

Review of the Real Estate Brokerage Act



FULLY
RESPONSIBLE
real estate brokers

for greater protection
of the public

PRESENTED BY



Association des courtiers
et agents immobiliers
du Québec

November 2000

Table of contents

Brief of the ACAIQ

Review of the Real Estate Brokerage Act
Fully responsible real estate brokers
for greater protection of the public
Presented by Association des courtiers et
agents immobiliers du Québec
November 2000

Members of the Board of Directors

ELECTED CHAIRMAN

François Léger

ELECTED DIRECTORS

Robert Aubin

Serge Brousseau, vice-chairman

Raymond Desbiens

David Farber

Pierre Lafond

Pierre Paradis

Daniel Pelchat

Paul Robert, treasurer

DIRECTORS APPOINTED BY THE GOVERNMENT

Jean Mathieu

Madeleine Plamondon

CHIEF EXECUTIVE OFFICER

Robert Nadeau

SECRETARY

Claude Barsalou

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.

It may also dispense continuing education courses to its members and award the titles referred to in section 76.

ACAIQ

6300 Auteuil Street, Suite 300
Brossard (Québec) J4Z 3P2

Telephone: (450) 676-4800 or
1-800-440-5100

Fax: (450) 676-7801

info@acaiq.com

Preface	4
Introduction	5
COMMENTS AND RECOMMENDATIONS	
1 Evolution of the roles of the broker and agent, and liability	8
2 Responsibilities and limitations	10
2.1 Limit the effects of the trainee's practice in order to ensure greater protection of the public	10
2.2 The rights and obligations of the real estate broker	11
2.3 The rights and obligations of the chartered real estate broker	12
2.4 Maintain the practice of real estate brokerage in the form of real estate brokerage enterprises	13
3 Better training for members of the profession	14
3.1 Raising criteria for access to the profession	14
3.2 The training period: a dynamic and effective monitoring tool	15
3.3 Meet the training needs of chartered real estate brokers more effectively	15
3.4 Increase accessibility to courses	15
3.5 Review the certification examination	16
3.6 Contribution of the regulatory body in the development of training programs and in monitoring acquired skills	16
3.7 Developing the courses necessary for the needs of specialists	17
3.8 Develop a mandatory continuing education program	17
3.9 Mobility between jurisdictions	18
4 The activity of broker and brokerage transactions	19
4.1 Illegal brokerage: withdraw the notion of compensation from the definition of the activity of real estate broker	19
4.2 Obligation of the real estate broker to always act in that capacity	20
4.3 Disclosing conflicts of interest	20
4.4 The importance of regulating building inspections	21
5 Advertising, solicitation and representations	22
5.1 Ensure clear identification of the persons the public is dealing with	22
5.2 Conveying verifiable and quantifiable information	23
6 Forms	24
6.1 Review the regulations concerning forms in terms of the needs of the public	24
7 Establishments	25
7.1 Redefine the notion of establishment	25
7.2 Eliminate the obligation for managers to devote themselves exclusively to their management duties	25

8	Records, accounts and registers	27
8.1	Make it mandatory to keep a trust account	27
8.2	Set up registers according to specialized fields	27
9	Regulatory body	28
9.1	Maintain the principles of self-management, self-regulation and self-discipline	28
9.2	Find a name that best represents the mission of the regulatory body	29
9.3	Viability of the regulatory body	29
10	Certification	30
10.1	Simplify the administrative process for certification	30
10.2	Criminal acts and disciplinary infractions in another jurisdiction	31
11	Professional inspection	32
11.1	Give the Inspection Committee the authority to supervise the professional competence of brokers	32
12	The Syndic	34
12.01	Give the Syndic the authority to do ethical conciliation	34
12.2	Prevent abuses in civil proceedings	34
12.3	Review committee	35
12.4	Review the regulations concerning the appointment of assistant syndics	35
13	Discipline Committee	36
13.1	Specify recourse to a court of appeal	36
13.2	Review the procedure for selecting or replacing the Secretary and Chairmans of the Discipline Committee	36
13.3	The appointment of assessors	37
14	Professional liability insurance	38
14.1	Provide liability insurance through the regulatory body	38
15	Fonds d'indemnisation du courtage immobilier	40
15.1	Increase the monetary coverage of fraud victims	40
15.2	Appointment and composition of the Fund Board of Directors	40
15.3	Obtain the authority to suspend contributions	41
	Conclusion	42
	Transition	43

APPENDICES

Appendix 1	Consultation	45
	Methodology	45
	Extent of the consultation	46
	Reference documents	47
	Consultation document	48
	Consultation document (questionnaire)	56
Appendix 2	Technologies and Real Estate Brokerage: Food for thought	59
	New means, new needs and new consumer expectations	59
	New reality and new skills for the broker	60
	Conclusion	61
Appendix 3	History of the framework of real estate brokerage in Québec	62

Preface

Section 188 of the Real Estate Brokerage Act stipulates that the minister must report to the government concerning the implementation of the Act, the advisability of keeping it in force and, as appropriate, of amending it. This is the context in which, in 1997, the Association des courtiers et agents immobiliers du Québec (ACAIQ) undertook a thorough evaluation of the framework of the profession, with a view to publishing the quinquennial Report on the application of the Real Estate Brokerage Act. In doing so, it examined all of the statutes and regulations governing real estate brokerage, in order to verify whether or not the current control structure and the various mechanisms are effective in ensuring the protection of the public, as prescribed by the Association's mission statement.

A Consultation Committee was set up by the Association's Board of Directors. This Committee carried out a survey of members. More than 1,100 brokers and agents responded, out of a total of 9,700 members at the time, compared to close to 11,000 today. The Committee also held information meetings all over Québec, and focus groups led by the Créatec Plus firm were held with consumers and real estate brokers and agents. Consumer protection organizations and government agencies and professional associations were all consulted and met with. Real estate boards and the Fédération des chambres immobilières du Québec were also consulted on a number of occasions, providing the opportunity for in-depth conversations regarding all the issues being examined. The Consultation Committee presented the Association's Board of Directors with the results of its work in 1999. *Appendix 1 - Consultation* describes the methodology and the scope of this work. The consultation document and the questionnaire used for the survey are also included. In addition, the Appendix describes the Association's recommendations concerning both subjects that were and that were not discussed during the general consultation, since the consultation could not cover all the subjects due to the rapid evolution of the situation and the appearance of new concerns.

This document is the result of a long process of reflection. It identifies ways of amending the Real Estate Brokerage Act in order to optimize the quality of professional services provided to the public, and ways to adjust the statutory and regulatory framework to current and future practices in real estate brokerage. In fact, real estate brokerage has evolved considerably over the past number of years, particularly in terms of professional development, and it is clear that even more fundamental changes will take place in the future, made necessary by new needs of consumers and by new ways of delivering professional services.

Introduction

In real estate matters, the consumer must deal with a number of suppliers when carrying out a transaction. The process is long, complex, highly regulated and extremely costly. Traditionally, the consumer would call upon the services of a real estate broker and agent to help him with the sale or purchase of a property, principally with marketing, searching for an immovable and negotiating an agreement. The consumer would also traditionally go to the broker and agent to coordinate some of his relations with certain suppliers whose involvement is necessary to successfully complete a transaction, such as, for example, a notary. Until recently, in the eyes of the consumer, the broker was the main source of reference in matters of real estate, for the simple reason that he had access to a database about the market and that he had access to specific knowledge. Now, this reality has changed considerably.

In fact, from the point of view of the impact of new information technologies, real estate brokerage is not different from other sectors of commercial and professional activities which have undergone profound changes in terms of the needs and expectations of consumers and the necessity for distributors of goods and services to adapt. Relations between buyers and sellers are different than they were a few years ago, as is the role of all the intermediaries. The consumer can easily participate in discussions about the products and services he is using. He has the arguments and means necessary to enforce his decisions. Thanks to the new information technology, the concept of a better-informed consumer is becoming commonplace. He is in a better position to control the business relationship.

The consumer now has the means at his disposal to do searches himself, find resources, understand the transaction process and carry out a transaction without the assistance of an intermediary, or using the intermediary for more limited or specialized functions. Given the complexity of real estate transactions and the many factors that prevent their standardization, the adaptation of the transaction process to the requirements of electronic commerce will not happen in the same way as it has in the sale of books or airline tickets. Instead, it will take place through a compartmentalizing of the transaction process, both in terms of consumer needs and the professional services provided by the real estate broker. For example, a consumer could have recourse to a broker solely to present and negotiate a promise to purchase, without asking him to participate in searching for the property. The consumer will have less need for an intermediary to help him to sell or purchase a property, and more need for an advisor whose role will extend far beyond the transaction itself. On the other hand, even if the consumer is better informed, he does not necessarily have the means, the time or the ability to fully take advantage of the new information resources he has at his disposal. That is where the broker can play his role of real estate advisor.

This new environment, which we describe in summary form in Appendix 2, entitled "Information Technology and Real Estate Brokerage", requires a high level of adaptation on the part of real estate brokerage professionals. In order to serve the consumer well, they must understand, use and fully and efficiently integrate the new technologies into their activities. They must also acquire the knowledge required by the environment within which they are working, and the knowledge required by their role as real estate advisor. This knowledge differs in a number of ways from the knowledge the traditional intermediary, whose role was limited to the transaction, was required to have.

In the opinion of observers, real estate brokerage firms and the brokers and agents who work in them must reexamine their ways of operating, because major investments will have to be made in technology, and there will be significant pressure to lower the costs of their services and therefore their profit margin. It is also generally agreed that we are witnessing a concentration of activities and a standardization of methods and procedures arising from the standardization of the communication technologies. These changes affect the practice of real estate brokerage and are leading us towards virtual transactions and virtual intermediaries.

The new environment in which real estate transactions can be conducted poses great challenges in terms of consumer protection, both in terms of the monitoring of the professional conduct of real estate brokers and other professionals involved, and in terms of the regulation of markets as well as the maintenance and operation of the institutions involved in market regulation.

The fact that the real estate broker is enlarging his scope of activity, considerably increasing the quantity and type of information that he is providing to the consumer, and diversifying his sources of revenue, notably those taken from referrals, be they providers of financial, legal, accounting, maintenance or property renovation services, etc., requires a reexamination of the various aspects of the Act and its regulations. The issue of civil liability and disciplinary action must obviously be given particular attention, as well as the definition of the practice of real estate brokerage itself. Most of the questions dealt with, be they the rules concerning conflict of interest or collaboration between brokers, the development and maintenance of Web sites, rules concerning the transmission and checking of information, solicitation and publicity or keeping records, must be examined in terms of the new modes of consumption and the modern way of doing business.

Another challenge is the question of jurisdiction for establishing the legality of professional acts. This question cannot be resolved in the context of the Real Estate Brokerage Act alone, but is part of a much larger context of the laws that govern commerce and the taxation of goods and services. For these reasons and in order to avoid conflicts with other jurisdictions, the harmonization of real estate brokerage in Québec with brokerage in other jurisdictions must be examined very carefully.

To ensure that consumers can negotiate effectively, at the best price possible and in complete safety, the statutory and regulatory framework which will result from the review process must facilitate and promote change, especially in terms of the development of virtual transactions and virtual real estate agencies. It must also support the real estate broker in playing his role as advisor. This new framework must therefore provide enough flexibility in terms of the administration of the law, and at the same time be rigorous in terms of public protection and the monitoring of professional acts.

Under the current Real Estate Brokerage Act, the real estate agent is only authorized to act for and on behalf of a broker. He currently has no professional independence, and only has partial liability, even when he is the one who carries out all of the brokerage transactions. The development of brokerage practice over the past few years and the changes that we anticipate in the near future require a review of the monitoring principles in favour of making all natural and legal persons who act as intermediaries or advisors in a transaction, or more generally in any real estate matter, more responsible.

Making all persons responsible can only be done insofar as the standards of competence have been reviewed and underpinned with complete and effective training.

COMMENTS AND RECOMMENDATIONS



Evolution of the roles of the broker and agent, and liability

Under the Real Estate Brokerage Act, a real estate agent may only act for and on behalf of a broker. The Act does not give him any professional independence, even when he is the person who carries out the whole brokerage transaction (solicitation, signing of the brokerage contract, drawing up and presentation of the promises to purchase, negotiations, etc.). The broker has complete civil liability for the professional acts of his agents, even when he is no longer able to supervise them adequately.

