionals are self-regulating, but the self-regulatory bodies, i.e. the professional orders, are supervised by the Office des professions du Québec and, for the majority of regulations, by the government.

Lastly, since the ACAIQ would remain an association of members, a degree of overlapping could remain between its activities and those of organizations whose mission is to defend the interests of brokers and agents.

***Measures relating to option two (improve the status quo)***

**- Name and mission**

In the subdivision entitled "Elimination of the "agent" title", it is proposed that only the "broker" title be retained for natural persons.

**It is proposed that:**

**5.1.** The name of the Association des courtiers et agents immobiliers du Québec be replaced with that of the "Association des courtiers immobiliers du Québec" (the ACIQ).

**5.2.** The mission of the ACIQ consist in protecting the public in the real estate brokerage field.

- **The board of directors of the ACIQ**

Since consideration is being given to transferring to the ACIQ certain regulatory powers currently held by the government, it would be appropriate, in return, to bolster the public's representation on its board of directors.

**It is proposed that:**

- 6.1. The Minister appoint three directors instead of the government appointing two as is currently the case.
- 6.2. No person may be elected or appointed director or remain so if he holds a position as director or manager with an association or a firm that defends the interests of real estate agencies, brokers or franchisers, or a paid position with the ACIQ.

- **Powers of the ACIQ**

The degree to which the ACIQ can offer training should be clarified.

The ACIQ should be given certain new responsibilities regarding assistance to the public, like those granted to the Autorité des marchés financiers.

**It is proposed that:**

- 7.1. The ACIQ not be allowed to provide basic training.
- 7.2. The ACIQ not be allowed to provide training that is essentially of private interest for brokers.
- 7.3. The ACIQ must act as conciliator or mediator if the interested parties so wish, except for disputes between agencies or brokers regarding the sharing of compensation.
- 7.4. The ACIQ may, by petition, request a judge of the Superior Court to issue an injunction in any matter relating to the Act or its regulations.

- **Government supervision of the ACIQ**

The requirement that the Registraire des entreprises approve the exam to become an agent or broker no longer appears necessary.

**It is proposed that:**

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| <p><b>8.1.</b> The requirement that the exam to become an agent or broker, which is prepared by the ACAIQ, must be approved by the Registraire des entreprises be eliminated.</p> <p><b>8.2.</b> The organization that supervises the ACIQ may order it to revoke its approval of a standard contract or form [see the subdivision on standard contracts and forms below]</p> |
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**2.2. FIELD OF APPLICATION OF THE ACT**

The Act grants real estate brokers an exclusive right of exercise in real estate brokerage to protect the public. The property that is the object of the brokerage act is generally a family residence that, for most individuals, accounts for a large share of their wealth.

However, this reason does not apply in cases where a consumer or a business wishes to conclude a lease contract of a residential or other nature. The stakes are not the same at all.

The same is true in the case of the purchase or sale of a business, when no real property is involved, and in the situation where the real property of the business is not its major asset. In these situations, knowledge of the business world, especially of the activity sector concerned, is more important than knowledge of the real estate sector, which is then of secondary importance.

The Act stipulates that certain persons are exempted from holding a real estate broker's permit. It has proven difficult to stipulate in the Act, clearly and comprehensively, which persons or groups should be exempt under which conditions. Also, exempt persons may commit acts that should not be covered by the exemption.

The two parties interested in a potential contract to purchase real property in Québec are not necessarily residents of Québec. Particularly with regard to this situation, the Act should be sufficiently flexible to allow foreign brokers in particular, whether Canadian or not, to occasionally carry out brokerage acts in Québec without being required to hold a broker's permit, subject to special authorization from the ACIQ or the Bureau.

**Concerning the field of application of the Act, it is proposed that:**

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| <p><b>9.1.</b> Only real estate agencies and real estate brokers may carry out real estate brokerage acts, subject to the exemptions stipulated by regulation and special authorizations.</p> |
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- 9.2. In the case of the purchase or sale, in a single contract, of all the assets of a business, the exclusive right of exercise of brokers and brokerage firms be maintained only if the assets of the business, by value, consist mainly of real property.
- 9.3. Concerning the lease of real property, the exclusive right of exercise of brokers and brokerage firms be maintained when in fact a business is carried on by a person who acts as an intermediary in this field. In other words, as soon as there is a brokerage firm, it is subject to the Act.
- 9.4. The government be granted the regulatory power to exempt, with or without conditions, a category of persons or groups from all or some of the obligations resulting from the Act and its regulations.
- 9.5. The ACIQ or the Bureau du courtage immobilier be granted the regulatory power to determine which brokerage acts, following authorization, may be carried out on a one-time or occasional basis by one or more persons or groups or categories of persons or groups, other than brokers and agencies, as well as the terms and conditions under which such acts may be carried out and the fees payable.

### **2.3. REAL ESTATE AGENCIES**

#### **The notion of real estate agency**

According to the Act, natural persons as well as corporations and legal persons that exercise real estate brokerage activities hold the title of broker. For instance, a legal person that is a broker registered with the ACAIQ can offer its services through a broker who is a natural person, who may be an affiliated broker. This situation may be confusing for the public since it is dealing with a broker (the natural person who represents a brokerage firm) and the brokerage firm itself that, currently, is also a broker.

**Concerning the notion of real estate agency, it is proposed that:**

- 10.1. Partnership and legal persons that want to exercise real estate brokerage activities through a broker be required to obtain a real estate agency permit from the ACIQ or the Bureau.
- 10.2. A natural person who acts through a broker representative be required to obtain a real estate agency permit from the ACIQ or the Bureau.

**10.3.** Real estate agencies be required to have at least one establishment in Québec.

### **Obligations of agencies**

Real estate agencies should assume certain obligations because they act through natural persons who are brokers and agencies are responsible for the brokers actions.

Currently, the Act stipulates that, in some cases, a manager of a brokerage firm must devote himself exclusively to his management duties. In view of the greater independence brokers enjoy, such a rule no longer appears necessary. Rather, this issue comes under the administrative freedom of the brokerage firm. The same is true of the rule concerning the required number of assistant managers per group of agents.

Also, the Act stipulates that the establishment of the real estate brokerage firm is the place where the books of the brokerage firm are kept. This rule appears outmoded particularly because of the possibilities offered by new information and communications technologies.

#### **Concerning the obligations of agencies, it is proposed that:**

- 11.1.** Special obligations be stipulated for real estate agencies in the Act or the regulations, including the obligation to cover the liability of their representatives.
- 11.2.** The rule concerning the exclusivity of management duties for the managers of an agency be eliminated.
- 11.3.** The rule whereby a partnership or a legal person can exercise real estate brokerage activities (obtain a permit) only if it is represented, for the purposes of the Act, by a natural person who devotes himself full-time to the activities of the firm be eliminated.
- 11.4.** The rule concerning the required number of assistant managers per group of agents be eliminated.
- 11.5.** The establishment no longer be tied to the place where the books are kept.
- 11.6.** The ACIQ or the Bureau be granted the regulatory power to stipulate special requirements for persons who manage a real estate agency.

