

Role and powers of the Committee

The role of the Licence Issue and Maintenance Committee under the Real Estate Brokerage Act (R.S.Q., c. C-73.2, hereinafter referred to as the "Act") consists particularly in determining whether public protection warrants the imposition of one of the measures as provided under the Act, where an applicant or a licence holder has been found guilty of, or has pleaded guilty to a penal or disciplinary offence or a criminal act, to the extent where the Committee has established that this offence or act has a link with the activity of real estate broker or agency.

When an application for licence issuance is submitted to the Committee, the latter has the power to review all criminal, penal or disciplinary convictions, regardless of when the individual was found or pleaded guilty.

When deciding on licence maintenance, the Committee may take into account any criminal, penal or disciplinary conviction which occurred since May 1, 2010.

In addition, the Committee may review cases involving bankruptcy, guardianship, curatorship or appointment of an adviser to a person of full age, as well as cases where an applicant or licence holder has previously had his licence revoked, suspended or made subject to restrictions or conditions by the OACIQ Discipline Committee or by a body in another province or State responsible for overseeing and monitoring real estate brokerage.

The Committee may also review the case of an individual who applies for a licence and who has, before May 1, 2010, violated a provision of the *Act respecting the distribution of financial products and services*, while carrying out brokerage activities in connection with loans secured by immovable hypothec.

In such cases, the Committee may decide to impose one of the measures provided for in the Act when public protection warrants.

Depending on circumstances, the Committee may refuse to issue a licence to an applicant, or may issue it by imposing restrictions or conditions thereon. The Committee may also take measures against a licence holder, including suspending or revoking a licence or making it subject to restrictions or conditions.

Composition of the Committee

The Committee consists of at least three and not more than nine members, including a chairman, appointed for a 3-year term by the Organization's Board of Directors.

Generally: the committee sits in divisions of three members each, including a chairman or vice-chair.

Application process

The case will be reviewed by the Certification Department once the application for a licence issuance or information update is transmitted with all the documents required by the Organization.

If applicable, the file will be transferred to an analyst who will prepare all the documents to be submitted to the Licence Issue and Maintenance Committee so it can render its decision.

Opportunity to submit observations

Once the file is complete, the Registry office of the Organization sends to the licence holder, the individual or partnership requesting a licence, as the case may be, a notice at least 15 days from the date on which he can submit his observations and informs him about the possibility of providing documents to complete his file.

This notice includes documents submitted to the Committee in order to render its decision.

Required documents or information

The committee may require the applicant or holder to provide any information or document it deems necessary to make its decision. If the applicant or holder fails to provide it, the committee may refuse to review the applicant's request or suspend the holder's licence, as the case may be, until the required document or information is provided.

The Committee's decision

The Committee's decision is made by a majority of members. It is recorded in writing and signed by the members of the Committee who agree with it. The decision to refuse to issue, revoke or suspend a licence or make it subject to restrictions or conditions is justified.

A decision taken in respect of a licence holder who is convicted of, or pleaded guilty to a penal or disciplinary offence or criminal act, which is related to broker's or agency activities, remains valid, as the case may be, until the decision of the syndic or assistant syndic not to file a complaint or until the final and enforceable decision of the Discipline Committee on the complaint made by the syndic or assistant syndic.

The Committee can make its decision even if the licence holder, the individual or the partnership requesting a licence fails to respond to the notice that was sent to him, or to show up for the scheduled meeting, or to submit his observations in writing, or to provide documents to complete his file.

Appeal

The decision rendered by the Committee can be appealed before the Court of Québec, within 30 days from the date it was served on.

The appeal does not suspend the contested decision, unless a judge of the Court of Québec decides otherwise.

Decision notice

When the Committee decides to suspend or revoke a licence or impose restrictions or conditions thereon, the decision must be made public according to terms and conditions prescribed by the By-Laws of the Organization, particularly by publishing a notice to that effect on its website.

The Organization also notifies the agency on behalf of which the individual is acting or should be acting about this decision.

Frequently Asked Questions

WHEN APPLYING FOR A REAL ESTATE OR MORTGAGE BROKER'S (OR AGENCY) LICENCE:

Q : I have an ethical, penal or criminal record (except for an offence related to the Highway Safety Code and municipal by-laws). Does this prevent me from becoming a real estate broker?

A : Not necessarily. It's the Committee that shall decide, first of all, whether or not the offence or criminal act in question is related to the performance of agency or broker's activities. If the committee believes that there is a link, it shall decide if the licence requested can be issued and, if so, whether it is appropriate to make it subject to restrictions and conditions.

Q : Am I obliged to disclose my criminal record to the Organization?

A : Yes. If you have an ethical, penal or criminal record (except for an offence related to the Highway Safety Code and municipal by-laws), you must disclose it to the Organization when applying for a licence. You must also provide documents required by the Organization, regardless of the date on which you have been convicted.

An individual who does not disclose his criminal record to the Organization when applying for a licence might have his licence revoked due to a misrepresentation.

Q : If I obtained a "record suspension" (formerly called "pardon"), do I still have to declare the offence?

A : Yes. If you have been convicted of, or pleaded guilty to, a penal offence or criminal act for which you obtained a record suspension, you still need to declare the conviction to the Organization. However, the conviction will not affect the processing of your application and your file will not be submitted to the Committee for that offence or act.

Q : I went bankrupt several years ago and I was discharged, do I have to disclose this to the Organization?

A : Yes. If you previously went bankrupt, and whether you were discharged or not, you must disclose it to the Organization and provide the documents required by the Organization to this effect.

Due to this situation and in order to protect the public, the Committee may decide whether or not the requested licence can be issued and, if so, if it is appropriate to impose restrictions or conditions thereon.