In reality, the practice of real estate brokerage has evolved, either for economic reasons or because the new communications technologies have modified working methods. Brokers hardly ever get involved in the work of their agents any more, even if they are still responsible for doing so under the current Act. Agents have become more than mere employees. In fact, they have acquired great professional independence in relation to their employer, and they carry out their activities more independently from their broker's supervision than ever before.

According to a study done for the ACAIQ by the Créatec Plus firm in 1997, the public does not make any distinction between a broker and an agent. In general, the public has a poor understanding of real estate brokerage, and believes that, when dealing with a real estate agent, it is dealing with someone who is fully liable for his actions. Of course, this is not true, since the only liability that agents have is in fact an ethical one.

In the Association's opinion, the fact that the Act does not stipulate full liability for all persons carrying out real estate brokerage transactions is a menace to public safety, if only in terms of remedies that can be sought against violators.



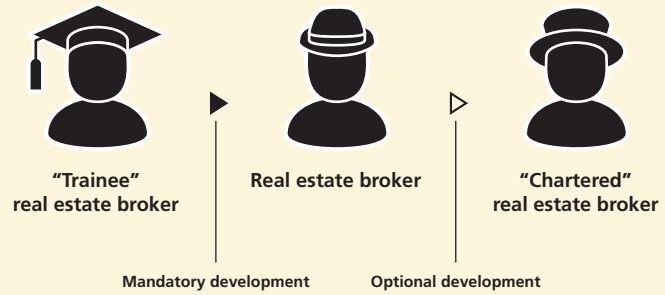
RECOMMENDATION #1

The Association recommends that any person acting as a real estate intermediary should have full legal capacity and full liability for all of his professional acts, without being obliged to be employed or authorized to act on behalf of someone else. This liability would only be acquired by the newcomer to the profession after a training period during which he would be designated as a "trainee real estate broker" for the purposes of administration of the Act.

Once his training had been completed, the fully qualified intermediary would become the central figure of the professional system of real estate brokerage, and would be called a "real estate broker". The Act could, however, provide for certain limitations on the activities of the real estate broker, which would be lifted when he had acquired sufficient experience and had completed additional training. The broker would then become a "chartered real estate broker".

For the purposes of administration of the Act, it would be appropriate to set up 3 levels for the real estate broker certificate. This would seem to be necessary for the purposes of making the transition and to ensure that everyone has the necessary experience, training and qualifications.

Professional development



Note: 89% of the 1,100 participants in the Association's survey considered that the real estate intermediary should have the ability to carry out his professional tasks independently (full independence and full liability). Those who were in favour of the independence of agents stated that it is about time that the regulations reflect current practices in the profession. They highlight the fact that agents are in fact already autonomous. The partisans of independence sometimes set some conditions. Notably, they wanted rigorous training, more stringent admission criteria and the obligation to have professional liability insurance for all participants.



Responsibilities and limitations

In this section, we describe what the responsibilities and limitations of real estate brokers, as well as those of trainee brokers and chartered brokers, could be. We also deal with the form that brokerage firms could take.

In general, the Association recommends moving from a system under which full professional responsibility falls to the group or office, meaning the current broker, to a system of complete responsibility both of individuals and of groups. The practice within professional orders in Québec is in itself a model upon which this argument can be based. However, this is not the main argument. For the Association, such a system of professional responsibility is becoming indispensable in light of the radical changes that are currently taking place in the field of real estate brokerage, provoked by the massive use of new information technologies, which encourage the individualism of participants.

The traditional model of the broker who hires or authorizes agents to act in his name to offer properties for sale or to search for properties is no longer valid. As we mentioned in the introduction and as described in Appendix 1, we are witnessing the development of new business models in which the consumer is in a position of power. There will be both an expansion and a fragmentation of the demand for and the provision of professional services. We are also seeing the development of information systems that allow all the stages of a real estate transaction to be performed electronically.

2.1 Limit the effects of the trainee's practice in order to ensure greater protection of the public

The trainee generally has neither the experience nor the training necessary to be fully independent. The supervision of his practice should be determined with this in mind.

RECOMMENDATION #2

The Association recommends as follows for trainees:

Limited independence and liability of the trainee

For the duration of his training period, the trainee would have limited legal capacity and competence to carry out his professional tasks. He would therefore act for and on behalf of his training supervisor, and this supervisor would be liable for his professional acts.

The training supervisor would guide, direct, review and validate the work of the trainee, but would not necessarily be required to assist him in all his activities.

Plan for certain limitations in important transactions

The limitations on the trainee's professional activities would mean:

- prohibition from signing brokerage contracts or acting as an intermediary for a promise to purchase unless under the supervision of his training supervisor; and

- prohibition from receiving his compensation directly (sharing of the compensation would still be left to the discretion of the chartered real estate broker and the trainee).

Title of trainee

In the eyes of the public and for the purposes of administration of the Act, the trainee would be seen as a “trainee” real estate broker in order to clearly identify his status as an apprentice and his limited experience in the profession.

2.2 The rights and obligations of the real estate broker

In the spirit of the proposed modifications, the former title of *real estate agent* would be replaced by *real estate broker*. In addition to this change of title, the new framework of real estate professionals should ensure that the transition towards the full independence of its practitioners is made easily.



RECOMMENDATION #3

The Association recommends as follows for the real estate broker:

Independence and liability of the real estate broker

The Association recommends that the real estate broker be able to act alone and be fully responsible for his acts. He would automatically become a party to the brokerage contract and would be responsible for maintaining his records and registers. He would also have professional liability insurance.

Compensation and trust account

As the primary party responsible for the professional transaction, the real estate broker could receive his compensation directly and share it. He could also have his own trust account in order to receive deposits for real estate transactions. If the broker were to choose to act within a brokerage company, he would have to delegate the management of his trust account, collection of his compensation and the keeping of certain registers to this company.

Limitations on hiring

Although the real estate broker would be authorized to act on his own behalf, he would not be allowed to hire other brokers or trainees. He would therefore not be able to act as a training supervisor.

Prohibition from practising in the form a company or under a corporate name

The real estate broker would not be able to carry out his professional activities through his own company, nor act using a corporate name (assumed name). However, he would be able to share certain operating costs with other real estate brokers.

Title and transition

In addition, the Association recommends that the current affiliated real estate agent become a real estate broker. However, this person should not be able to act in his own name without having passed an examination which would place him on the same level as those who will join the profession after the new Act comes into effect.



2.3 The rights and obligations of the chartered real estate broker

The limitations on the real estate broker would disappear once he had acquired sufficient experience and training. After having exercised his profession as a real estate broker for a certain time and having acquired additional training, he could then become a *chartered real estate broker*, and would be granted certain additional rights.

RECOMMENDATION #4

The Association recommends as follows for the chartered real estate broker:

Hiring and responsibility towards trainees

The chartered real estate broker would have chartered real estate brokers, real estate brokers and trainees at his disposal. In the case of trainees, the chartered real estate broker could act as a training supervisor or delegate this responsibility to another chartered real estate broker. The professional liability of the chartered real estate broker would cover the actions of the trainee.

Company and corporate name

The chartered real estate broker could carry out his professional activities through a company, a limited partnership or a cooperative. He could also act using a corporate name. In all cases, the enterprise would have to be registered with the regulatory body.

Keeping records, accounts and registers for others

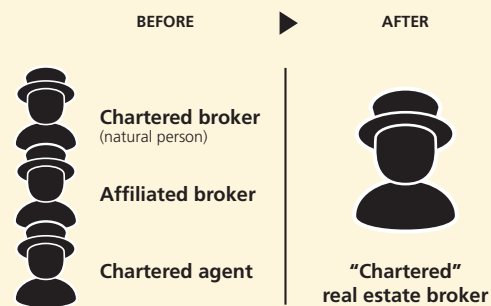
The chartered real estate broker in charge of the enterprise would be responsible for keeping the records and registers and maintaining the trust account for the other brokers working in the same enterprise.

Limitations on the chartered real estate broker

The chartered real estate broker would not be bound by the limitations on the real estate broker.

Title and transition

The Association recommends that all current chartered real estate agents, affiliated real estate brokers and chartered real estate brokers (natural persons) be designated as chartered real estate brokers for the purposes of administration of the Act. On the other hand, in dealing with the public, they could simply call themselves "real estate broker".



2.4 Maintain the practice of real estate brokerage in the form of real estate brokerage enterprises

In addition to carrying out their own activities, meaning as sole proprietors, the chartered real estate brokers could carry out their activities under various forms of brokerage enterprises.

RECOMMENDATION #5

The Association recommends as follows for brokerage enterprises:

The **first type of enterprise** could be organized under the responsibility of an individual chartered real estate broker who has other chartered real estate brokers, real estate brokers or trainees working for him.

The **second type of enterprise** could bring a number of chartered real estate brokers, real estate brokers and trainees together into an entity that could be a company, a partnership or a cooperative. However, this entity would not have a real estate broker's certificate, since this privilege is only granted to natural persons. The legal person, partnership or cooperative could not fulfil the functions of a training supervisor either, since this can only be done by natural persons. It could call itself not a real estate broker but a brokerage agency, and it would be required to register with the regulatory body.

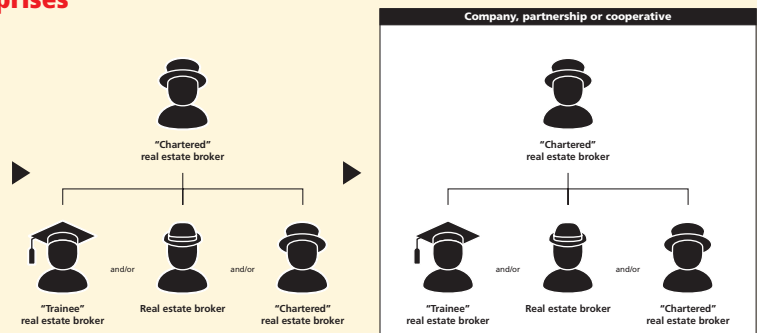
All the obligations of the real estate broker provided for in the Act would be applicable to the enterprise. This means that the enterprise would be liable, to the same extent as the brokers working in it, for breaches of discipline by these brokers. It would also be liable for any prejudice caused to a consumer by a fault committed in carrying out his duties by a natural person working in the enterprise.

The liability of real estate brokers would remain full and complete in terms of their professional actions, and each natural person would be required to have professional liability insurance covering the minimum conditions set out in the Act. However, their actions would not engage the liability of the other brokers in the enterprise. The enterprise could however insure itself in addition to the liability insurance held by its real estate brokers, and therefore offer added value to the public.

Transition

The Association recommends that the chartered real estate broker – natural person be the person under whose authority the other brokers or trainees could act. The situation would therefore be essentially the same as it is now. In addition, the Association recommends that the legal persons or partnerships that currently hold a chartered real estate broker's certificate have their certificates transferred into registration with the regulatory body.

Enterprises





Better training for members of the profession

A number of comments confirm that the training of real estate brokers and agents has improved since the current Real Estate Brokerage Act came into effect. Despite this fact, and even though we

have one of the most demanding training programs in North America, the comments gathered during the consultation meetings with consumers and members of the profession all agree: it is essential to have training that is better adapted to the needs of the profession and the public to be able to provide the consumer with services of high quality.

In this section, we will examine the various aspects of the current training of brokers and agents, and we will suggest measures for improving it.

3.1 Raising criteria for access to the profession

One of the first things noticed concerning training is that candidates to the profession do not always have the level of education necessary to allow them to follow and fully understand the principles and notions that they are taught in the initial training courses, which are the five college-level courses. This disadvantage is even more serious in that it shows that initial training is also incomplete.



RECOMMENDATION #6

The Association recommends that candidates for initial training have at least a diploma from a college-level educational institution (DEC) or equivalent.

The Association also recommends that initial training or an attestation from a college-level educational institution (AEC) which is the normal route for joining the profession, can be enriched in the context of a DEC, in order to make the necessary improvements to current training, especially by increasing the range of subjects taught.

As is the case at present, passing an examination given by the regulatory body would be a method of verifying the knowledge and qualifications acquired during initial training.

Candidates to the profession should also be required to pass an examination demonstrating their knowledge of the language used (French or English) in the practice of the profession.

The four conditions listed above would constitute the qualification criteria for acceptance into the training period.

Note: 96% of participants in the Association's survey believe that future members of the profession should be given more extensive training in real estate than that which is currently being offered, before being eligible to become trainees.

3.2 The training period: a dynamic and effective monitoring tool

The experience of the past few years has shown us that newcomers to the profession are often left to themselves. Making the transition from theory to practice is difficult, and poses a risk for the public.