## 2.4. **BROKERS**

### **Elimination of the title “agent”**

The variety of titles currently in use (affiliated broker, certified broker, affiliated agent, certified agent) provides the public with little information on the powers and responsibilities of the agent or broker, though the title “agent” indicates that the person is acting on behalf of somebody else, i.e. a brokerage firm. Indeed, it often happens that the public does not distinguish between a real estate agent and a real estate broker.

As matters currently stand, the agent represents the brokerage firm by offering an intermediation service between two third parties. This notion of intermediation is adequately conveyed by the title “broker”. In the circumstances, it seems more advisable to keep the title that corresponds to the type of relation the agent has with the public: he is an intermediary, a broker.

In practice, the broker must disclose whether he is acting on his own behalf or on behalf of another person or a partnership, i.e. for a real estate agency.

**Table 3**  
**Current titles and proposed titles**

<b>CURRENT TITLES</b>	<b>PROPOSED TITLES</b>
Certified real estate agent	Real estate broker
Affiliated real estate agent	Real estate broker
Certified real estate broker (individual)	Real estate broker Real estate agency*
Certified real estate broker (partnership and legal person)	Real estate agency
Affiliated real estate broker	Real estate broker

\* The holder of a real estate broker permit that has at least one representative will also be required to obtain a real estate agency permit from the ACIQ or the Bureau du courtage immobilier. In this situation, when the broker himself carries out a brokerage act, it will be as a broker, not as a real estate agency.

**Concerning the elimination of the title “agent”, it is proposed that:**

**12.1.** The title “agent” be eliminated.



**12.2.** A single title, “real estate broker”, be retained for natural persons.

### **Independence of agents**

The Act requires that real estate agents work for a brokerage firm. Accordingly, they necessarily are representatives of that firm. However, as mentioned above, more and more agents are acting with considerable independence in relation to the firm they represent.

There is no reason for maintaining different statuses, i.e. agent and broker, for similar functions. These persons are competent to carry out brokerage acts, whether they act on behalf of a real estate agency or not. However, a broker acting on his own behalf must satisfy certain additional obligations requiring additional competences (e.g.: maintaining a trust account, bookkeeping).

In practice, although it is proposed that agents be allowed to exercise on their own behalf, existing brokerage firms should not suffer from a lack of personnel for the following reasons:

- There should be a reasonable interval between the time when the Report is tabled and the effective date of the new provisions.
- The new provisions will not affect contractual relations between brokerage firms and the brokers representing them.
- Many agents will prefer to continue working for a brokerage firm.
- All affiliated agents (roughly 7 600) will not be able to meet the qualification requirements to act as broker on their own behalf at the same time. Many will need additional training to satisfy these conditions.

### **Concerning the independence of agents, it is proposed that:**

**13.1.** Existing affiliated real estate agents, henceforth called real estate brokers, be granted the possibility to act on their own behalf, as real estate brokers provided they satisfy the qualification requirements imposed by the ACIQ or the Bureau du courtage immobilier.

## Training

### - **Basic training**

This subdivision begins by examining the question of basic training for anyone who wishes to become a real estate broker.

Under the current regulation, a candidate for the title of affiliated real estate agent must have a secondary school diploma as a minimum. He must take a number of real estate courses totalling 240 hours to obtain the required attestation of college studies. He must then pass the exam prepared by the ACAIQ.

A candidate for the title of certified real estate agent or real estate broker (certified or affiliated) is in principle a real estate agent with at least three years of experience. He must take additional courses totalling 255 hours and pass the exam prepared by the ACAIQ.

Some briefs proposed strengthening basic training. In a knowledge-based society, this should be considered. However, such a measure should be reasonable and be justified by better protection for the public.

#### **Concerning basic training, it is proposed that:**

**14.1.** The ACIQ or the Bureau du courtage immobilier be granted the power to stipulate, by regulation, the broad objectives and total length of the minimum training required for the purposes of becoming a broker.

### - **Mandatory additional training**

Currently, the discipline committee can require that a broker who is at fault receive additional training.

However, the ACAIQ cannot require brokers or a group of brokers to take certain training even when justified by the circumstances. Accordingly, it would be advisable that the ACIQ or the Bureau du courtage immobilier have such a power to deal with certain problems.

#### **Concerning mandatory additional training, it is proposed that:**

**15.1.** The ACIQ or the Bureau may pass a regulation imposing, in special circumstances, additional training on all or some brokers and stipulating the requirements and conditions of such training.

## Permit

Currently, the Act requires that a person hold a real estate broker certificate to announce himself as such and exercise the activity of real estate broker. The term “permit” would be more appropriate than “certificate” to convey the idea that in a sense it is a privilege. The right to carry out real estate brokerage acts for another person constitutes in principle a right that is exclusive to real estate agents and brokers.

The Act stipulates that the government can determine, by regulation, the qualifications required to hold an agent’s or broker’s certificate. It also stipulates that the board of directors of the ACAIQ must determine by regulation the conditions and details of issue, renewal, suspension, cancellation or reinstatement of a certificate.

The Act stipulates that the bankruptcy of a natural person (an affiliated broker or agent) who represents a partnership or a legal person makes him unfit to represent it until he is discharged. The Act also provides that the certificate of a bankrupt broker ceases to have effect.

Currently, the regulations are relatively rigid regarding the conditions for obtaining and retaining an agent’s or broker’s certificate. The advantage of this is that everyone receives equal treatment. However, it sometimes has the disadvantage of making it impossible to adjust the measure to the severity of the fault.

To apply adequately and fairly, the regulations could handle the following situations regarding the issue or retention of the permit differently:

- The situation in which the ACIQ or the Bureau must refuse to issue a permit or must withdraw it temporarily or permanently. This situation could cover such cases as: non-payment of fees; the fact that a real estate agency no longer has an establishment in Québec; the fact that it has been proven that the permit was obtained fraudulently; the fact that a broker has been placed under tutorship or curatorship.
- The situation in which the ACIQ or the Bureau has discretionary power to issue a permit or not, to issue it with or without conditions or limitations, to withdraw it (temporarily or permanently) or to attach conditions or limitations to it. This situation could cover such cases as: a broker to whom a tribunal has appointed an adviser (form of protection regime for a person of full age); the fact that the broker was found guilty of a crime.
- The situation in which a broker breaches the Act or its regulations and, consequently, among other things, his permit could be withdrawn eventually. Such situations fall under the competence of the discipline committee regarding a broker.

- The situation in which an agency breaches the Act or its regulations. Such situations fall under the competence of the ACIQ or the Bureau.

Accordingly, the regulations could be streamlined as follows. In addition to the compulsory basic qualifications and requirements for obtaining a permit and keeping it, the regulations could stipulate the cases in which the ACIQ or the Bureau would have discretionary power concerning the issue of the permit (with or without conditions or limitations). The ACIQ or the Bureau could also withdraw a permit temporarily or permanently or impose conditions or limitations on the permit. The ACIQ or the Bureau could also adjust the sanction or limitation depending on the severity of the fault, breach or situation concerned. In addition, in some cases, that could give the broker the opportunity to correct his irregular situation (e.g.: pay an amount owing).

