

**NOTICE OF DISCLOSURE OF THE
REAL ESTATE AGENCY OR BROKER
(Purchase – Sale – Loan)**

(S. 18 to 22 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising* (c. C-73.2, r. 1))

HIGHLIGHTS

WHAT IS THE PURPOSE OF THIS NOTICE OF DISCLOSURE?

This *Notice of disclosure* is used to disclose to the other party to the transaction (**prospective contracting party**):

- **Your status as broker or agency**, whether or not you are acting in the performance of your duties, you hold a valid or a suspended licence, or you are represented by another broker or agency. The other party to the transaction must be informed that they are dealing with a person who has real estate brokerage expertise.
- **The nature of your interest in the transaction, whether direct or indirect**. If the agency or the broker owns or is purchasing an immovable, the interest is direct. If the agency's or broker's interest is financial, i.e. it concerns a spouse, dependent children within the meaning of tax laws, or a company owned and controlled by the agency or broker, the interest is indirect.

THIS NOTICE OF DISCLOSURE IS NOT TO BE USED TO DISCLOSE A CONFLICT OF INTEREST

Giving this *Notice of disclosure* does not relieve you of your obligation to avoid placing yourself in a conflict of interest.

The agency or broker is in a conflict of interest when their interests, whether personal or professional, are incompatible or divergent with those of their client. This also occurs when the agency or broker is at risk of favouring their own personal or professional interests or those of another person rather than those of the client.

The OACIQ does not have a pre-established form for disclosing a conflict of interest that cannot be avoided at the onset. The important thing is for the disclosure to be made in writing without delay (s. 2 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising*, C-73.2, r. 1 (RBR)). Proof of receipt or signature of the disclosure by the client must be kept in the broker's record.

THIS NOTICE OF DISCLOSURE IS NOT TO BE USED TO REPRESENT A CLOSE RELATION

You are allowed to represent a **close relation** (e.g. brother, sister, colleague, friend, family member, business partner, creditor, company in which a member of your family is a shareholder or director, etc.). In this situation, you must inform the other party to the transaction of the relationship between you and your client. **If you do not have a direct or indirect interest in the immovable, do not use this *Notice of disclosure* to do so.**

The OACIQ does not have a pre-established form for this kind of situation. To ensure transparency, it is good practice to inform the other party in writing and obtain an acknowledgement of receipt. For example, you can notify the other party by email that the selling client is your brother or colleague, and that you have no interest in the property concerned. It is important to ask the other party to acknowledge receipt of the email.

HOW TO COMPLETE THIS NOTICE OF DISCLOSURE

IDENTIFICATION OF THE AGENCY OR BROKER (CLAUSE 1)

The agency or broker required to send this *Notice of disclosure* is identified in this section. If it is the broker's business corporation that owns or proposes to acquire an interest in an immovable or acts as hypothecary lender, it must also be identified in this section.

IDENTIFICATION OF THE PROSPECTIVE CONTRACTING PARTY (BUYER, SELLER, BORROWER) (CLAUSE 2)

The prospective contracting party is the buyer, seller or borrower to whom the agency or broker must send this *Notice of disclosure*. For example, if the broker is the seller, the prospective contracting party is the prospective buyer.

SUMMARY DESCRIPTION OF THE IMMOVABLE (CLAUSE 3)

The immovable that is the subject of the sale, purchase or hypothecary loan must be identified in this section by its address or its cadastre number if there is no address.

NATURE OF THE INTEREST THAT THE AGENCY OR BROKER HAS OR PROPOSES TO ACQUIRE (CLAUSE 4)

SALE (clause 4.1)

- I own, directly or indirectly, in whole or in part, an interest in the IMMOVABLE which is the subject of the purchase: personally OR through a natural or legal person
 - The agency or broker **directly owns** all or a portion of the immovable being sold, for example:
 - The agency or broker is selling an immovable which they own.
 - The agency or broker is a hypothecary creditor of the immovable being sold.
- I own, directly or indirectly, in whole or in part, an interest in the IMMOVABLE which is the subject of the purchase: personally OR through a natural or legal person
 - The agency or broker has an indirect interest in the immovable (or a portion thereof) being sold:
 - Through another natural person: for example, a broker is representing his or her spouse for the sale of the immovable belonging to the spouse.
 - Through a legal person: for example, an agency or broker is representing a legal entity in which the agency or broker owns shares for the sale of an immovable owned in whole or in part by that entity.
- I own, directly or indirectly, in whole or in part, an interest in the IMMOVABLE which is the subject of the purchase: personally OR through a natural or legal person
 - Both boxes must be checked if, for example:
 - The broker is selling his personal residence which he owns jointly with his spouse.
 - The agency executive officer who is the agency owner is selling an immovable belonging both to himself personally and to the agency.
- **AND I inform the PROSPECTIVE CONTRACTING PARTY (BUYER) without delay and in writing that I do not represent him and that he may seek representation by a real estate broker of his choice.**

This box must be checked. It serves to confirm that the agency or broker has fulfilled their ethical obligation by advising the other party to the transaction (the prospective contracting party) that they do not represent it and that this party may seek representation by another licence holder (s. 20 RBR).

The *Notice of disclosure* must be given to a prospective buyer **prior to the acceptance of the offer to purchase**.