RECOMMENDATION #7

The Association recommends that all new candidates to the profession be required to complete a training period supervised by a duly qualified person. This training period would include courses, assignments and examinations on drawing up contracts and using the forms, the methodology of real estate brokerage (the presentation of a promise to purchase, keeping records and registers), real estate assessment, ways of dealing with clients, putting properties on the market, financing, basic training in the fields of commerce and industry, professional ethics, computers, etc.

The length of the training period could depend on the time required for the trainee to acquire the necessary experience, but also be subject to a minimum and maximum length. Evaluation of the trainee would be based on certain quantitative and qualitative criteria which would be evaluated by the training supervisor, and the trainee would be required to pass a second examination prepared by the Association before being granted the title of real estate broker.

The trainee real estate broker would be required to complete his training period before becoming a fully-fledged real estate broker.

Note: 88% of the respondents to the Association's survey are in favour of the requirement of doing a training period to join the profession.

3.3 Meet the training needs of chartered real estate brokers more effectively

The training that currently leads to the title of chartered real estate broker does not provide all the additional skills required to manage a real estate brokerage enterprise.

RECOMMENDATION #8

The Association recommends that improvements be made to the training of chartered real estate brokers to make it possible to acquire all the skills and qualifications required by the job.

In particular, the subjects necessary for the training of a chartered real estate broker would be business law, accounting and tax, advanced drafting of contracts, the Real Estate Brokerage Act and the Code of Ethics, management methods, commercial and industrial real estate, and marketing and professional services techniques.

3.4 Increase accessibility to courses

It has been observed that initial training courses are sometimes difficult to find, especially outside the urban centres. This is also true in the case of courses given in English. This problem of accessibility is even more extreme in the case of courses for chartered real estate agents or brokers. Candidates for the chartered real estate agent certificate must sometimes wait for up to two years to write the ACAIQ examination because educational institutions have difficulty in gathering together a large enough number of students.

Few institutions provide courses, although many of them are authorized to do so. Courses have often been cancelled. This situation is a significant impediment to the development of

professional qualifications and new professionals. It can also result in a lack of certificate holders in certain regions or for certain categories, which encourages the illegal practice of brokerage activities.

In addition, it is very difficult for people who have a university education in related subjects to obtain equivalency from colleges, which accentuates the general problem of accessibility.

RECOMMENDATION #9

In order to optimize current training, the Association recommends that accessibility to courses be improved. To do this, distance courses should be provided (by correspondence, through television or the Internet, etc.) in order to alleviate the identified accessibility problems.

With respect to the study of candidates' records for purposes of certification and specifically for the granting of equivalency, the current mechanisms should be reviewed in order to grant the necessary powers to the regulatory body, which would give persons who have appropriate university training easier access.

3.5 Review the certification examination

Before issuing a certificate, the Association requires the candidate to write a "synthesis" or composite examination, in order to establish that he has the necessary knowledge. Successful completion of this examination is a condition for being granted the right to practise. The passing grade is 70%.

A candidate may fail in one subject, for example the course dealing with the Act, but still receive a passing grade on the composite examination. In order to avoid this situation, it would be necessary to set up one examination per subject, rather than a composite examination. Apart from the fact that these types of examination would make it easier to verify the knowledge of candidates, they would also contribute to raising their level of competence.

This recommendation also applies to the examinations for brokers. The unavailability of courses considerably increases their problem.

RECOMMENDATION #10

The Association recommends that examinations by subject rather than a composite examination be set up. These examinations would have the advantage of improving the process of verifying acquired competence. A maximum period of time should be set for passing all the examinations.

3.6 Contribution of the regulatory body in the development of training programs and in monitoring acquired skills

The Association participates very little in the development of training programs provided by educational institutions for real estate brokers and agents. However, the many requests that the Association receives daily make it possible to clearly identify the gaps in information and knowledge among brokers and agents. The Association is all the better placed to become a first-rate resource since it is the organization which dictates the rules of practice for real estate brokerage.



RECOMMENDATION #11

It is essential that the regulatory body be directly involved in the development of real estate training programs. To do so, the Association recommends that the Act provide for the automatic participation of the regulatory body in the development of the courses and programs given by educational institutions.

In the same spirit, the legislator must ensure that, in terms of basic training, there are mechanisms which will allow the regulatory body to consult the various partners in the field of education and real estate brokerage so they can combine their expertise to develop courses that are best adapted to the needs of students.

In addition, closer participation with the regulatory body in the training of teaching personnel would have a positive impact on the quality of courses offered, particularly with regard to the Real Estate Brokerage Act and the drawing up of contracts.

3.7 Developing the courses necessary for the needs of specialists

The current Act was developed primarily to govern residential brokerage, and the basic training of real estate agents therefore does not adequately meet the needs of other types of real estate brokerage. First, some of the courses offered as part of basic training are not relevant for people who want to work in specialized fields (agricultural, commercial and industrial, enterprise, income properties, mortgage loans, etc.). Second, real estate brokers and agents who practise their profession in one of these fields do not always have the qualifications necessary to ensure adequate protection of the interests of the public.



RECOMMENDATION #12

The Association recommends that training for real estate brokerage be reviewed so that the main areas of specialization are covered. In this way, all real estate professionals would have sufficient basic knowledge to be able to practise in a specialized area.

Those who wish to have a category of specialization mentioned on their certificate and be able to list it on their business card should obtain recognition of their relevant training and experience from the regulatory body. They should also pass an examination. In addition, the number of categories of specialization that appear on a certificate should be limited.

3.8 Develop a mandatory continuing education program

In the context of the powers conferred upon it by the Act, the Association has, for a number of years, provided its members with continuing education activities and seminars on subjects related to practice, such as the use of mandatory forms.

Despite this, real estate brokerage professionals receive little on-the-job training, given the absence of stipulations that make the participation of brokers and agents in continuing education activities mandatory. However, most of the infringements of the established rules concerning discipline and civil liability seem to be related to insufficient professional improvement.

Mandatory continuing education would also have the advantage of encouraging inactive members (holders of a suspended certificate, for example) to update their qualifications. The protection of the public would thereby be increased, since members who did not meet the requirements would be forced to leave the profession.



RECOMMENDATION #13

The Association recommends that continuing education be made mandatory. This obligation could take the form of a certain number of hours of training given periodically, in the context of a program set up and administrated by the regulatory body. It would still be necessary, however, to give the regulatory body the power to recognize the training given by other institutions, and to mandate some of them to provide certain activities for and on behalf of the regulatory body.

Note: A number of respondents to the Association's survey stated that continuing education would be useful for fundamental subjects (changes in the Civil Code, laws or regulations, or any other change that has an important impact on the practice of real estate brokerage).

Courses by correspondence, Internet and events such as colloquiums, seminars, congresses, etc. are the methods most often suggested.

Finally, respondents ask that training be based as much as possible on practice and not on theory.

3.9 Mobility between jurisdictions

At present, the Association does not have the authority to recognize the training of persons who are already authorized to practise in other jurisdictions so that they can practise in Québec. Québec is one of the rare jurisdictions in which the regulatory body has been unable to reach an agreement in this regard with its counterparts. In light of the Canadian Labour Mobility Act, a number of real estate brokerage regulatory bodies in Canada are reviewing their acts and regulations, and some of them have already concluded inter-jurisdictional agreements. The same phenomenon is taking place in the United States. These types of agreement are even being made between Canadian and American jurisdictions. In Québec, the Association has received some requests on this subject, and has been unable to follow up on them.



RECOMMENDATION #14

The Association recommends that the Real Estate Brokerage Act and regulations provide stipulations allowing the regulatory body to recognize the training of persons already authorized to practise in other jurisdictions for the purposes of issuing a certificate for practice in Québec, based on a pre-established criteria. Such a measure and any other stipulation that would promote increased mobility of persons practising real estate brokerage are considered to be essential in the general context of the mobility of the labour force, given the transformation that real estate brokerage is beginning to experience due to the influence of information technology.

Naturally, this type of recognition could only be given in the particular context of Québec law. Thus, it would be easy to recognize course in Financial Mathematics done in Alberta or Michigan, but difficult, and even impossible, to recognize courses in Law from a common law jurisdiction.



The activity of broker and brokerage transactions

In this section, we will deal with certain aspects directly or indirectly related to the activity of broker for which statutory and regulatory changes should be made if we want to ensure optimum protection of the public.

4.1 Illegal brokerage: withdraw the notion of compensation from the definition of the activity of real estate broker

In its description of the activity of the real estate broker, the Real Estate Brokerage Act specifies that “a person who, for compensation and for others, engages in a brokerage transaction ... is pursuing the activity of real estate broker”. This definition, which seems innocent enough at first glance, implies that in the absence of the payment of compensation, a person cannot be considered to be engaging in the activity of broker, even when this person has performed brokerage transactions.

In other words, the courts would have difficulty finding a person guilty of practising the profession illegally without proof of compensation. Unfortunately, this part of the evidence is often difficult to prove, and offenders escape from justice even though it has been shown that they were acting without a certificate. Of course, the public cannot be protected adequately if it is served by people who are unqualified and unmonitored.

In addition, the expression “brokerage transaction” is not defined in the Act. This imprecision leads to difficulties of interpretation in criminal matters.

RECOMMENDATION #15

The Association recommends that the notion of compensation be removed from the definition of the activity of real estate broker, and that any person who has engaged in brokerage activities be considered to have acted as a real estate broker. The Association could then intervene against any person who had illegally engaged in a real estate brokerage transaction, without having to worry about the notion of compensation, which changes nothing in terms of the risk the public is exposed to.

The Association recommends reviewing the definition of the brokerage transaction and certain dispositions of the Act and its regulations, in order to ensure that all the brokerage transactions carried out by persons who are covered by an exception to section 2 of the current Real Estate Brokerage Act be made subject to the provisions of the Act. In addition, the Association recommends lifting the prohibition against real estate brokers engaging in activities in the fields of insurance, financial planning and securities investments. This definition could also be reviewed in the light of securitization, relocation and real estate management activities.

The definition of the brokerage transaction should also take into account the changes in terms of e-commerce and their impact on the influence of professional transactions and even on questions of jurisdiction.

Note: 66% of the participants in the survey were of the opinion that a person engaging in a brokerage transaction should be considered to be acting as an intermediary, even if he did not receive compensation.

4.2 Obligation of the real estate broker to always act in that capacity

The current Real Estate Brokerage Act provides that a real estate agent may not work for more than one broker at a time. In addition, the By-law of the ACAIQ specifies that agents may carry out a brokerage transaction as long as they are working for a chartered broker or a multidisciplinary firm. In reality, sometimes agents work for other persons or organizations than their broker without identifying themselves as agents even when engaging in brokerage transactions, such as for builders or financial institutions, and when they receive compensation in return.

RECOMMENDATION #16

The Association recommends that the Act and regulations prohibit a real estate broker from carrying out brokerage transactions for persons other than himself or the brokerage enterprise to which he is connected. Stipulations should also be provided to ensure that the broker will always act in that capacity when engaging in brokerage transactions in order to keep the public well-informed, and ensure access to redress.

4.3 Disclosing conflicts of interest

A real estate broker or agent who has or intends to have an interest in a property that is subject to a transaction must reveal his professional status to the potential contracting party. In the same way, any agreement for compensation that could place the broker or agent in a conflict of interest with his client's interests must be disclosed. For example, the broker frequently receives compensation from the financial institution to whom he sends a client.

Legally, a real estate broker may not share his compensation with another broker practising in Québec or in another jurisdiction or brokerage firm, or with a representative as defined by the Act Respecting the Distribution of Financial Products and Services. Now, sometimes compensation sharing agreements are concluded with professionals in fields related to real estate brokerage. This practice is illegal.

RECOMMENDATION #17

The Association recommends that the statutory and regulatory provisions be reviewed in order to **make the disclosure** of all conflicts of interest **mandatory**. In fact, a more effective supervision is required to ensure greater compliance with the rules concerning referrals, commissions or any other practice that promotes the interests of the broker. Thus, there would be reason to fully regulate situations of double representation, for example when a broker who has a brokerage contract for a purchase decides to present a promise to purchase for an immovable for which he already has a brokerage contract for sale.

The Association also recommends that monetary compensation be stated in the registers of brokers. In addition, non-monetary consideration (future contracts and other commercial privileges, trips, gifts, etc.) should be prohibited.

4.4 The importance of regulating building inspections

Building inspection is an important stage in a real estate transaction, and is a key element in protecting the public. That is why the Association always recommends that buyers have a complete inspection of the immovable done before purchasing it, in order to ensure that it is in good condition. The Association has developed specific directives for real estate brokers and agents on this matter.