By comparison, a discretionary power of this type exists in this regard in the *Professional Code* and in the *Act respecting the distribution of financial products and services*. However, in the interests of regulatory flexibility, it would be preferable that the cases in which such power applies be stipulated in the regulations rather than in the law.

**Concerning the permit, it is proposed that:**

- 16.1.** The notion of certificate be replaced by the notion of permit.
- 16.2.** Such permit be permanent in principle.
- 16.3.** The notions of suspension of certificate and withdrawal of certificate be replaced by the notions of “temporary withdrawal of permit” and “permanent withdrawal of permit”.
- 16.4.** The power to stipulate, by regulation, the basic qualifications or requirements for obtaining and keeping a real estate broker or real estate agency permit and the conditions and details for the issue of the permit be maintained.
- 16.5.** The ACIQ or the Bureau be granted the power to sanction an agency that breaches the Act or the regulations.
- 16.6.** It be determined in the Act that the fines collected from agencies by the ACIQ or the Bureau be paid into a fund for the purpose of educating the public regarding real estate brokerage.
- 16.7.** The obligation that agencies and brokers have liability insurance be maintained.
- 16.8.** The ACIQ or the Bureau be granted the power to stipulate, by regulation, the special situations and conditions in which they have discretionary power to refuse to issue a permit, to issue it with or

without conditions or limitations, to withdraw it (temporarily or permanently) or to attach conditions or limitations to it, subject to the competence of the discipline committee.

### **Novice brokers**

Special requirements must be stipulated for brokers starting their career to ensure adequate protection for the public. Currently, among other things, agents must have worked at least three years for a brokerage firm before becoming a broker and working for themselves.

#### **Concerning novice brokers, it is proposed that:**

**17.1.** Novice brokers be required to work with an agency for the period determined by regulation before being able to work for themselves.

### **Brokers representing an agency**

According to the Act, agents can only exercise their activities for a single real estate brokerage firm. This rule avoids situations that could mislead the public. The public could be confused if a broker could represent many real estate agencies or if he could work for himself and represent a real estate agency at the same time.

#### **Concerning brokers representing an agency, it is proposed that:**

**18.1.** The rule that a broker who represents one real estate agency cannot at the same time represent another agency or work for himself be maintained.

**18.2.** Representatives of real estate agencies be required to represent themselves as such to the public.

### **Representations and advertising**

Protection of the public requires among other things that business relations be truly transparent. More specifically, it is extremely important that people know with whom they are entering into a contract: the broker or the real estate agency. They never enter into a contract with the franchiser. In other

words, the public must know clearly who is responsible for the brokerage act. Advertising and representations must not mislead the public in this regard.

Such transparency among brokers, agencies or franchisers and the public should be bolstered, while granting the ACIQ or the Bureau du courtage immobilier the necessary regulatory flexibility in this matter.

**Concerning representations and advertising, it is proposed that:**

**19.1.** The provisions relating to advertising and representations be replaced by the requirement that brokers and agencies comply with the regulatory provisions concerning representations, advertising and information they provide on properties and made available to the public for brokerage promotion purposes.

**19.2.** The ACIQ or the Bureau be granted the power to determine for brokers and agencies, by regulation, the rules regarding representations, advertising and information on properties made available to the public for brokerage promotion purposes, as well as the relevant criteria on these matters, required disclosure and how to proceed with such disclosure.

**Prohibited activities**

The Act prohibits agents and brokers from acting as insurance representatives, securities representatives, claims adjusters or financial planners. It also prohibits them from exercising the activity of securities dealer or adviser.

These bans should be maintained only if they are genuinely based on an incompatibility of the functions carried out.

The Act as it currently stands grants the government the power to determine, by regulation, the activities that a broker is prohibited from exercising. To date, there is no regulation in this regard. However, such regulatory power is advisable because it is impossible to affirm that there will never be an activity that is incompatible with a broker's functions.

**Concerning prohibited activities, it is proposed that:**

**20.1.** The prohibition in the Act against a real estate broker exercising the activity of insurance representative, securities representative, claims adjuster or financial planner or the activity of securities dealer or adviser not be maintained.

**20.2.** The regulatory power concerning the activities that a real estate broker or real estate agency may not exercise be maintained.

### **Conflicts of interest**

The Act specifically governs remuneration agreements as conflicts of interest. This includes the situation where the broker is remunerated or receives a commission for directing a client to another broker or to a financial institution (for instance, for a loan application). This issue of conflict of interest also concerns gifts that a broker may receive. In this regard, the regulations should be revised on the principle of transparency and take the value of the remuneration at stake into account.

#### **Concerning conflicts of interest, it is proposed that:**

**21.1.** The provisions relating to disclosure requirements and those relating to sharing of compensation be replaced by the general requirement to disclose situations of conflict of interest, in accordance with the requirements specified by regulation.

**21.2.** The ACIQ or the Bureau be granted the power to determine, in the regulations on professional ethics, cases in which a broker or an agency is in a conflict of interest, the criteria and details relating to disclosure, the persons to whom disclosure must be made and the consequences of failure to provide disclosure.

## **2.5. REAL ESTATE FRANCHISERS**

The Act governs advertising by real estate agents and real estate brokers, but not by real estate franchisers. That means that a franchiser's advertising (that benefits its franchisees) is not subject to the same set of rules as advertising made directly by an agent or a broker.

The great majority of persons governed by the Act are currently agents. Most of them work for franchised brokers.

Advertising in the real estate brokerage field must not mislead the public regarding the person he is doing business with. The advertising should make it clear that the broker or real estate agency is solely responsible for its acts, i.e. that the franchiser is not liable. Accordingly, the broker or agency must not use the franchiser's name or trademark in a way that gives the false impression that he is acting on behalf of the franchiser or that the franchiser is in some sense liable, when it is not.

**Concerning real estate franchisers, it is proposed that:**

- 22.1.** The rules relating to advertising regarding real estate brokerage and information on properties made available to the public for brokerage promotion purposes apply to agencies, brokers, franchisers and any other person promoting real estate brokerage services.
- 22.2.** The ACIQ or the Bureau du courtage immobilier be granted regulatory power to stipulate specific rules to control advertising or additional rules for franchisers, franchisees and subfranchisees.
- 22.3.** The ACIQ or the Bureau be granted the power to oversee real estate brokerage advertising and information on properties made available to the public for brokerage promotion purposes.
- 22.4.** The ACIQ or the Bureau may, in cases of violation of the advertising rules, apply for an injunction to stop the distribution of misleading advertising and require the person or group at fault to produce, within a set time and as required by the tribunal, an advertising message designed to correct the earlier misleading advertising.

## **2.6. INSPECTION AND DISCIPLINE**

### **Inspection**

The Act stipulates the formation of an inspection committee within the ACAIQ, a number of housekeeping rules for the committee (composition, expiration of mandate, vacancy, personnel) and the powers of inspectors. In addition, the Act stipulates that if the committee notes an infraction of the Act or its regulations, it must advise the trustee, since the inspection committee's mission is not to oversee the competence of brokers.

Should the Bureau option be adopted, the provisions relating to inspection will have to be adapted.

**Under the ACIQ option, it is proposed that:**

- 23.1.** The existing system be maintained.