Q : I have been convicted of an ethical offence by a professional order or by a self-regulatory body (e.g.: Chambre de la sécurité financière), should I report it to the Organization?

A : Yes. If you have been found guilty of an ethical offence, by a court in Canada or elsewhere, or pleaded guilty to such an offence, you must report it to the Organization and must provide the required documents.

As in the case of a penal offence or a criminal act, the Committee shall determine, first of all, if the offence in question is related to the performance of agency or broker's activities. If the committee believes that there is a link, it shall decide whether or not the requested licence can be issued and, if so, whether it is appropriate to make it subject to restrictions and conditions.

Frequently Asked Questions (continued)

WHEN APPLYING FOR A REAL ESTATE OR MORTGAGE BROKER'S (OR AGENCY) LICENCE (continued):

Q : Can I act as agency executive officer if the Committee imposes measures on my licence?

A : No. The *Regulation respecting the issue of broker's and agency licences* provides that in order to be qualified as executive officer of a real estate or mortgage agency, the individual must not be holder of a real estate or mortgage broker's licence that was suspended or made subject to restrictions or conditions. If the Committee issues a licence loaded with restrictions and conditions to you, you cannot act as executive officer of a real estate or mortgage agency for the duration of conditions or restrictions.

FOR LICENCE HOLDERS

Q : If I am convicted of a penal offence or a criminal act that was not committed in the performance of my activities as a broker or agency, should I inform the Organization about it?

A : Yes, you must inform the Organization about it immediately, regardless of the nature and circumstances of the offence (except for an offence related to the Highway Safety Code and municipal by-laws).

It's up to the Committee to determine whether this offence or act is related to the performance of agency or broker's activities or not, whether or not it was committed in the performance of these functions.

If the Committee believes that there is a link, it shall decide if it is appropriate to suspend or revoke your licence or impose restrictions or conditions thereon. This decision remains valid until the decision of the syndic or assistant syndic not to file a complaint before the OACIQ Discipline Committee or until the final and enforceable decision of the Discipline Committee on the complaint made by the syndic or assistant syndic.

Q : If I declare bankruptcy, do I have to inform the Organization?

A : If you declare bankruptcy or if you are placed under a receiving order pursuant to the *Bankruptcy and Insolvency Act*, you must inform the Organization about it immediately and provide all the documents required.

Q : What are the consequences of bankruptcy on my licence?

A : Your file will then be submitted to the Committee. Due to this situation and in order to protect the public, the Committee shall determine whether it is appropriate to suspend or revoke your licence or impose restrictions or conditions thereon.

Q : Can I act as agency executive officer if the Committee imposes measures on my licence?

A : No. The *Regulation respecting the issue of broker's and agency licences* provides that in order to be qualified as real estate or mortgage agency executive officer, the individual must not be holder of a real estate or mortgage broker's licence that was suspended or made subject to restrictions or conditions. If the Committee suspends your licence or imposes restrictions and conditions thereon, you cannot act as executive officer of a real estate or mortgage agency for the duration of suspension or imposition of conditions or restrictions.

PROCEEDINGS OF MEETINGS

Q : How a Committee meeting is conducted?

A : The Committee is generally made up of three members. In addition, one or two resource persons join the Committee to ensure administrative support.

If you decide to attend the Committee's session, the latter will hear your observations and then take a decision regarding your licence issuance or maintenance application.

Note that the observations presented before the Committee, if any, are recorded.

Q : How often does the Committee meet?

A : The Committee meets approximately once a month to review applications.

Q : Can call witnesses before the Committee?

A : If you wish to call witnesses, it's your responsibility to request that from the Committee. The latter has the discretion to accept or reject your request.

Q : Can I request the assistance of a lawyer?

A : Yes, you may consult a lawyer before submitting your observations to the Committee. You may also be assisted by the lawyer of your choice before the Committee.

Q : What are the consequences of my absence before the Committee?

A : If you do not wish to appear before the Committee to present your observations, you can send them in writing to the attention of the Committee before the date set for the session. However, if you decide not to present written or verbal observations before the Committee, the latter can still make a decision.

PROCEEDINGS OF MEETINGS (continued):

Q : When and how will I be notified of the Committee's decision?

A : In all cases, the Committee's written decision will be sent to you as soon as possible after the Committee's meeting.

Q : What are my options following the Committee's decision?

A : If you wish to dispute the Committee's decision, you may do so by filing an appeal before the Court of Québec within 30 days from the date the decision is served on.

Note that the appeal does not suspend the contested decision, unless a judge of the Court of Québec decides otherwise.

REMEMBER

For licence applicants

When applying for a licence, you must report to the Organization if any of the following situations applies to you:

- You have already had your licence revoked, suspended or made subject to restrictions or conditions by the Discipline Committee or by a body in Québec or in another province or State responsible for overseeing and monitoring real estate brokerage;
- You have already declared bankruptcy;
- You have previously been convicted by a court of a penal or ethical offence or a criminal act (except for an offence related to the Highway Safety Code and municipal by-laws);
- You have been assigned a tutor, curator or adviser to a person of full age;
- Before May 1, 2010, you violated a provision of the *Act respecting the distribution of financial products and services* while carrying out brokerage activities relating to loans secured by immovable hypothec.

For licence holders

You must inform the Organization immediately if any of the following situations applies to you:

- Your licence is revoked, suspended or made subject to restrictions or conditions by the Discipline Committee or by a body in another province or State responsible for overseeing and monitoring real estate brokerage;
- You declared bankruptcy;
- You are convicted by a court of a penal or ethical offence or a criminal act (except for an offence related to the Highway Safety Code and municipal by-laws);
- You are assigned a tutor, curator or adviser to a person of full age;