However, persons working in the field of building inspections are not subject to any specific regulation. It is therefore not surprising to notice that the standards of quality of this activity are uneven. Many inspectors do not have any liability insurance, while others claim to be professionals without having sufficient training.



RECOMMENDATION #18

The Association recommends that the obligation of the real estate broker to advise his clients to have their immovable inspected before purchase be a specific stipulation in the Act, and should include the obligation of placing the inspection report in the record, which is not always done at present.

In addition, since building inspection is essential for guaranteeing the protection of the public, the Association recommends that this activity be governed by a law, just like real estate brokerage. In this way, the members of this profession would be subject to regulations and a code of ethics in addition to being covered by liability insurance and a compensation fund.



Advertising, solicitation and representations

The applicable regulations on advertising prohibit any real estate broker or agent from making false, misleading or incomplete representations.

The Association's observations show a clear improvement in practice in terms of professional identification. But some adjustments are still desirable, as we will see in this section.

5.1 Ensure clear identification of the persons the public is dealing with

Advertising by real estate brokers and agents does not always clearly identify who is advertising, which is confusing for the public. This situation is due to a number of factors, including the rules governing advertising, the relative complexity of the structure of a large number of brokerage enterprises, and the increasingly common use of trademarks that belong to banners or franchises. This phenomenon often leads to advertising in which holders of real estate brokerage certificates, legal persons, natural persons, assumed names, franchisees, sub-franchisees, etc. are all mixed together, so that the consumer no longer knows who he is dealing with. In addition to the problem of communication there is the question of the protection of the public and especially the recourse the public has under the Real Estate Brokerage Act.

It would also be appropriate to examine the possibility of making real estate advertising by all enterprises, even those that do not fall under the jurisdiction of the regulatory body, subject to the Real Estate Brokerage Act and its regulations. In fact, this is a point that the Government of Ontario has addressed in a recent proposal concerning a reform of that province's *Real Estate and Business Brokers Act*.



RECOMMENDATION #19

In order to ensure better protection for consumers, the name of the advertiser should be reproduced in a way that does not lead to confusion in any advertising, solicitation or representation (the directives developed by the Syndic of the ACAIQ in 1995 are a basic reference in this matter, but are not binding).

For this purpose, the Association recommends that any legal or natural person, economic or other type of partner, who does advertising for or on behalf of a broker or jointly with a broker, be bound to comply with the Real Estate Brokerage Act and be accountable to the regulatory body's Discipline Committee, which could then sanction them for their act as is currently the case for directors and officers of a broker – legal person (s. 130 of the LCI). This measure would result in enlarging the protection of the public by making all participants in the profession responsible for the promotion of services offered to the consumer.

5.2 Conveying verifiable and quantifiable information

In their publicity, real estate brokers and agents often use statistics on their performance. These are generally used to make comparisons with the competition to gain a promotional advantage. However, this data (the number of homes sold, total dollar amount of sales, etc.) may be presented in a number of ways, according to the interests of the advertiser, so that the public is often misled.

This practice, insofar as it is based on partial or even potentially false information, may become unfair and therefore is not appropriate in a field of activity in which the role of professional advisor should prevail.

The Real Estate Brokerage Act provides that a real estate broker or agent may use verifiable and quantifiable data in his advertising. Unfortunately, verifying the accuracy of the information used is often a problem.



RECOMMENDATION #20

The Association recommends that all forms of comparative advertising, both qualitative and quantitative, be prohibited.



Forms

The Real Estate Brokerage Act and regulations contain a number of measures that provide for the use of mandatory forms. Brokerage contracts, promises to purchase, counter-proposals, etc., have been the subject of many comments from the public and members of the profession. This section contains the various suggestions of the Association to simplify their use.

6.1 Review the regulations concerning forms in terms of the needs of the public

The comments of the public and real estate professionals show a consensus: the current forms are hard to understand and their length discourages people from reading them. Although the Association is aware that changes are necessary, developing and updating of the forms required by the Act is difficult because of the complexity of the regulatory process to be followed.

RECOMMENDATION #21

The Association recommends that the use of some of its forms be made an ethical requirement. It also recommends that the regulatory body be given the power to modify the mandatory content of the forms without having to submit these changes for government approval.

Apply the rules for use to all forms

The rules governing the use of mandatory forms should be applied to any form completed by a broker or agent. These rules of contract drafting are fundamental to ensuring the protection of the parties to a transaction.

Note: 81% of the participants in the survey are of the opinion that only a minimum content for certain forms should be specified by regulations adopted by the profession.

90% of people questioned believe that the use of forms published by the regulatory body should be an ethical obligation. Among those who agree with this principle, only 12% are of the opinion that this should only apply to residential forms, and that industrial or commercial transactions, or transactions concerning income properties, should be exempted from this obligation, as is currently the case.



Establishments

An establishment* is defined by the Act as the place where the broker keeps his records, books and registers. This notion of a central location for the management of records is based to a large extent on the principle of supervision of agents by the broker they are working for.

In this section, we suggest measures for adaptation to current circumstances, taking into account the changes that have taken place in the profession in this matter.

7.1 Redefine the notion of establishment

As we have seen, agents do not often go to the establishment they are connected with, which has an influence on the role of an establishment and on the way that records and registers are stored. The Association believes that this reality should be reflected in the regulations governing establishments.

RECOMMENDATION #22

The Association recommends that the notion of “establishment” be defined without reference to the keeping of records and registers. Thus, an establishment would be any place of business identified as such, announced publicly and accessible to the consumer.

This place should, however, be set up to ensure the confidentiality of meetings that are held there and the personal information that is stored there.

As is presently the case, a person in charge should be designated for each of the establishments so that the public can have someone to contact in case of a problem with the real estate broker dealing with his transaction. This person in charge should still be a holder of a certificate.

* Until recently, the Real Estate Brokerage Act referred to a “place of business”.

Note: 84% of the respondents to the Association’s survey believe that an officer should be designated for each establishment so that the public will have someone to contact in case of a problem with the broker dealing with his transaction.

7.2 Eliminate the obligation for managers to devote themselves exclusively to their management duties

The Real Estate Brokerage Act and regulations provide that every establishment should be managed by a natural person who devotes himself exclusively to his management duties in terms of the number and experience of his personnel. One of the Association’s observations is that the expression “devote himself exclusively ...” creates confusion by leading to the belief that the manager does not need a chartered real estate agent’s certificate, or that he does not have the right to engage in real estate brokerage transactions.

Unfortunately, the economic conditions in which brokerage firms are operating, in the vast majority of cases, no longer make it possible to set aside the financial resources necessary to fully support a person who spends his time solely on management functions. In fact, the arrangements for sharing the compensation between real estate brokers and agents has greatly evolved over the last few years. Today, real estate agents keep the largest share of the compensation paid by the consumer, and the broker only keeps an amount that covers office expenses, which the agent pays to him on a monthly basis. This obliges the manager to engage in brokerage activities even if he is in a situation which could lead him to infringe the rule of exclusivity of duties.



RECOMMENDATION #23

The Association recommends that the managers of brokerage offices be permitted to carry out real estate brokerage transactions without being obliged to devote themselves exclusively to their managerial duties.



Records, accounts and registers

The By-law of the ACAIQ provides that the holder of a real estate broker's certificate must keep his records, accounts and registers up to date according to precise specifications. The By-law also stipulates that the real estate agent is obliged to report to his broker and to transmit to him the information necessary to maintain them. In this section, we summarize the current situation, specifically in light of the observations of the Professional Inspection Committee.

8.1 Make it mandatory to keep a trust account

At present, a broker is not obliged to keep a trust account. However, the By-law of the ACAIQ provides that a real estate broker or agent does have the obligation to recommend that a reasonable deposit be placed in trust with the contracting broker (listing), unless he has transmitted a statement to the effect that he did not intend to receive any sum on behalf of someone else.

RECOMMENDATION #24

For the protection of the public, the Association recommends that it be required to keep a trust account and that the deposit made during a transaction performed using the services of a real estate broker be deposited in that account. In fact, when the deposit is made with the broker, the Association always has the possibility of investigating him in case of irregularity, which is obviously not the case when the deposit is placed elsewhere, for example with a notary. This obligation would also have the effect of making the broker more responsible.

In addition, the procedures for the reimbursement of funds held in trust should be set out in the regulations. In addition, as is currently the case, any interest produced by these accounts should be paid to the regulatory body and be used for the protection of the public.

8.2 Set up registers according to specialized fields

The rules that govern the records, accounts and registers held by real estate brokers and agents were mainly designed in terms of residential brokerage, and are therefore not well adapted to specialized areas of real estate brokerage (commercial, industrial, hypothecs, etc.), which causes difficulties during professional inspection.

RECOMMENDATION #25

The Association recommends that the Act be amended to review the regulations applicable to the management of records, accounts and registers, so that monitoring rules can be set up in terms of the particular characteristics of the various activities of real estate brokerage.



Regulatory body

The Association des courtiers et agents immobiliers du Québec is the agency responsible for the enforcement of the Real Estate Brokerage Act. Its principal mission is to ensure the protection of the public by setting up a supervision for members of the profession.

In this section, we explore the mechanisms that have allowed the ACAIQ to fulfill this mission of protecting the public, and we make some recommendations for reinforcing the effectiveness of its involvement.

9.1 Maintain the principles of self-management, self-regulation and self-discipline

The real estate brokerage profession benefits to a large extent from the principles of self-management, self-regulation and self-discipline. For example, the Association's Board of Directors is made up of nine certificate holders elected by the members of the profession, and of two persons appointed by the government. In addition, the Board has the authority to adopt regulations concerning professional practice. Finally, the discipline of brokers and agents is ensured by members of the profession, appointed by the Board of Directors.

RECOMMENDATION #26

The Association recommends maintaining a regulatory body, the majority of whose Board of Directors is elected directly by members of the profession rather than appointed. It therefore proposes maintaining and reinforcing the principles of self-management, self-regulation and self-discipline that are already in place.

The Act should establish a principle of progressive replacement of the Association's directors, in order to preserve continuity. For example, the rules applicable to the replacement of directors could guarantee that former directors step down gradually and ensure that files are properly passed on to the new directors.

The Board of Directors should be made up of 11 members, as is currently the case. The number of persons appointed by the government, based upon their aptitude to contribute to solving problems concerning the protection of the public in the field of real estate, should be increased from two to three.

Note: 91% of the respondents to the Association's survey consider that the principles of self-management, self-regulation and self-discipline already in place should be maintained.

93% of the participants are of the opinion that the majority of members of the Board of Directors should be elected directly by members of the profession, as is currently the case, rather than be appointed by the government.

With regard to the proportion of the representation of the people appointed by the government to the regulatory body's board of directors, 21% of those who made comments are of the opinion that two persons is sufficient. It was mentioned that, at least, these people should have some concrete knowledge of real estate brokerage.

9.2 Find a name that best represents the mission of the regulatory body

The Association's present name can lead to confusion concerning its mission. In fact, the word "association" implies notions of voluntary membership which could give the impression that the regulatory body has a mission of exclusively representing the interests of its members. The professional character of the Association is thus poorly represented by this term.

RECOMMENDATION #27

Since the primary mission of the regulatory body is to protect the public, the Association recommends that its name reflect its professional character better, and that the terminology used to describe it be chosen accordingly.

9.3 Viability of the regulatory body

It is nearly seven years since the beginning of its operations, and the Association is now known by the public and its members fully understand its role. It has a good reputation and enjoys the confidence of the public, its members and the various participants in the sector. In fact, the regulatory body has become one of the main points of reference in real estate brokerage for information, monitoring the quality of professional services, continuing education, etc.

In addition, the Association notes that it is becoming difficult to ensure the availability of sufficient financial resources to allow the organization to fully carry out its mission. The question of financing and the viability of the regulatory body will be a major challenge over the next few years.

The demand for services is constantly on the rise, and the Association is responding to this demand, but is just barely able to do so. A change in the real estate market and the slightest decrease in the number of brokers would considerably reduce the regulatory body's ability to carry out its responsibilities.

We must remember that the regulatory body is mainly funded by professional fees paid by certificate holders. Now, in a more global context, it seems difficult to increase these fees, even if the regulatory body is able to do so. In fact, it costs more and more for brokers and agents to practise in a traditional environment where they belong to a real estate board, to provincial and national associations, and where they use multiple listings services. For these organizations, there are significant repercussions in terms of funding and the provision of services. There is also the alarming phenomenon of retirement which has been taking place in most jurisdictions.