**Under the Bureau du courtage immobilier option, it is proposed that:**

- 24.1.** The Bureau have the power to inspect brokers and agencies.



**24.2.** The Bureau have the power to file a complaint with the discipline committee if there are reasons to believe that a broker has violated the Act or its regulations.

## **Syndic**

The Act stipulates that the board of directors appoint a syndic and one or more assistant syndic. It also stipulates rules for their replacement and discharge. If the syndic has reasons to believe that a broker has violated the Act or its regulations, he investigates and, if necessary, files a complaint with the discipline committee.

It seems justified to maintain the syndic in its current form within a self-regulatory body to guarantee independent and impartial decisions. On the other hand, it does not appear necessary to maintain the syndic in a regulatory body such as the Bureau that will have sufficient inspection powers and the independence needed to file complaints with the discipline committee.

### **Under the ACIQ option, it is proposed that:**

**25.1.** The existing system be maintained.

### **Under the Bureau du courtage immobilier option, it is proposed that:**

**26.1.** The syndic not be maintained.

## **Discipline committee**

The discipline committee is seized of any complaint made against a broker. The Act stipulates a number of housekeeping rules (composition of the committee, continued mandate, vacancy, etc.). In addition, the Act refers to a series of sections of the *Professional Code* concerning the introduction and investigation of a complaint and the decisions and sanctions concerning it.

Not all of these rules need to be incorporated into the law. This procedure is cumbersome and complex because it is too judicial. If these rules were not stipulated by law, they could be simplified or improved much more quickly. In short, regulatory streamlining and flexibility are possible by making this disciplinary process less judicial.

However, a person should be clearly subject to all the law applicable to real estate brokers for the period during which he was a broker. Accordingly, a broker must not be allowed to avoid imposition of disciplinary measures by voluntarily abandoning his permit and applying for another one at a later time.

**Concerning the discipline committee, it is proposed that:**

- 27.1. Complaints against brokers be investigated and decided by groups within the discipline committee, a majority of whose members are brokers.
- 27.2. The ACIQ or the Bureau du courtage immobilier be granted the power to stipulate, by regulation, the rules of the discipline committee, including rules on the officers of the committee, replacement of members or their discharge, rules relating to the operation of the committee, the composition of groups, notices to send, the committee's report, its form and content.
- 27.3. The ACIQ or the Bureau be granted the power to adopt, by regulation, rules relating to the introduction and investigation of a complaint before the discipline committee and to the decisions and sanctions concerning it, including the rules applicable in the event that a member of a group ceases to be part of it or becomes unfit or unable to act before the decision is handed down.
- 27.4. The disciplinary process may continue even if the person no longer holds a broker's permit, and that if the disciplinary process is not continued, such process may resume if the person subsequently obtains a new permit.

## **2.7. REGULATORY POWERS OF THE ACIQ OR THE BUREAU**

According to the Act, there are currently three authorities that pass regulations:

- The government
- The board of directors of the ACAIQ
- The meeting of members of the ACAIQ (rules of professional ethics, fees payable and specialist titles)

If the ACAIQ were to be transformed into the Bureau de courtage immobilier, almost all the regulatory powers would be transferred to it, subject to the

government's power of approval. That should make it possible to present regulations more consistently and accessibly, since the rules are too scattered at present. For instance, rules on the conditions for obtaining an agent's or broker's certificate are found in the Act, in the government's regulations, in the general regulations of the ACAIQ and in the regulations of the ACAIQ relating to fees payable.

In view of the regulatory streamlining objective, the Act should maintain or stipulate only those regulatory powers justified by the need for a standard on the subject that should have force of law.

The orientations considered in the Report would require a revision of all regulatory powers covering the regulatory structure of the real estate brokerage sector. Some existing regulatory powers would have to be preserved, others would have to be introduced, while some would have to be eliminated.

**Concerning the regulatory powers of the ACIQ or the Bureau, it is proposed that:**

**Under the ACIQ option:**

**28.1.** The existing regulatory authorities (board of directors of the ACIQ, meeting of members and government) be maintained.

**28.2.** The government be granted regulatory powers only in relation to the Fonds d'indemnisation du courtage immobilier and exemptions (persons wholly or partially exempt from the application of the Act).

**Under the Bureau du courtage immobilier option:**

**28.3.** All regulatory powers, except the one relating to exemptions, be transferred to the Bureau, subject to the government's approval.

## **2.8. RULES CONCERNING CONTRACTS**

### **Use of new technologies by the ACIQ or the Bureau**

In practice, the ACAIQ website makes all kinds of information on real estate brokerage available to brokers and the public.

The law should allow the broadest possible use of new information and communications technologies, particularly the Internet.

In addition, thanks to new technologies, contracts and relations between persons can occur remotely, and thus more easily and quickly.

It has been proposed that the Bureau act as an information and reference centre. The Internet is a remarkable tool for making available to the public the main information that may be of interest regarding real estate brokerage.

**Concerning the use of new technologies by the ACIQ or the Bureau, it is proposed that:**

**29.1.** The ACIQ or the Bureau du courtage immobilier as well as the persons and organizations governed by the Act be allowed to use new technologies to execute their rights and obligations, provided the following conditions are satisfied:

1. The rules of the *Act to establish a legal framework for information technology* are observed, particularly those relating to the integrity of the document;
2. It is possible to conserve the document and, if desired, print it.

## **Standard contracts and forms**

According to the Act, the government can determine by regulation which forms are compulsory. The main forms relate to the offer to purchase and the brokerage contract. The ACAIQ must also determine by regulation the content, form and use of the compulsory forms designated by government regulation. The regulations of the ACAIQ are subject to the government's approval.

Concerning standard contracts and forms, it has been suggested to the Minister that the ACIQ or the Bureau be allowed to adopt and change them without being subject to the regulatory process, which is seen as rather cumbersome. That would enable the ACIQ or the Bureau to change them quickly, among other things to adapt them new real estate brokerage practices and to improve them.

Since standard contracts and forms are compulsory, they are subject to the regulatory process. How can this process be avoided while at the same time pursuing the objectives of regulatory streamlining and protection of the public?

Furthermore, how can the use of these standard contracts and forms be encouraged if they are no longer compulsory? Note that prior to 1994 the

equivalent forms were not compulsory, but were used nonetheless in the great majority of cases.

If standard contracts and forms were no longer compulsory, the regulations could require that notices such as those below be prominently displayed:

This standard contract has been approved by the Association des courtiers immobiliers du Québec (the Bureau du courtage immobilier). This approval is valid until...

This contract has not been approved by the Association des courtiers immobiliers du Québec (the Bureau du courtage immobilier). You would be wise to consult a lawyer or notary.

The proposals mentioned below seek to reconcile as much as possible the objective of protecting the public with that of regulatory streamlining.

In addition, it seems advisable to maintain a degree of uniformity of standard contracts and forms.