PURCHASE (clause 4.2)

- **I propose to purchase, directly or indirectly, in whole or in part, an interest in the IMMOVABLE which is the subject of the sale:** **personally** OR **through a natural or legal person**
 - The agency or broker is proposing to purchase the immovable or a portion thereof, **on his own behalf**.
- **I propose to purchase, directly or indirectly, in whole or in part, an interest in the IMMOVABLE which is the subject of the sale:** **personally** OR **through a natural or legal person**
 - The agency or broker wishes to acquire an indirect interest in the immovable (or a portion thereof) being sold:
 - Through another related natural person: for example, the broker is representing his dependent child for the purchase of an immovable on behalf of the child.
 - Through a related legal person: for example, the immovable or a portion thereof is being purchased by the legal entity in which the agency or broker owns shares.
- **I propose to purchase, directly or indirectly, in whole or in part, an interest in the IMMOVABLE which is the subject of the sale:** **personally** OR **through a natural or legal person**
 - Both boxes must be checked if, for example:
 - The broker and his spouse are purchasing an immovable.
 - The agency executive officer who is the agency owner is purchasing an immovable for the agency of which he will also be co-owner.
- **AND I am negotiating, have negotiated or intend to negotiate, on my behalf, the resale or alienation of the IMMOVABLE that I propose to acquire.**
 - This box must be checked if the agency or broker plans to resell or transfer the immovable which he proposes to acquire, for example (not limited to the following):
 - The agency or broker submits an offer to purchase to a seller for a piece of land. The agency or broker already has an agreement to resell the land to a developer.
 - The agency or broker makes an offer to purchase to a seller for a building. At the time of purchase, the broker already knows that he will transfer the property to one of his companies.
 - The broker is the developer/builder who buys the land and plans to erect one or more new buildings on the site, which will then be put up for sale.
 - The agency or broker buys an immovable with the intention of subdividing it into several lots and reselling them once the subdivision is complete.
 - The agency or broker buys an immovable with the intention of renovating it and reselling it once the renovations are complete.
 - The broker buys an immovable with the intention of gifting it to his child.
- **AND inform the PROSPECTIVE CONTRACTING PARTY (SELLER) without delay and in writing that I do not represent him and that he may seek representation by a real estate broker of his choice.**

This box must be checked. It serves to confirm that the agency or broker has fulfilled their ethical obligation by advising the other party to the transaction (the prospective contracting party) that they do not represent it and that this party may seek representation by another licence holder (s. 21 RBR).

- **AND I was responsible for selling or leasing the IMMOVABLE under a brokerage contract with the PROSPECTIVE CONTRACTING PARTY:**

- I terminated my brokerage contract prior to submitting my transaction proposal; and
- There are no transactions in progress on the IMMOVABLE; and
- I am not collaborating with another real estate broker to complete the transaction on the IMMOVABLE.

- This box must be checked when the agency or broker proposing to acquire the immovable or an interest in an immovable is responsible for selling or leasing it under a brokerage contract (s. 22 RBR). For example, the agency or broker is responsible for leasing the immovable and decides to purchase it.

In such a situation, the agency or broker must terminate the brokerage contract and cannot do so as long as there are transactions in progress on the immovable or as long as the agency or broker is collaborating with another licensee for the purpose of carrying out a transaction on the immovable. The agency or broker must also check all the boxes to confirm that these three conditions have been met:

- The brokerage contract was terminated before the transaction proposal was submitted; and
- There are no transactions in progress on the immovable; and
- There is no collaboration in progress with another real estate broker for the purpose of carrying out a transaction on the immovable.

The agency or broker cannot purchase the immovable which they are responsible for selling or leasing unless these three conditions are met.

The *Notice of disclosure* must be given to the seller **prior to the drafting of the offer to purchase**.

HYPOTHECARY LOAN (clause 4.3)

- **I am acting or I propose to act as a lender for a loan secured by immovable hypothec:**

personally OR **through a natural or legal person**

- The agency or broker is acting or proposes to act directly as hypothecary lender for the immovable.

- **I am acting or I propose to act as a lender for a loan secured by immovable hypothec:**

personally OR **through a natural or legal person**

- The agency or broker is acting indirectly as hypothecary lender for the immovable:

- Through another related natural person: for example, the broker's spouse is acting as hypothecary lender.
- Through a related legal person: for example, the legal entity in which the agency or broker owns shares is acting as hypothecary lender.

- **I am acting or I propose to act as a lender for a loan secured by immovable hypothec:**

personally OR **through a natural or legal person**

- Both boxes must be checked if, for example, the broker and the legal entity in which the broker owns shares are acting or propose to act as hypothecary lenders.

HOW TO SEND THIS NOTICE OF DISCLOSURE

The *Notice of disclosure* must be made in writing and sent by any means providing proof of the date and time of **receipt**. Therefore, the other party to the transaction for whom the *Notice* is intended (the prospective contracting party) must acknowledge receipt of it, sign it, and date it. You must keep the signed *Notice* in the Record for disclosure notices and enter it in the Register of disclosure notices.

FAILURE TO SEND THIS NOTICE OF DISCLOSURE

In the event of failure to send this *Notice of disclosure*, or if the *Notice* does not contain all the required information, the other party to the transaction (prospective contracting party) may, as long as the contract has not been signed by the parties, **withdraw without penalty** from any offer or promise concerning the immovable or the loan, whether accepted or not, by sending or giving written notice to the agency or broker (s. 18 RBR).