Over the next few years, we will see major structural changes in organized real estate brokerage, and these will have an impact on the administrative organizations, if only in terms of an increased demand for services and funding. The ACAIQ's Board of Directors is examining this subject, but it is essential that the process of reviewing the Act allow an examination of these issues.

RECOMMENDATION #28

The Association recommends an examination of the regulatory body's funding methods so that these revenues will no longer be based exclusively on the fees paid by members of the profession. The diversification of sources of income, for example from continuing education, would minimize the unstable nature of the regulatory body's funding.

The Association also recommends that the Board of Directors have the right to determine the required fees, through a by-law submitted to the government for approval.



Certification

The Real Estate Brokerage Act stipulates that all real estate brokers and agents in Québec are required to hold a certificate from the Association. An agent's certificate may only be issued when he is employed by or authorized to act on behalf of a broker. In addition, candidates who wish to be admitted to the profession must first pass the Association's entrance examination. This standard has been set up to guarantee the public that brokers and agents have the knowledge and qualifications necessary to provide them with high-quality services.

10.1 Simplify the administrative process for certification

The fact that the right to practise real estate brokerage is based on the issue of a "certificate" and not on the principle of a "right to practise" as is often the case in other professions, makes the certification process considerably more complicated. This complexity is compounded by the fact that the agent's certificate is required to be linked to a broker's certificate.

We would also point out that the current regulations do not allow the Association to use new communication technologies in managing its register of members. Thus, a certificate must be renewed through the mail or in person. Québec is already somewhat behind compared to other North American jurisdictions in this regard. Our neighbours to the south are setting up a central system that will combine data from registers in the different states into a single database. Real estate brokers and agents can make changes to some information contained in their records through the Web, regardless of the jurisdiction they are in. The regulatory body concerned is then automatically informed of these changes, and updates its register as a result.

RECOMMENDATION #29

The Association recommends that the notion of a "certificate" be replaced by the notion of the right to practise, as is done in professional orders, among others. This change, combined with the fact that all the persons authorized to practise real estate brokerage would have the status of broker, and therefore full professional responsibility and independence, would greatly simplify the certification process, and thereby generate appreciable savings.

These savings would be even greater if the regulatory body could issue and maintain permits electronically.

10.2 Criminal acts and disciplinary infractions in another jurisdiction

The current Real Estate Brokerage Act and regulations do not contain specific stipulations, as provided for in the Professional Code, that give the Association the authority to refuse or suspend a certificate when the person has been found guilty of a criminal act related to the activity of a broker, in Québec or elsewhere. This absence of a stipulation means that the Association is very limited in its ability to intervene, even when it has knowledge of the situation.

Nor are there stipulations that make it possible to take into consideration the fact that a person has been found guilty of a disciplinary infraction related to the activity of a broker in another jurisdiction, and therefore suspend or limit his right to practise.



RECOMMENDATION #30

The Association recommends that the Real Estate Brokerage Act and regulations provide specific stipulations concerning the way and the conditions in which the regulatory body may refuse, suspend or limit the right to practise of a person when this person has been found guilty, in Canada or in another jurisdiction, of a criminal act related to the activity of a broker. Similar stipulations should be provided for persons who have been subject to disciplinary decision related to the activity of a broker outside Québec.



Professional inspection

The role of the Association's Professional Inspection Committee is to ensure that the methods used by real estate brokers and agents are consistent with the rules of the profession. More specifically, the Committee has the mandate of supervising the professional practice of real estate brokers and agents by auditing their records, accounts and registers.

The professional inspection department has noticed that the records on brokerage contracts held by brokers do not always contain all the documents required by the Act. In this regard, the inspectors must remind brokers and agents of their obligation to complete their records so that they can prove the accuracy of the information contained in the description sheet. This problem is even more significant because it is often the cause of inconvenience to the public.

In this section, we suggest ways of improving the efficiency of the Professional Inspection Committee.

11.1 Give the Inspection Committee the authority to supervise the professional competence of brokers

In terms of professional inspection, the Real Estate Brokerage Act has a favourable impact on the protection of the public, thanks notably to its preventive type of intervention. The identification of certain difficulties in the rules of the profession before they cause any problems provides extra protection for the public. In fact, the experience of the Committee shows that corrective measures are effectively brought to bear following its recommendations in the vast majority of cases.

Although the past few years have shown the great usefulness of the Professional Inspection Committee, the role assigned to it (section 108 of the Act), namely to "*supervise the carrying on of the professional activities of the members of the Association, with the exception of professional competence, in particular by auditing their records, accounts, books and registers*", limits the range of its action. In fact, it prevents the Committee from intervening when it notices the inability of real estate brokers and agents to conduct their activities correctly.

The power to supervise the competence of real estate brokerage professionals would give the Professional Inspection Committee more latitude to encourage the members of the profession to improve their training. Even better, the power to recommend that the regulatory body's Board of Directors oblige certain professionals to complete a training period and/or take, and pass, upgrading courses, and limit or suspend the right of these members to pursue their professional activities until they have met this obligation, would maximize the effect of the inspection visits in providing more effective protection of the public.



RECOMMENDATION #31

The Association recommends that the Professional Inspection Committee, through its inspectors, be allowed to supervise the professional competence of real estate brokers, and to recommend that they update their knowledge by completing, and passing, a training period and/or upgrading course, which could be imposed by the regulatory body's Board of Directors in accordance with pre-established standards. If they failed to comply, the brokers who were given this recommendation could have their right to practise limited or suspended. The brokers would obviously have an opportunity to express their point of view, in accordance with procedures similar to those provided in the Professional Code for members of professional orders.



The Syndic

The Association's Syndic will carry out an investigation if there are reasons to believe that a real estate broker or agent has behaved inappropriately. As necessary, he could file a complaint with the Discipline Committee. Thus, any broker or agent who has not acted in compliance with the Act and regulations of the profession could be called to appear before the Association's Discipline Committee.

In this section, we suggest certain methods of improving the Syndic's effectiveness.

12.01 Give the Syndic the authority to do ethical conciliation

The Syndic often plays the role of conciliator when members of the profession are undergoing an investigation, even though this type of involvement is not provided for in the Real Estate Brokerage Act, contrary to the regulations of professional orders.

Examining a file often leads the Syndic to explain to the professionals involved not only the reasons for the investigation, but also the potential risks to the public and the professional, in order to prevent the occurrence of other errors.

RECOMMENDATION #32

The Association recommends that the Syndic's power of ethical conciliation* be officially sanctioned. This would allow the Syndic to perform his duties with greater flexibility, which would make his task easier and increase his effectiveness. In fact, conciliation could avoid the systematic recourse to the normal disciplinary process, unless absolutely necessary, as long as the interest of the public is served and justice is rendered.

* Conciliation between brokers for the sharing of compensation following a collaboration would remain the responsibility of real estate boards on behalf of their members.

12.2 Prevent abuses in civil proceedings

When real estate brokers and their clients engage in a conflict on a question concerning services and compensation, more and more often brokers take the dispute to the civil courts. This is shown by the greater amount of jurisprudence. Traditionally, the decision to take a client to court was made by the broker. This is no longer the case. The organizational structure of brokerage firms and the subsequent wide independence that agents enjoy means that the decision to take the client to court is now made more often by the agent than by the firm. Factors such as the quality of relations with clients and the company's image are becoming less important. As a result, court proceedings are not only more frequent, but more and more of them are abusive in nature.

Since the Real Estate Brokerage Act makes real estate intermediaries fully responsible for their acts, it seems necessary to provide stipulations which prevent abuses in this regard, without limiting the rights of individuals.



RECOMMENDATION #33

The Association recommends that clear provisions be written into the Act to ensure that a real estate broker cannot initiate civil court proceedings in an improper and vexatious manner. This stipulation must be accompanied by an ethical rule stating that a real estate broker cannot intimidate anyone or induce him to pay him compensation or damages.

12.3 Review committee

When the Syndic decides not to make a complaint to the Discipline Committee, his decision may not be reviewed and persons who disagree with his decision will have no other choice than to bring a complaint to this Committee themselves.



RECOMMENDATION #34

In order to encourage the transparency of the disciplinary process, the Association recommends that the decision of the Syndic not to make a complaint may be examined by an independent review committee made up of persons qualified to evaluate the complaint, as is already done in the professional orders.

12.4 Review the regulations concerning the appointment of assistant syndics

The Act provides that the Syndic will be chosen from among members of the profession who have been practising for at least five years. In the case of assistant syndics, the candidates must have been practising for at least three years. Now, the Syndic and the assistant syndics are not authorized to carry out the functions of a real estate broker or agent during their mandate, although they can renew their certificate. This situation poses a problem for replacing the Syndic. Since the assistant syndics are not able to practise during their mandate, they cannot qualify for the position of Syndic even if they have the experience and knowledge necessary to perform the task.

It should also be pointed out that Québec is the only Canadian jurisdiction in the field of real estate brokerage in which the assistant syndic (investigator) must be a certificate holder. This principle is taken from the Québec professional world.



RECOMMENDATION #35

The Association recommends that the criterion of qualification for the position of Syndic according to which candidates must have been “practising for five years” be replaced by a criterion of “having a right to practise for five years”.

The Association also recommends that the requirement of having practised be waived for hiring an assistant syndic.



Discipline Committee

Any real estate broker or agent who has not acted in compliance with the Act may be called to appear before the Association's Discipline Committee, which can impose fines, suspend offenders or even cancel their right to practise.

The decisions of the Discipline Committee are published in the Association's magazine and on its Web site. In this way, the members of the profession quickly become aware that certain practices are not tolerated. At the same time, they can correct aspects of their own professional practice, if necessary.

In this section, we deal with elements that can impede the work of the Committee and we suggest solutions for resolving these difficulties.

13.1 Specify recourse to a court of appeal

At present, appeals of decisions of the Association's Discipline Committee are heard by the Court of Québec, with one judge, rather than at the Professions Tribunal which is made up of three judges from the Court of Québec specialized in disciplinary law. However, under section 136 of the Real Estate Brokerage Act, the Court of Québec refers to sections 164 through 177.1 of the Professional Code for hearing the appeal. The appeal of trial-stage disciplinary decisions therefore follows a different procedure.

Unfortunately, the incomplete references to the Professional Code lead to significant difficulties in interpretation which impede the operation of the real estate brokerage disciplinary system.



RECOMMENDATION #36

The Association recommends that appeals of decisions of the Discipline Committee be brought exclusively before the Professions Tribunal. This harmonization of the appeal procedure is essential to provide litigants with a coherent system, allowing the implementation of high-quality justice at the lowest cost possible.

13.2 Review the procedure for selecting or replacing the Secretary and Chairmans of the Discipline Committee

The Association's Discipline Committee is composed of at least three members appointed for a term of three years. Its Chairman, who is appointed by the government after consultation with the Barreau du Québec from among advocates having at least 10 years of experience. The government also appoints a substitute chair in case the Chair is unable to act.

In addition, the current Act does not provide for the appointment of a substitute for the secretary of the Discipline Committee.



RECOMMENDATION #37

The Association recommends that the notion of substitute chairman which replaced the Chairman when he is unable to preside be abandoned in favour of a notion of Vice-Chairman who could also preside at the same time as the Chairman when necessary.

The Association also recommends that the selection procedure for a Chairman and Vice-Chairman of the Discipline Committee take the form of a competition supervised by a selection committee.

In the same way, the Act should be amended to provide for the appointment of a substitute secretary who could replace the Discipline Committee's Secretary in case of absence.

13.3 The appointment of assessors

Apart from the Chairman or substitute chairman, two other members of the Discipline Committee are appointed by the Board of Directors from among the Association's members. Thus, the Board of Directors has appointed approximately 80 persons who have played the role of assessor when they sat on the Committee.

The experience of the past five years has shown that the persons appointed are often not necessarily available to sit on the Committee, especially since hearing certain complaints can require a number of days of hearings. This phenomenon is also accentuated by the fact that the real estate market has been very active over the past few years and that the assessors, who do not receive compensation when they sit on the Committee, can experience a significant loss of income.

It is also noted that sitting only occasionally does not allow assessors to acquire all the skills necessary to exercise their role. On the basis of these observations, it would also be desirable to make changes to the process of appointing members of the profession to the Discipline Committee.



RECOMMENDATION #38

The Association recommends that the members of the Discipline Committee called to act as assessors be appointed by the Board of Directors from among members of the profession who no longer have the right to practise. Assessors, who could be paid, would sit on the Committee much more often, and would thus acquire the skills required by the function more easily.