**Concerning standard contracts and forms, it is proposed that:**

- 30.1.** The ACIQ or the Bureau du courtage immobilier be granted the power to stipulate by regulation, for the contracts and forms it specifies, the notices, stipulations and information that are compulsory, those that are forbidden, the additional optional notices or stipulations and, as applicable, the terms and conditions in all such cases.
- 30.2.** The ACIQ or the Bureau be granted the power to determine by regulation the rules for the form and use of all contracts and forms, or only of those it specifies.
- 30.3.** For the ACIQ option: The organization that oversees the ACIQ be authorized to order it to revoke its approval of a standard contract or form.

**Brokerage contract for selling a residential property**

- Existing situation

The Act contains many rules concerning the contract between a natural person and a broker under which the broker undertakes to act as intermediary for the sale or exchange of a residential property. These rules are modelled on those of the *Consumer Protection Act* and are public in nature. However, these rules do not apply if the client of the broker is a partnership or a legal person.

The government's regulations and those of the ACAIQ also stipulate rules on this contract. Many of these rules are then taken up in brokerage contracts concerning the sale of a mainly residential property (compulsory standard contracts). In short, the rules are scattered and repeated.

- Proposal to place the rules in the regulations

Most of these rules concern the content of the contract. There is no need to keep these rules in the Act, except for the case mentioned below, since the ACIQ or the Bureau would have the power to stipulate, by regulation, for the contracts or forms it specifies, compulsory notices, stipulations and information, those that are forbidden, additional optional notices or stipulations, and the conditions in all such cases. Accordingly, the rules relating to the compulsory content of the contract should instead be stipulated by regulation. Rules stipulating the obligations of brokers could also be stipulated by regulation.

However, the provision allowing the client to rescind the brokerage contract within three days of receiving a copy of the contract should be maintained in the Act. This provision concerns the resolution of the contract, not its actual content. This is an exceptional right that deserves to be conspicuously provided for in the Act.

- Proposal that the rules also apply to businesses

The Act seeks to protect the public, i.e. individuals as well as firms. The protection rules in question, present in both the Act and the regulations, apply only to contracts between an individual and a broker for the sale of a residential property.

Unlike the existing situation, we feel that the rules should apply equally to all, i.e. everyone should benefit equally from the protection of the Act. In Québec, it should be noted, the great majority of firms are small businesses. Many capital stock corporations consist of only one person and many partnerships have just a few people. They do not necessarily have the resources and expertise needed to fully defend their rights and interests themselves. In addition, directors or shareholders are frequently required to provide security for the obligations of their legal person. The non-application of these rules to legal persons seems even less justified when they are associations.

- Proposal to allow brokerage contracts to be concluded remotely

One rule stipulates that the broker must give a copy of the brokerage contract to the natural person who signed it and that this copy must be a paper copy. Accordingly, the brokerage contract cannot be signed electronically and given electronically. The natural person is bound to execute his obligations only as of the time he is in possession of a copy of the contract.

From the outset, it seems strange that the copy of the brokerage contract must be a paper copy while the offer to purchase the property does not, since the offer can be made electronically. Since the offer to purchase by its very nature is much more important than the brokerage contract, there is no reason to ban the electronic remote conclusion of brokerage contracts.

**Concerning the rules relating to the brokerage contract for selling a residential property, it is proposed that:**

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| <p><b>31.1.</b> Rules specific to the brokerage contract concerning the sale or exchange of a residential property no longer be stipulated in the Act but rather by regulation, subject to the stipulation in the Act of the client's right to rescind, within three days, the brokerage contract regarding the sale or exchange of a residential property and subject to the broker's right to demand his remuneration in the circumstances currently stipulated in the Act.</p> <p><b>31.2.</b> Concerning the sale or exchange of a residential property, the protection of the regulations no longer be denied to partnerships and legal persons.</p> <p><b>31.3.</b> The requirement that the copy of the brokerage contract given by the broker to the client be a paper copy be eliminated, subject to the condition that the technology used permits to conserve and print the contract.</p> |
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## **2.9. THE FONDS D'INDEMNISATION DU COURTAGE IMMOBILIER**

### **Nature and mission of the Fonds d'indemnisation**

The Fonds d'indemnisation du courtage immobilier is a legal person. The Act stipulates that the directors of the Fonds are appointed by the government. Accordingly, the Fonds has the status of a government organization; it is a public legal person. The Auditor General audits the books and accounts of the Fonds.

The first paragraph of section 55 of the Act describes the mission of the Fonds as follows:

The purpose of the fund is to administer the sums of money deposited into it to guarantee any liability that may be incurred by a broker or agent owing to fraud, a dishonest transaction, or the misappropriation of funds or other property which, under this Act, must be deposited in a trust account.

The Act also stipulates a number of housekeeping rules of the Fonds. In addition, it decrees that the Fonds adopt by-laws and that they be approved by the government.

Currently, the government determines, by regulation, the most important rules regarding the operation of the Fonds: admissibility conditions of claims, maximum amount of indemnities, contributions, etc.

Under the Bureau du courtage immobilier option, alternatives for regulatory streamlining could be considered:

- Either stipulate that henceforth the Fonds is a private law legal person, by changing how its directors are appointed;
- Or stipulate the dissolution of the Fonds as a legal person and that henceforth it is administered by the Bureau.

Under the first possibility, many rules of the Act concerning this legal person would have to be maintained or amended to reflect the public order nature of the Fonds. New rules would also have to be stipulated concerning the relations between the Bureau and the Fonds. The Bureau would have to be given genuine control over the Fonds: power of inspection, power to demand documents or information, etc.

Under the second possibility, the administration and regulation of the compensation regime would truly be simplified. It would doubtless be possible to administer it more economically. The committee charged with the decision as to whether to compensate or not obviously should have the necessary independence in relation to the rest of the operations of the Bureau. This possibility also has the advantage of allowing efforts to be focused on what is essential, protection of the public and the compensation regime. Note that within professional orders and the financial sector's regulatory structure, administration of the compensation regime is not entrusted to a separate legal person.

Furthermore, a provision stipulates that the Minister may, under conditions stipulated by government regulation, authorize the Fonds to use the interest generated by its funds for purposes relating to the real estate brokerage sector and encouraging protection of the public. Under the principle that the incidental follows the principal, the interest should be used for the same purposes as the funds in question.



**Concerning the nature and mission of the Fonds d'indemnisation, it is proposed that:**

**Under the ACIQ option:**

**32.1.** The rule whereby the Minister may, under conditions stipulated by government regulation, authorize the "Fonds" to use the interest generated by its funds for purposes relating to the real estate brokerage sector and encouraging protection of the public be eliminated.

**Under the Bureau du courtage immobilier option:**

**32.2.** The Fonds d'indemnisation du courtage immobilier (legal person) be dissolved.

**32.3.** The rights and obligations of the Fonds be transferred to the Bureau du courtage immobilier and that the latter replace the Fonds in every respect.

**32.4.** All the funds of the Fonds constitute a separate fund managed by the Bureau.

**32.5.** The other assets of the Fonds become the property of the Bureau and be incorporated into its assets.

**32.6.** The Act stipulate a compensation committee.

**32.7.** The purpose of the compensation committee be to compensate, from the compensation fund, persons and groups harmed by a real estate brokerage or a real estate broker that, in carrying out its functions, committed fraud, acted dishonestly or misappropriated funds or other property that, under the present law, must be deposited in a trust account.