Professional liability insurance

Professional liability insurance is a guarantee that real estate brokers subscribe to in order to provide the public with protection in the case of a claim for fault, error, negligence or omission that they may have committed in the course of their professional activities.

Although precise statistics on this subject are not available, the obligation that real estate professionals have to provide accurate and verified information to the parties to a transaction is invoked in the majority of the damage claim reports that the assessors send to the Association.

In this section, we deal with the administrative question of liability insurance, and propose solutions that could improve its functioning.

14.1 Provide liability insurance through the regulatory body

At present, only brokers are covered by liability insurance, which causes various problems related to the fact that the broker is responsible for the professional acts of his agents, even when these agents are no longer working for him. This type of situation would obviously be eliminated if the Act were to recognize the full civil liability and independence of all persons practising real estate brokerage.

Moreover, the administration of insurance liability files often causes a problem, since insurers do not always fulfil their legal obligation of providing the Association with a copy of all damage claim reports. This type of information would allow the Association to analyse the prejudice caused to the public and to direct its efforts towards eliminating certain practices not in accordance with the Act.

The fact that the dates of validity of insurance policies and professional practice certificates do not coincide also causes difficulties, since it is possible that a broker would not have coverage for a certain period of time, contrary to the requirements of the Act.



RECOMMENDATION #39

In terms of professional liability insurance, the Association recommends the following:

Full civil liability of all persons engaging in real estate brokerage cannot be guaranteed unless they have professional liability insurance which would protect the public in case of fault, error or omission.

In addition, the Professional Liability Insurance Fund, which the regulatory body would administer and which would thereafter cover everyone, would be more economical. This approach would promote better control of the administrative process. It would also allow the regulatory body to become aware of the faults, errors or omissions that occur most frequently. The regulatory body would then be able to act more effectively to correct undesirable practices, which would contribute to reinforcing public protection.



Fonds d'indemnisation du courtage immobilier

The mission of the Fonds d'indemnisation du courtage immobilier is to underwrite the liability of a real estate broker or agent in case of fraud, a dishonest transaction or the misappropriation of funds from a trust account. The Fund acts under the authority of the Québec Minister of Finance, and is managed by a Board of Directors made up of seven members appointed by the government.

15.1 Increase the monetary coverage of fraud victims

The Fund administrators decide on the admissibility of a claim and, as appropriate, set the amount of compensation payable to a claimant, to a maximum amount of only \$15,000 for each brokerage transaction against which a claim is being made.

RECOMMENDATION #40

Given the large amounts of money involved in real estate transaction, the Association recommends that the maximum amount of compensation granted by the Fonds d'indemnisation du courtage immobilier should be raised to \$75,000 per brokerage transaction and per claimant.

15.2 Appointment and composition of the Fund Board of Directors

The Fonds d'indemnisation du courtage immobilier is a separate organization from the Association, and the seven members of its Board of Directors are appointed by the government. Four of them are appointed from among holders of certificates issued by the Association, after consultation with the latter. In this regard, the Fund is different from what we find in professional orders or at the Bureau des services financiers.

RECOMMENDATION #41

The Association recommends that the Compensation Fund's Board of Directors still be composed of seven members, four of whom would be appointed by the regulatory body from members who have held a right to practise for at least 5 years, and three of whom would be appointed by the government because of their ability to contribute to resolving problems relating to the protection of the public in the field of real estate.

15.3 Obtain the authority to suspend contributions

The cash account of the Fonds d'indemnisation du courtage immobilier produces a surplus of approximately \$300,000 per year, and the amount exceeding expenses was \$3,671,301 at the end of 1999.

The interest produced by this cash account now exceeds the total of the annual contributions paid by members of the profession.



RECOMMENDATION #42

The Association recommends that the Fund be given the authority to order the raising or suspension of contributions, based on actuarial criteria and recommendations.



Conclusion

By adopting the Real Estate Brokerage Act, the government has expressed its desire to raise the professional standards of real estate brokers and agents. Close to seven years after it came into effect, the Association des courtiers et agents immobiliers du Québec is now able to observe its benefits. The current administrative structure of the profession contributes effectively to maintaining and promoting competence and integrity within the profession.

The importance of the Real Estate Brokerage Act stems from the fact that it governs persons who act as advisors to the public for transactions concerning property, which is very often the most significant part of a person's estate. For the consumer, it is reassuring to be able to count on the presence of an independent system whose mission is to ensure his safety.

This safety should not be compromised by the vast changes which are effecting the profession and whose consequences we cannot yet predict. The training of members of the profession is a major concern for ensuring the public an excellent quality of service. That is why better training of future real estate brokers, before they enter the profession, is essential, as is the ongoing updating of their knowledge. Training is the principal tool for preventing professional errors and improving professional practice. It is also the basis of the independence and full professional responsibility of everyone who practises real estate brokerage. Ever more extensive disciplinary jurisprudence is also reinforcing good professional practices and discourages those who would be tempted to violate the rules of the profession. However, some modifications to current regulations would allow the regulatory body to go farther.

In a context in which real estate agents have acquired great independence from their brokers, it would be safer for the public if the Act were to recognize the independence of agents by making them fully responsible for their professional acts. However, the independence of agents cannot become a reality without adequate training. Therefore, the Association proposes modifications in order to guarantee a high level of basic training which would also ensure the professional development of practitioners in a continuous manner.

In the same spirit, the mechanisms for the supervision of real estate brokerage must be adapted in terms of the new methods used by real estate professionals. For example, the rapid evolution of information technologies is revolutionizing the practice of real estate brokerage as we know it. The information highway has a significant impact on the way the public views real estate transactions. The needs of the public are evolving rapidly, and new specialized sites make their task easier, so that their expectations for real estate brokers or agents have changed significantly over the past few years. However, a real estate transaction often includes a number of technical aspects which required specialized knowledge. This type of competence is not within the grasp of the uninitiated, and acting without proper training is a danger for anyone who would choose to carry out real estate transactions without the assistance of a qualified person.

The public now demands that the broker provide superior service. In a context in which clients are often tempted to carry out their transactions without an intermediary who will help them make their decisions in an informed manner, the essential contribution of real estate brokers and agents is their role of advisor. This new situation shows once again the importance of training, since the quality of the services being offered is unavoidably linked to competence.

By adopting a dynamic approach and by being given all the authority and tools necessary to better ensure the protection of the public, the regulatory body will be able to fulfill the responsibilities assigned to it under the Act more effectively.

Transition

The recommendations contained in this document would result in as many changes as those caused by the coming into effect of the Act and regulations in 1994. These changes will require not only transitional rules, but strategic planning which could be developed by a number of players in the sector, notably consumer protection organizations, real estate boards and the Fédération des chambres immobilières du Québec, franchisors and banners, real estate management companies and certain professional orders or organizations. This planning would clearly specify deadlines and the impact in terms of costs and resources. This would promote greater understanding of the provisions of the Act and regulations, savings in time and resources, and maintenance of trust.

APPENDICES

Appendix 1

Consultation

This brief is the result of a consultation of all participants in real estate brokerage in Québec. It contains the Association's main thoughts concerning the Real Estate Brokerage Act.

Methodology

In order to make an extensive study of the main aspects of the Act, a Consultation Committee was set up by the Association's Board of Directors. This Committee, which was representative of the whole profession, included the Chairman and Vice-Chairman of the Board and the General Director of the ACAIQ, the Chairman of the Fonds d'indemnisation du courtage immobilier, two certificate holders designated by the Board of Directors of the Fédération des chambres immobilières du Québec, representatives of the major Québec real estate franchisors, certificate holders representing the commercial, industrial and loans secured by immovable hypothec sectors, and one person appointed by the government to the Association's Board of Directors.

Focus groups with citizens and members of the profession first gave the Committee the chance to make certain observations which formed the basis of a study document that presented various possibilities for improving the current system. These suggestions were then tested through a survey of members of the Association. All participants concerned to a greater or lesser degree by the application of the Act also had the opportunity of expressing their opinion, so that the positions held by the Association would obtain the broadest consensus possible. The following in particular were invited to make comments:

- the real estate boards
- the Fédération des chambres immobilières du Québec;
- consumer protection organizations;
- professional orders;
- the Office de protection du consommateur;
- the Ombudsman;
- the Office des professions du Québec;
- the Conseil interprofessionnel du Québec;
- the Inspector General of Financial Institutions;
- the Québec Securities Commission.

At the end of this initiative, the Association was sent more than 1,100 questionnaires and 17 briefs. The comments gathered allowed the Committee to develop recommendations that were presented to the Association's Board of Directors in December 1998. This document was approved by the Board in October 2000.

Extent of the consultation

The general consultation dealt with the vast majority of topics touched on in this document. However, certain points elicited comments without having been submitted to consultation, and other questions were not dealt with even though they were the subject of consultation.

- **Introduction**

The main concerns that motivated the general consultation had to do with the evolution of the role of brokers and agents and the gaps in the current supervision in terms of professional responsibilities and competence. In addition to these concerns, there are concerns about the impact of information technology on consumers, real estate brokers and agents and the real estate market, and the very nature of the real estate transaction. These concerns have been brought to the forefront as basic trends in real estate brokerage in North America became clear.

- **Sections 1 and 2: Role of the broker and agent and responsibilities and limitations**

The concepts and recommendations in these two sections were at the heart of the general consultation in 1998. For example, the questionnaire dealt with the issues of full professional responsibility of every person acting as a real estate intermediary, training period, and the principles, duration, conditions of eligibility and success, as well as limitations. This section also dealt with limitations in terms of hiring and supervision, the collection of compensation payments, the form of groups, etc.

- **Section 3: Training**

In terms of training, the recommendation concerning the accessibility of courses and the effect of reviewing the certification examination to be replaced with an examination by subject were not dealt with in the consultation. These recommendations came out of the experience of the past few years, and are a solution to difficulties in the current system. The recommendation on mobility between jurisdictions was not dealt with in the consultation either, but this is a heated topic of discussion between the various Canadian and American jurisdictions because of the different laws that promote the mobility of the labour force.

- **Section 4: Brokerage activities and brokerage transactions**

In this section, only the removal of the notion of compensation from the definition of the act of brokerage was submitted to consultation. Real estate management and the sale of shares (enterprise) are two issues related to the practice of real estate brokerage, and were touched upon during the consultation, but in the end were not the subject of a recommendation. Recommendations to the effect that real estate brokers should always act in that capacity, and concerning building inspections and conflicts of interest were made because of difficulties in applying the Act and the changes in real estate brokerage practices.

- **Section 5: Advertising**

Recommendations on advertising were not the subject of specific questions during the general consultation, except for the concerns expressed concerning the application of the rules applicable to brokers and agents to banners (franchisors), in advertising for example.

- **Section 6: Forms**

The contents and regulations governing forms were touched upon in the general consultation of 1998, but the issue of the brokerage contract - purchase was not. On the other hand, this issue was the subject of a specific consultation carried out by means of focus groups, both with the public and with members of the profession.

- **Section 7: Establishments**

The points dealt with in this section, namely the redefinition of the notion of establishment and the elimination of the obligation of managers to confine themselves solely to their managerial functions, were the subject of a consultation.

- **Section 8: Records, accounts, books and registers**

The two points dealt with in this section, which were the obligation to maintain a trust account and the keeping of registers in terms of specialized fields were not dealt with in the consultation.

- **Section 9: Regulatory body**

The issue of maintaining the principles of self-management, self-regulation and self-discipline and the issue of the name of the regulatory body were dealt with during the consultation. The issue of the number of directors and how representative they are was also touched upon.

- **Sections 10, 11, 12, 13 and 14: Certification, professional inspection, Syndic, Discipline Committee, liability insurance**

The recommendations contained in sections 10 through 14 were not touched upon during the general consultation. These recommendations arose from the work of the Committee and the Board.

- **Section 15: Fonds d'indemnisation**

The integration of the Fonds d'indemnisation into the regulatory body was dealt with during the general consultation. The increase in the monetary coverage of victims and the authority to suspend contributions were not dealt with.

Reference documents

All the documents used in developing this document and listed here are available at the Association's offices.

- *Mémoire concernant le document de consultation sur le courtage immobilier*
Quebec Real Estate Association - August 1990
- *Provisions concerning advertising, customer solicitation and representations by a member*
Association des courtiers et agents immobiliers du Québec - June 1994
- *Commentaires relatifs au Rapport quinquennal sur la mise en oeuvre de la Loi sur les intermédiaires de marché*
Association des courtiers et agents immobiliers du Québec - September 1996
- *Évaluation d'un cadre professionnel amélioré*
Créatec Plus - October 1997
- *Real Estate Brokerage Act*
Association des courtiers et agents immobiliers du Québec - September 1997
- *For a fully responsible and independent real estate intermediary*
Association des courtiers et agents immobiliers du Québec - November 1997
- *Consultation questionnaire - review of the Real Estate Brokerage Act*
Association des courtiers et agents immobiliers du Québec - November 1997
- *Compilation - questionnaires and papers - review of the Real Estate Brokerage Act*
Association des courtiers et agents immobiliers du Québec - June 1998
- *Summary - Compilation - questionnaires and papers - review of the Real Estate Brokerage Act*
Association des courtiers et agents immobiliers du Québec - July 1998

Consultation document

Your turn to speak up!

Consultation

REVISION OF THE REAL ESTATE BROKERAGE ACT

For a fully
responsible
and **independent**
real estate intermediary

Prepared by
The Consultation Committee
on the revision of the Real Estate Brokerage Act
of the Association des courtiers
et agents immobiliers du Québec

To reach us

Any requests for information, suggestions and comments relating to the consultation on the revision of the Real Estate Brokerage Act can be addressed to:

Consultation Committee / ACAIQ

500 René-Lévesque Blvd. W.
Suite 700
Montréal (Québec)
H2Z 1W7

Tel.: (514) 392-4800 or 1 800 440-5110
Fax: (514) 392-4837

E-mail: consultation@acaiq.com

ACAIQ employees who have participated in the Committee's work

Claude Barsalou
Claude Lafrenière
Josée Maure
Robert Nadeau

Members of the Consultation Committee

The Chairman and the Vice-Chairman of the Board of the ACAIQ:

François Léger, Groupe Sutton Laurentides (St-Sauveur)
Nicholas Stephens, Re/Max du Mont Royal Inc. (Town of Mount Royal)

The Chairman of the Fonds d'indemnisation du courtage immobilier:
Clément Delpesteau, Re/Max Signature (Boucherville)

Two certificate holders named by the Board of Directors of La Fédération des chambres immobilières du Québec:

Robert Langlade, Les Immeubles Trans-Immo Enr. (Laval)
Jean-Guy Savoie, G.R. Lauzon & Associés Inc. (Gatineau)

One representative named by each of the following banners:

Claude Charron, Re/Max TMS inc. (Ste-Thérèse)
Keith Collins, Royal LePage (Brossard)
Yvon Poirier, Trans-Action, Les immeubles Nova Inc. (Saint-Hubert)
Jean-Marie Gauthier, Century 21 Innovation (Montréal)
Robert Daoust, Groupe Sutton Plus Inc. (Québec)
Claude Méthot, Max-Immo C.M. (Laval)
Bernard Girard, La Capitale Est de Montréal Inc. (Anjou)

One certificate holder representing the mortgage brokerage sector:
Jean-Guy Vanier, Groupe Conseil hypothèque GCH Inc. (Lasalle)

One certificate holder representing the commercial and industrial sector:
Michel Léonard, Léonard McKeague (Montréal)

Three certificate holders from groups who are not otherwise represented:
Dominique Tessier, Société immobilière Métivier et Associés Inc. (Montréal)
Arnold Laforest, Immo Club Plus Inc. (Anjou)
Jean-Nicolas Perrault, Immeubles Nicolas Perrault Inc. (Ste-Adèle)

One person who is neither a broker nor an agent:
Jean Mathieu, director of the ACAIQ appointed by the Government

The Director General of the ACAIQ:
Serge Cayser

For a fully responsible and independent real estate intermediary

Today's real estate brokers are no longer the bosses they used to be! Very often, reality makes them managers who are no longer really involved in their agents' professional practice even though, paradoxically, they still have this responsibility. It's the law! Similarly, agents no longer are mere employees. Over time they have acquired great independence in relation to their employer. Agents are now recognized as "professionals", a fact that does reflect the point of view of consumers who really make no distinction between real estate brokers and agents. However, as professional as they may be, the law does not make agents fully responsible for their acts. They are only authorized to act for and on behalf of a broker, based on a hierarchy which is no longer relevant.

Moreover many consumers as well as brokers and agents say that the professional training received by brokers and agents is inadequate: incomplete training, barely accessible courses, absence of a formal program of professional improvement courses, etc. Then there are the mandatory forms which are so long and complicated that consumers don't take the trouble to read them and rely on their broker's or agent's expertise.

These are a few of the observations made by the *Committee on the revision of the Real Estate Brokerage Act* set up by the ACAIQ's Board of Directors. The committee relied on the expertise of its 19 members, the Association's experience and the testimony of focus groups of consumers and practitioners to study the application of the *Real Estate Brokerage Act*. In the following document, the Committee not only describes these situations (and others) with which you are very familiar, but suggests ways to **modernize** the practice of real estate brokerage and make it more **efficient** in terms of the public's needs, expectations, satisfaction and protection. These suggestions should also **simplify** supervision of the profession and **bring it into line** with current real estate brokerage practice.

The Association's Board of Directors has studied this consultation document without taking a stand on its content. Only following the consultations, after the Committee has synthesized the reactions, comments and suggestions obtained, will the Board formulate its recommendations to the Government for the five-year revision of the *Real Estate Brokerage Act*.

Thank you for your invaluable cooperation.

The Chairman of the Board of Directors

François Léger, eng.



Chartered Real Estate Agent

It's important to know what you think.

Major changes are being suggested by the Committee. They should be the object of a broad public and professional consensus if we want the Government to act on them.

What is expected of you...

1. Study the document.
2. Discuss it with your colleagues and the people around you.
3. Complete the questionnaire accompanying this document and fax or mail it to the Association.
4. Fax or mail any other comments or suggestions to the Association.

We also invite you to:

5. Prepare a written brief on one or more of the questions raised in the document. This invitation is addressed to all real estate brokerage practitioners, the public and any organization interested in these questions.
6. Transmit this brief to the Association no later than Friday, **February 6, 1998**.
7. Ask the Association to be heard at the public meetings to be held in February 1998, the schedule of which is appended to this document. You can be heard at these meetings, regardless of whether or not you have submitted a brief in writing.
8. Attend the public meetings.

Consultation - Revision of the Real Estate Brokerage Act

3

Independence and empowerment of the real estate intermediary

Note: The term "intermediary" is used in this document because it correctly describes the activity of the real estate broker and agent and avoids any confusion with the existing terminology.

► Observations

Distinction between brokers and agents

The public makes no distinction between real estate brokers and agents. When people do business with an agent, they believe that they are dealing with a person who has full professional independence. Consumer focus groups have confirmed this finding. These focus groups were conducted by a specialized market research firm at the *Consultation Committee's* request.

Broker's responsibility for acts committed by agents

Under the existing Act, an agent is only authorized to act for and on behalf of a broker and currently has no independence under the Act, even if he is the person who commits all the brokerage acts (solicitation, signing of the brokerage contract, drafting and presentation of promises to purchase, negotiations, etc.).

The existing Act makes the broker fully responsible for professional acts committed by an agent or broker, even if he is not always in a position to supervise the agent adequately. Likewise, the vast majority of brokers no longer assume responsibility for or deliver the agents' training.

► Suggestions

A single level of certification

The Committee suggests that apart from a **training** period when entering the profession every natural person acting as a real estate intermediary should have the **full capacity** and **competency** to accomplish their professional acts on their own.

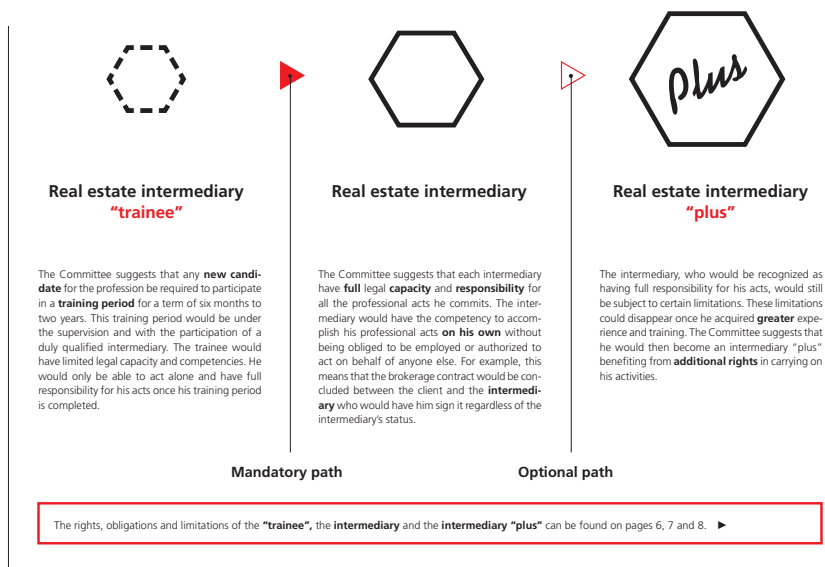
This real estate intermediary would be the hub of the professional real estate brokerage system which henceforth would have only one certification level from the public's perspective and for its protection. In short, tomorrow's real estate professional would start his career as a trainee. After a training period and completion of relevant courses, he would become a fully-licensed real estate intermediary, **fully independent and responsible** for his professional acts.

The real estate intermediary could then pursue additional training and become a real estate intermediary "plus", or could take training in a specialized field and be awarded a title or designation based on the training received.

Consultation - Revision of the Real Estate Brokerage Act

4

Career path



Consultation – Revision of the Real Estate Brokerage Act

5

The "trainee"

► Before becoming a "trainee": 4 prerequisites

The **first** prerequisite, before becoming a "trainee", would be to have one of the following diplomas:

- A high school diploma
- A college diploma
- A university diploma

The **second** would be to have completed basic real estate training in such subjects as civil law, real estate law, mathematics, architecture and construction, comparative market analysis, the Real Estate Brokerage Act and professional ethics and the general principles of drafting contracts.

The **third** would be to have passed an examination administered by the regulatory body, showing a good comprehension of the language used (French or English) in professional practice.

The **fourth** would be to have passed an examination administered by the regulatory body, verifying the knowledge acquired during basic training.

A person who met these prerequisites could then begin his or her training period.

► Rights and obligations of the "trainee"

Limited independence and responsibility

During his training period, the trainee would have limited legal capacity and competency to perform his professional acts. He would therefore act for and on behalf of the person responsible for his training and under his supervision and he would therefore be liable for the trainee's professional acts. The training period supervisor would have to guide, orient and review the trainee's work but would not necessarily have to accompany him in all his actions.

► Limitations of the "trainee"

Prohibitions

The "trainees" restricted practice of professional acts would translate into:

- Prohibition on signing brokerage contracts without the supervision of the person responsible for his training period.
- Prohibition on acting as an intermediary in a promise to purchase without the supervision of the person responsible for his training period.
- Prohibition on receiving compensation directly and splitting it.

Term and evaluation of the training period

The "trainee" would have the obligation to complete additional courses during his training period before becoming a fully-licensed intermediary. The term of the training period could vary between a minimum of 6 months and a maximum of 24 months. His evaluation would be based on certain quantitative and qualitative criteria which would be assessed by the training period supervisor and the regulatory body.

► Content of the training period

The training period would include courses, work and examinations which, for example, could concern drafting of contracts and use of forms, real estate brokerage methodology (presentation of promises to purchase, keeping of records and registers), real estate appraisal, how to deal with a client (intermediary role), marketing, and financing.

► Transition

The obligation to participate in a training period would only affect newcomers to the profession.

Professional title

The Committee believes that the "trainee" could be awarded the title of "real estate broker trainee" or "real estate agent".

Consultation – Revision of the Real Estate Brokerage Act

6

The intermediary

► Rights and obligations of the intermediary

Responsibility: contracts and records, books and registers

The intermediary could act on his own. Being fully responsible for his acts, he necessarily would have to carry professional liability insurance. It would be mandatory for him to be a party to the brokerage contract. He would be responsible for maintenance of his records and registers. However, an intermediary who chose not to act on his own but rather through a group would have the obligation to delegate the keeping of certain registers to this group (see page 9, Groups).

Compensation and trust account

As the person primarily responsible for professional acts committed, the intermediary could receive his compensation directly and split it. He could also hold his own trust account to receive deposits on real estate transactions. However, if the intermediary chose to act through a group, he would be obliged to delegate maintenance of the trust account, as well as collection of his compensation, to the group.