**32.8.** The Bureau be granted the power to stipulate, by regulation, the rules of the compensation committee, including rules on the membership of the committee, the mandate of the members and their replacement or discharge, rules relating to the operation of the committee or notices to be given, its report and its content and form.

**32.9.** The Bureau be granted the power to adopt, by regulation, rules relating to the introduction and investigation of a compensation claim before the compensation committee as well as to the decisions of the committee, including applicable rules in the event that a member of the committee ceases to be a member or becomes unfit or unable to act before the decision is handed down.

**32.10.** The rule whereby the Minister may, under conditions stipulated by government regulation, authorize the “Fonds” to use the interest generated by its funds for purposes relating to the real estate brokerage sector and encouraging protection of the public be eliminated.

### **Contributions to the Fonds d’indemnisation**

The government currently determines, by regulation, the contributions that members of the ACAIQ must pay to the Fonds.

**Concerning contributions to the Fonds d’indemnisation, it is proposed that:**

**33.1.** The Bureau or the government be granted the regulatory power to determine the contribution, including a special contribution if necessary, to be paid to the compensation fund by brokers and agencies, based on the category of permit they hold and according in particular to the date the permit was obtained, and the terms and conditions for payment of contributions.

## **MAKING AGENTS AND BROKERS SUBJECT TO THE PROFESSIONAL CODE**

The Office des professions du Québec already supervises bodies that exercise functions comparable with those of the ACAIQ. Provided they satisfy the criteria stipulated in the Professional Code, real estate agents and brokers could be constituted as a professional order and thus be subject to this code.

However, in the event of such a decision, general partnerships or legal persons in the real estate brokerage field could not become members nor, consequently, be directly regulated by a professional order, which can only include individuals. Accordingly, a separate structure would have to be maintained for such partnerships and legal persons as well as for real estate franchisers.

This option is consistent with the major objective being sought. The basic function of a professional order would be the protection of the public. In addition, application of the option would help simplify the regulatory structure by placing it within a well-established general system. The supervisory power accorded the Office des professions and the government in the professional system would ensure the necessary oversight.

### **Concerning making agents and brokers subject to the Professional Code, it is proposed that:**

<p><b>34.1.</b> The option be examined of requiring real estate agents and brokers to constitute themselves a professional order governed by the Professional Code and of entrusting oversight of such professional order to the Office des professions du Québec.</p>
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## CONCLUSION

The Report mentions the possibility of simplifying regulatory structures by replacing the ACAIQ, which is a self-regulatory body, with a hybrid governmental organization, mid-way between a self-regulatory organization and a governmental organization, that would be charged with administering the Act: the Bureau du courtage immobilier. This option would focus the mission of the organization solely on protection of the public, thus clearly distinguishing it from the mission of associations that defend the interests of brokers. In addition, it would help streamline regulation in many ways, particularly by substantially reducing the number of players in the regulatory system of the real estate brokerage sector. Accordingly, the Registraire des entreprises would not oversee this regulatory body. There would no longer be a meeting of members with regulatory power. The Fonds d'indemnisation du courtage immobilier would disappear as a separate legal person.

However, even though more substantial regulatory streamlining could be achieved under the "Bureau de courtage immobilier" option, maintaining a self-regulatory body is an adequate option for protecting the public and would not prevent implementation of the other measures with the necessary adaptations.

At the same time, the government will examine the possibility of requiring real estate agents and brokers to constitute themselves a professional order.

The other major orientations in the Report are as follows:

- Elimination of the requirement that affiliated agents represent a brokerage firm provided certain requirements are satisfied.
- Simplification in the titles used: real estate brokerages and real estate brokers.

The Report also contains many other measures designed to better protect the public and streamline regulation in the field of real estate brokerage.

Proposals designed to better protect the public include the following in particular:

- The proposal to apply rules relating to real estate advertising to real estate franchisers.
- The proposal allowing the ACIQ or the Bureau, in special circumstances, to adopt a regulation to impose additional training on all or some brokers.

## CONCLUSION

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Regulatory streamlining proposals include the following in particular:

- The proposal to grant the ACIQ or the Bureau du courtage immobilier the power to adopt regulations concerning the introduction and investigation of a complaint before the discipline committee.
- The proposal to ease of the use of new technologies.

In short, the measures of the Report would help to better protect the public and reduce the regulatory burden on those subject to the Act.

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## APPENDIX 1: LIST OF PROPOSALS

### THE REGULATORY STRUCTURE FOR REAL ESTATE BROKERAGE

#### PROPOSALS OF OPTION ONE (BUREAU DU COURTAGE IMMOBILIER)

- 1.1. The ACAIQ, an association of members, be replaced with a hybrid regulatory body, i.e. an organization that is neither governmental (the Minister appoints a minority of directors) nor self-regulatory (a minority of directors are brokers).
- 1.2. Consequently, the notion of members and that of meeting of members be eliminated.
- 1.3. The name “Association des courtiers et agents immobiliers du Québec” be replaced with that of “Bureau du courtage immobilier”.
- 1.4. The mission of the Bureau consist in protecting the public in the field of real estate brokerage.
- 1.5. The Bureau be responsible for the administration of the Act.

- 2.1. The board of directors of the Bureau du courtage immobilier consist of eleven directors.
- 2.2. The number of directors appointed by the government authority and having no ties to the real estate brokerage industry be raised from two to five.
- 2.3. These five directors be appointed by the Minister, not by the government.
- 2.4. Brokers must elect from among themselves five other directors according to terms and conditions determined by regulation of the Bureau.
- 2.5. A person shall not be elected a director or remain so if he holds a position as a director or manager with a real estate franchiser or a position as a director or manager in an association or a firm that defends the interests of real estate agencies (real estate brokerage firms), real estate franchisers or brokers, or a paid position within the Bureau.

- 2.6.** The Bureau be granted the power to stipulate, by regulation, the terms and conditions of election by brokers of the five directors and the rules to ensure fair representation of brokers, including, if applicable, the possibility for brokers of a territory to elect a set number of directors and rules to ensure that directors do not use the same franchise.
- 2.7.** The directors appointed by the Minister and those elected by brokers must, at a meeting, elect an eleventh director (an independent person) by a majority of at least two thirds of the votes cast.
- 2.8.** The eleventh director shall not possess or have possessed interests in a real estate brokerage firm, or be or have been an agent or broker or work or have previously worked in another capacity in the real estate brokerage field.

- 3.1.** The Bureau receive complaints filed in the real estate brokerage field, unless they concern disputes between real estate agencies or real estate brokers regarding the sharing of compensation.
- 3.2.** The Bureau must act as conciliator or mediator if the interested parties so wish, except for disputes between real estate agencies or real estate brokers regarding the sharing of compensation.
- 3.3.** The Bureau act as an information and reference centre.
- 3.4.** The Bureau du courtage immobilier may not provide training other than compulsory additional training if it is not otherwise available.
- 3.5.** The Bureau may, by petition, apply to a judge of the Superior Court to issue an injunction in any matter relating to the Act or its regulations.

- 4.1.** In principle, the supervisory powers of the Registraire des entreprises over the ACAIQ, in particular its power of inspection, be transferred to the Minister.
- 4.2.** The government approve with or without addition or amendment the regulations of the Bureau du courtage immobilier.

**4.3.** The admission exam of agents and brokers no longer be approved by a government authority.

### **PROPOSALS OF OPTION TWO (ACIQ)**

**5.1.** The name of the Association des courtiers et agents immobiliers du Québec be replaced with that of the “Association des courtiers immobiliers du Québec” (the ACIQ).

**5.2.** The mission of the ACIQ consist in protecting the public in the real estate brokerage field.

**6.1.** The Minister appoint three directors instead of the government appointing two as is currently the case.

**6.2.** No person may be elected or appointed director or remain so if he holds a position as director or manager with an association or a firm that defends the interests of real estate agencies, brokers or franchisers, or a paid position with the ACIQ.

**7.1.** The ACIQ not be allowed to provide basic training.

**7.2.** The ACIQ not be allowed to provide training that is essentially of private interest for brokers.

**7.3.** The ACIQ must act as conciliator or mediator if the interested parties so wish, except for disputes between agencies or brokers regarding the sharing of compensation.

**7.4.** The ACIQ may, by petition, request a judge of the Superior Court to issue an injunction in any matter relating to the Act or its regulations.

**8.1.** The requirement that the exam to become an agent or broker, which is prepared by the ACAIQ, must be approved by the Registraire des entreprises be eliminated.

**8.2.** The organization that supervises the ACIQ may order it to revoke its approval of a standard contract or form.



## FIELD OF APPLICATION OF THE ACT

- 9.1.** Only real estate agencies and real estate brokers may carry out real estate brokerage acts, subject to the exemptions stipulated by regulation and special authorizations.
- 9.2.** In the case of the purchase or sale, in a single contract, of all the assets of a business, the exclusive right of exercise of brokers and brokerage firms be maintained only if the assets of the business, by value, consist mainly of real property.
- 9.3.** Concerning the lease of real property, the exclusive right of exercise of brokers and brokerage firms be maintained when in fact a business is carried on by a person who acts as an intermediary in this field. In other words, as soon as there is a brokerage firm, it is subject to the Act.
- 9.4.** The government be granted the regulatory power to exempt, with or without conditions, a category of persons or groups from all or some of the obligations resulting from the Act and its regulations.
- 9.5.** The ACIQ or the Bureau du courtage immobilier be granted the regulatory power to determine which brokerage acts, following authorization, may be carried out on a one-time or occasional basis by one or more persons or groups or categories of persons or groups, other than brokers and agencies, as well as the terms and conditions under which such acts may be carried out and the fees payable.

## REAL ESTATE AGENCIES

### The notion of real estate agency

- 10.1.** Partnership and legal persons that want to exercise real estate brokerage activities through a broker be required to obtain a real estate agency permit from the ACIQ or the Bureau.
- 10.2.** A natural person who acts through a broker representative be required to obtain a real estate agency permit from the ACIQ or the Bureau.

**10.3.** Real estate agencies be required to have at least one establishment in Québec.

### **Obligations of agencies**

**11.1.** Special obligations be stipulated for real estate agencies in the Act or the regulations, including the obligation to cover the liability of their representatives.

**11.2.** The rule concerning the exclusivity of management duties for the managers of an agency be eliminated.

**11.3.** The rule whereby a partnership or a legal person can exercise real estate brokerage activities (obtain a permit) only if it is represented, for the purposes of the Act, by a natural person who devotes himself full-time to the activities of the firm be eliminated.

**11.4.** The rule concerning the required number of assistant managers per group of agents be eliminated.

**11.5.** The establishment no longer be tied to the place where the books are kept.

**11.6.** The ACIQ or the Bureau be granted the regulatory power to stipulate special requirements for persons who manage a real estate agency.

## **BROKERS**

### **Elimination of the title “agent”**

**12.1.** The title “agent” be eliminated.

**12.2.** A single title, “real estate broker”, be retained for natural persons.

### Independence of agents

**13.1.** Existing affiliated real estate agents, henceforth called real estate brokers, be granted the possibility to act on their own behalf, as real estate brokers provided they satisfy the qualification requirements imposed by the ACIQ or the Bureau du courtage immobilier.

### Training

**14.1.** The ACIQ or the Bureau du courtage immobilier be granted the power to stipulate, by regulation, the broad objectives and total length of the minimum training required for the purposes of becoming a broker.

**15.1.** The ACIQ or the Bureau may pass a regulation imposing, in special circumstances, additional training on all or some brokers and stipulating the requirements and conditions of such training.

### Permit

**16.1.** The notion of certificate be replaced by the notion of permit.

**16.2.** Such permit be permanent in principle.

**16.3.** The notions of suspension of certificate and withdrawal of certificate be replaced by the notions of “temporary withdrawal of permit” and “permanent withdrawal of permit”.

**16.4.** The power to stipulate, by regulation, the basic qualifications or requirements for obtaining and keeping a real estate broker or real estate agency permit and the conditions and details for the issue of the permit be maintained.

**16.5.** The ACIQ or the Bureau be granted the power to sanction an agency that breaches the Act or the regulations.

- 16.6.** It be determined in the Act that the fines collected from agencies by the ACIQ or the Bureau be paid into a fund for the purpose of educating the public regarding real estate brokerage.
- 16.7.** The obligation that agencies and brokers have liability insurance be maintained.
- 16.8.** The ACIQ or the Bureau be granted the power to stipulate, by regulation, the special situations and conditions in which they have discretionary power to refuse to issue a permit, to issue it with or without conditions or limitations, to withdraw it (temporarily or permanently) or to attach conditions or limitations to it, subject to the competence of the discipline committee.

### **Novice brokers**

- 17.1.** Novice brokers be required to work with an agency for the period determined by regulation before being able to work for themselves.

### **Brokers representing an agency**

- 18.1.** The rule that a broker who represents one real estate agency cannot at the same time represent another agency or work for himself be maintained.
- 18.2.** Representatives of real estate agencies be required to represent themselves as such to the public.

### **Representations and advertising**

- 19.1.** The provisions relating to advertising and representations be replaced by the requirement that brokers and agencies comply with the regulatory provisions concerning representations, advertising and information they provide on properties and made available to the public for brokerage promotion purposes.

**19.2.** The ACIQ or the Bureau be granted the power to determine for brokers and agencies, by regulation, the rules regarding representations, advertising and information on properties made available to the public for brokerage promotion purposes, as well as the relevant criteria on these matters, required disclosure and how to proceed with such disclosure.

### **Prohibited activities**

**20.1.** The prohibition in the Act against a real estate broker exercising the activity of insurance representative, securities representative, claims adjuster or financial planner or the activity of securities dealer or adviser not be maintained.

**20.2.** The regulatory power concerning the activities that a real estate broker or real estate agency may not exercise be maintained.

### **Conflicts of interest**

**21.1.** The provisions relating to disclosure requirements and those relating to sharing of compensation be replaced by the general requirement to disclose situations of conflict of interest, in accordance with the requirements specified by regulation.

**21.2.** The ACIQ or the Bureau be granted the power to determine, in the regulations on professional ethics, cases in which a broker or an agency is in a conflict of interest, the criteria and details relating to disclosure, the persons to whom disclosure must be made and the consequences of failure to provide disclosure.

## REAL ESTATE FRANCHISERS

- 22.1.** The rules relating to advertising regarding real estate brokerage and information on properties made available to the public for brokerage promotion purposes apply to agencies, brokers, franchisers and any other person promoting real estate brokerage services.
- 22.2.** The ACIQ or the Bureau du courtage immobilier be granted regulatory power to stipulate specific rules to control advertising or additional rules for franchisers, franchisees and subfranchisees.
- 22.3** The ACIQ or the Bureau be granted the power to oversee real estate brokerage advertising and information on properties made available to the public for brokerage promotion purposes.
- 22.4.** The ACIQ or the Bureau may, in cases of violation of the advertising rules, apply for an injunction to stop the distribution of misleading advertising and require the person or group at fault to produce, within a set time and as required by the tribunal, an advertising message designed to correct the earlier misleading advertising.

## INSPECTION AND DISCIPLINE

### Inspection

**Under the ACIQ option:**

- 23.1.** The existing system be maintained.

**Under the Bureau du courtage immobilier option:**

- 24.1.** The Bureau have the power to inspect brokers and agencies.
- 24.2.** The Bureau have the power to file a complaint with the discipline committee if there are reasons to believe that a broker has violated the Act or its regulations.

## Syndic

### Under the ACIQ option:

25.1. The existing system be maintained.

### Under the Bureau du courtage immobilier option:

26.1. The trustee not be maintained.

## Discipline committee

27.1. Complaints against brokers be investigated and decided by groups within the discipline committee, a majority of whose members are brokers.

27.2. The ACIQ or the Bureau du courtage immobilier be granted the power to stipulate, by regulation, the rules of the discipline committee, including rules on the officers of the committee, replacement of members or their discharge, rules relating to the operation of the committee, the composition of groups, notices to send, the committee's report, its form and content.

27.3. The ACIQ or the Bureau be granted the power to adopt, by regulation, rules relating to the introduction and investigation of a complaint before the disciplinary committee and to the decisions and sanctions concerning it, including the rules applicable in the event that a member of a group ceases to be part of it or becomes unfit or unable to act before the decision is handed down.

27.4. The disciplinary process may continue even if the person no longer holds a broker's permit, and that if the disciplinary process is not continued, such process may resume if the person subsequently obtains a new permit.

## REGULATORY POWERS OF THE ACIQ OR THE BUREAU

### Under the ACIQ option:

- 28.1. The existing regulatory authorities (board of directors of the ACIQ, meeting of members and government) be maintained.
- 28.2. The government be granted regulatory powers only in relation to the Fonds d'indemnisation du courtage immobilier and exemptions (persons wholly or partially exempt from the application of the Act).

### Under the Bureau du courtage immobilier option:

- 28.3. All regulatory powers, except the one relating to exemptions, be transferred to the Bureau, subject to the government's approval.

## RULES CONCERNING CONTRACTS

### Use of new technologies by the ACIQ or the Bureau

- 29.1. The ACIQ or the Bureau du courtage immobilier as well as the persons and organizations governed by the Act be allowed to use new technologies to execute their rights and obligations, provided the following conditions are satisfied:
  3. The rules of the *Act to establish a legal framework for information technology* are observed, particularly those relating to the integrity of the document;
  4. It is possible to conserve the document and, if desired, print it.



### Standard contracts and forms

- 30.1.** The ACIQ or the Bureau du courtage immobilier be granted the power to stipulate by regulation, for the contracts and forms it specifies, the notices, stipulations and information that are compulsory, those that are forbidden, the additional optional notices or stipulations and, as applicable, the terms and conditions in all such cases.
- 30.2.** The ACIQ or the Bureau be granted the power to determine by regulation the rules for the form and use of all contracts and forms, or only of those it specifies.
- 30.3.** For the ACIQ option: The organization that oversees the ACIQ be authorized to order it to revoke its approval of a standard contract or form.

### Brokerage contract for selling a residential property

- 31.1.** Rules specific to the brokerage contract concerning the sale or exchange of a residential property no longer be stipulated in the Act but rather by regulation, subject to the stipulation in the Act of the client's right to rescind, within three days, the brokerage contract regarding the sale or exchange of a residential property and subject to the broker's right to demand his remuneration in the circumstances currently stipulated in the Act.
- 31.2.** Concerning the sale or exchange of a residential property, the protection of the regulations no longer be denied to partnerships and legal persons.
- 31.3.** The requirement that the copy of the brokerage contract given by the broker to the client be a paper copy be eliminated, subject to the condition that the technology used permits to conserve and print the contract.

## THE FONDS D'INDEMNISATION DU COURTAGE IMMOBILIER

### Nature and mission of the Fonds d'indemnisation

**Under the ACIQ option:**

**32.1.** The rule whereby the Minister may, under conditions stipulated by government regulation, authorize the "Fonds" to use the interest generated by its funds for purposes relating to the real estate brokerage sector and encouraging protection of the public be eliminated.

**Under the Bureau du courtage immobilier option:**

**32.2.** The Fonds d'indemnisation du courtage immobilier (legal person) be dissolved.

**32.3.** The rights and obligations of the Fonds be transferred to the Bureau du courtage immobilier and that the latter replace the Fonds in every respect.

**32.4.** All the funds of the Fonds constitute a separate fund managed by the Bureau.

**32.5.** The other assets of the Fonds become the property of the Bureau and be incorporated into its assets.

**32.6.** The Act stipulate a compensation committee.

**32.7.** The purpose of the compensation committee be to compensate, from the compensation fund, persons and groups harmed by a real estate brokerage or a real estate broker that, in carrying out its functions, committed fraud, acted dishonestly or misappropriated funds or other property that, under the present law, must be deposited in a trust account.

**32.8.** The Bureau be granted the power to stipulate, by regulation, the rules of the compensation committee, including rules on the membership of the committee, the mandate of the members and their replacement or discharge, rules relating to the operation of the committee or notices to be given, its report and its content and form.

**32.9.** The Bureau be granted the power to adopt, by regulation, rules relating to the introduction and investigation of a compensation claim before the compensation committee

as well as to the decisions of the committee, including applicable rules in the event that a member of the committee ceases to be a member or becomes unfit or unable to act before the decision is handed down.

**32.10.** The rule whereby the Minister may, under conditions stipulated by government regulation, authorize the “Fonds” to use the interest generated by its funds for purposes relating to the real estate brokerage sector and encouraging protection of the public be eliminated.

### **Contributions to the Fonds d’indemnisation**

**33.1.** The Bureau or the government be granted the regulatory power to determine the contribution, including a special contribution if necessary, to be paid to the compensation fund by brokers and agencies, based on the category of permit they hold and according in particular to the date the permit was obtained, and the terms and conditions for payment of contributions.

### **MAKING AGENTS AND BROKERS SUBJECT TO THE PROFESSIONAL CODE**

**34.1.** The option be examined of requiring real estate agents and brokers to constitute themselves a professional order governed by the Professional Code and of entrusting oversight of such professional order to the Office des professions du Québec.