► Limitations of the intermediary

No other intermediary working for him

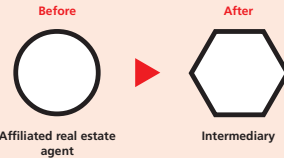
Although the intermediary would be authorized to act on his own behalf, he would not be allowed to have other intermediaries or "trainees" working for him. He thus would not be authorized to act as a training period supervisor.

Company and firm name

He could not carry on his professional activities through his own company, nor could he act under a firm name (registration).

► Transition

The Committee suggests that people currently holding an **affiliated real estate agent's** certificate become **intermediaries**. The Committee believes, however, that an affiliated real estate agent who becomes an intermediary should not be able to practice on his own behalf without taking transitional training.



Professional title
The Committee believes that the intermediary could be awarded the title of **real estate broker**.

Consultation – Revision of the Real Estate Brokerage Act

7

Intermediary "plus"

As described on the previous page, the intermediary would be fully responsible for his acts but would be subject to certain limitations. These limitations would disappear once he acquired greater experience and training. The Committee suggests that he then become an intermediary "plus" and thus benefit from additional rights.

► Before becoming an intermediary "plus"

The Committee suggests that the specific training to become an intermediary "plus" consist of courses, work and examinations which could focus, for example, on business law, corporate management, accounting and taxation, advanced drafting of contracts, and the role of a training period supervisor.

► Rights and obligations of the intermediary "plus"

In addition to the rights and obligations already stated for the intermediary, the intermediary "plus" would benefit from the following additional rights:

Hiring and training period supervisor

The intermediary "plus" could have intermediaries "plus", intermediaries and "trainees" working for him. In this case, he could act as a training period supervisor.

Company and firm name

The intermediary "plus" could practice his profession through a company. He could also act under a firm name (registration).

Keeping records, books and registers for others

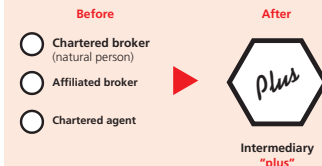
The intermediary "plus" could be delegated the responsibility for keeping records and registers and maintaining the trust accounts of intermediaries or intermediaries "plus" working within the same group.

► Limitations of intermediaries "plus"

Therefore, the intermediary "plus" would not have any of the intermediary's limitations.

► Transition

The Committee suggests that anyone holding the existing title of "chartered real estate agent", "affiliated real estate broker" or "chartered real estate broker" (natural person) become an **intermediary "plus"**.



Professional title
The Committee believes that the intermediary "plus" could be awarded the title of **chartered real estate broker**.

Consultation – Revision of the Real Estate Brokerage Act

8

Groups

In addition to practicing their profession alone, that is, on their own behalf, intermediaries "plus" and intermediaries could carry on their activities as part of various groups.

▶ Practicing under the responsibility of an intermediary "plus" (natural person)

This type of group is simple: it involves an intermediary "plus" with other intermediaries "plus" and/or intermediaries and/or "trainees" working for him. No activities would be carried on through a company or a partnership.

▶ Practicing through a company or a partnership

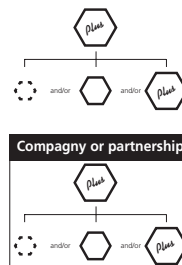
One or more intermediaries "plus", intermediaries and "trainees", as the case may be, would carry on activities through a company or a partnership. The company or partnership would not hold an intermediary's certificate but would have to register with the regulatory body. It could identify itself as an intermediary. The obligations stipulated in the Act would be applicable on the same basis as for an intermediary.

▶ Liability of groups

For either type of group, the liability of the intermediaries would remain the same with regard to any professional acts they would commit. However, their acts would also incur the liability of the intermediaries "plus" and the companies or partnerships within which they practiced their profession. Needless to say, acts committed by "trainees" would also result in the liability not only of their training period supervisor but of the group in which they carried on their activities. We are talking about "added" liability, since the consumer would have additional remedies because the intermediaries worked as a group.

Banner

The Committee is considering whether all banners should be subject to certain rules applicable to intermediaries, with regard to advertising, for example.



▶ Transition

The Committee suggests that the current "chartered real estate broker" (natural person) continue to be the one under whose authority other intermediaries or "trainees" could act. The situation would be the same as now.

The Committee suggests that legal persons or partnerships currently holding a chartered real estate broker's certificate see their certificates converted into registrations with the regulatory body.

Training

The Committee has made many observations about training. In addition, focus groups of consumers and Association members have shed light on major shortcomings and serious concerns with respect to professional training.

▶ Observations

Inadequate training and barely accessible courses

The Committee finds that training to become either an agent or a broker is inadequate. The Committee also finds that access to courses is sometimes difficult, especially in the regions. Courses given in English are particularly rare.

Training for chartered real estate brokers

Training for brokers does not enable them to acquire the additional competencies required by normal brokerage practice. In addition, people who want to become a chartered broker or agent have to wait a long time to take the ACAIQ examination after completing all courses, which contributes to a shortage of chartered brokers and agents.

Specialized training

Some courses offered under basic and broker's training are irrelevant for brokers and agents working in specific fields. In fact, no specific courses exist for certain fields of practice.

Non-involvement of the profession in development and control of training

The profession is not directly and formally involved in the development of the content and control of basic training to become real estate agents and brokers. The certificate examination prepared by the Association is its only intervention in the career entry process.

Continuing education

The Committee finds that there is little or no continuing education and that the professional improvement courses available are not offered under a formal program.

▶ Suggestions

Development of a training program

The suggestions made by the Committee concerning the training of real estate intermediary "trainees" and the training to become real estate intermediaries "plus" would make it possible to respond to these concerns in that they involve mandatory and optional learning stages. The Committee is considering whether these courses should be given as distance education courses (by correspondence, television, Internet, etc.).

Specialized training, titles or other designations

The Committee would like to receive comments on specialized training and the titles or designations which could be awarded after successfully completing this training.

Involvement of the profession in the development and control of training

The Committee suggests that the profession's involvement in the development of a training program be mandatory according to procedures that would allow for cooperation between the regulatory body and educational institutions.

Continuing education: optional or mandatory?

The Committee suggests that continuing education be offered. The Committee wonders whether the professional improvement activities should be optional or mandatory.

Place of business

In addition to questions about empowerment of real estate brokers and agents and professional training, the Committee made observations concerning other aspects of application of the Act, including the notion of place of business. The Committee suggests corrections and requests your comments.

► Observations

The notion of place of business

The place of business is defined by the Act as the location where the broker keeps the records, books and registers determined by the current regulatory body (ACAIQ). This notion is based on the supervision of agents by their broker. However, the Committee has observed that current professional practices mean that the broker exercises less and less control over the agents' activities. Agents no longer report, or report infrequently, to their assigned place of business. Thus, it may happen that brokers are unaware of brokerage contracts signed in their name by an agent who then arranges to be paid directly even though this is prohibited.

Records and registers

The Committee recognizes that it is difficult for brokers to maintain their records, books and registers in a manner that complies with the regulations. For example, brokerage contract files do not always contain all the documents required by the regulations. Also, requirements for maintenance of records relating to different fields of practice (commercial, leasing, mortgage) are difficult to apply given that the rules were designed for the residential sector.

Remote establishments

Some agents work in establishments which are not places of business within the meaning of the Act. Thus, an agent may practice his profession in an establishment located in Trois-Rivières, when he is assigned to a place of business in Québec City. It is then difficult for the manager to know his agent's availability and the status of his work.

► Qualified person

To open a place of business, the broker must find a person who has a broker's qualifications. This requirement is difficult to meet, or even impossible in some regions.

► Suggestion

Replacement of the notion of place of business with the notion of establishment

The Committee suggests that the notion of place of business be replaced with the concept of **establishment** which would be defined regardless of where the records and registers are kept.

According to the Committee, the establishment would be the place of practice identified as such, publicly advertised and accessible to the public. However, it should be set up to ensure the confidentiality of conversations with clients and colleague as well as to ensure protection of the personal information held. A person responsible for each establishment should be designated so that the public can contact him in case of problems with the real estate intermediary handling their file.

Consultation – Revision of the Real Estate Brokerage Act

11

Brokerage activity and brokerage operation

► Observations

Illegal brokerage

Real estate brokerage activity is briefly defined as follows: committing a brokerage act for another person in exchange for compensation. Thus, in the absence of payment of compensation, a person who is not a certificate holder is not considered to be engaging in brokerage activity even if he has committed acts of brokerage. One consequence of this is that the courts cannot find an individual guilty of illegally practicing the profession if there is no proof of compensation.

Moreover, certain members pursued by the Syndic of the Association before the Discipline Committee have tried to exempt themselves from application of the Act by presenting a defence that they had not received compensation.

Real estate management

Although real estate management is not specifically contemplated by the Act, certain acts committed by the manager constitute real estate brokerage.

Sale of shares

When the services of a real estate broker are retained to act as an intermediary in a sale of assets (sale of a business) and shares of a private company* are sold instead, this sale of shares is not explicitly covered by the Act. This situation has the effect of rendering the broker's right to his compensation ambiguous.

* Private company: one in which the number of shareholders is limited to 50, excluding those who are or have been employees of the company or a subsidiary.

► Suggestion

Removal of the notion of compensation

The Committee suggests that the notion of compensation be removed from the definition of brokerage activity. Thus, a person committing an act of real estate brokerage would be considered to be acting as a real estate intermediary even if he does not receive compensation.

► Questions

Real estate management

What acts committed by the manager should be regulated under the Act?

Sale of shares

Should an intermediary who acts in a sale of company assets be regulated by the Real Estate Brokerage Act when these assets are sold in the form of shares of a private company?

Consultation – Revision of the Real Estate Brokerage Act

12

Forms and Fonds d'indemnisation

► Observations

Length and intricacy of forms

The Committee has found that the public and most of the members consider the existing forms to be very long and complicated. These forms are difficult to understand and their length discourages consumers from reading them.

Complexity of the regulatory process

Development of the content of the forms prescribed in the Act is made difficult by the complexity of the regulatory process to be followed. This also prevents them from being updated when necessary.

► Observations

The Fonds d'indemnisation: a government body

The Fonds d'indemnisation is a government body since the members of its Board of Directors are appointed by the Government. This means that the Fonds is a body distinct from the Association, although its capital is completely subscribed by the members of the profession. Moreover, this is the only Fund which is not integrated into the regulatory body, contrary to the situation prevailing in professional orders.

► Suggestions

Forms - Streamlined adoption process

The Committee suggests that only a minimal content be specified for certain forms in a by-law adopted by the profession so as to allow more latitude to amend them and allow them to evolve flexibly.

Furthermore, the obligation to use the forms published by the regulatory body should be an ethical obligation.

► Suggestion

Integration with the regulatory body

The Committee suggests that the Fonds d'indemnisation be integrated with the regulatory body, as is the case for professional orders.

Consultation – Revision of the Real Estate Brokerage Act

13

Regulatory body

► Observations

The principles of self-management, self-regulation and self-discipline

The real estate broker profession currently benefits from the principles of self-management, self-regulation and self-discipline. This means that:

- the Board of Directors of the ACAIQ is made up of 9 certificate holders **directly elected** by the members of the profession and 2 persons **appointed** by the Government;
- the Board of Directors has the power to adopt by-laws relating to professional practice;
- the majority of the Discipline Committee is made up of members of the profession appointed by the Board of Directors.

Name of the regulatory body

The fact that the body's name contains the word "Association" may lead to confusion as to the body's main mission.

► Suggestion

The principles of self-management, self-regulation and self-discipline

The Committee suggests that a regulatory body be maintained with the majority of the members of its Board of Directors **directly elected** by the members of the profession rather than **appointed**. It therefore proposes maintaining and strengthening the principles of self-management, self-regulation and self-discipline already established. According to these principles, the regulatory body is accountable to the members for its administration and to the public for its actions.

As for the proportion for representation of people appointed by the Government on the regulatory body's Board of Directors, the Committee would like to hear from practitioners and the public on this point.

► Question

Name change for the regulatory body

The Committee is thinking about the name that the regulatory body should bear, given that:

- the body must protect the public;
- the profession must participate in this body;
- the body must ensure the orderly practice of the profession.

Consultation – Revision of the Real Estate Brokerage Act

14

Consultation document (questionnaire)

⇒ Questionnaire

For a fully responsible and independent real estate intermediary

Instructions

This questionnaire concerns the main subjects covered in the consultation document prepared by the Consultation Committee on the revision of the Real Estate Brokerage Act.

Please answer it. Your opinion is important.

The questions have been grouped by theme with an indication of the relevant pages in the information document.

- 1) Please answer each question;
- 2) Return the questionnaire to the ACAIQ by **February 6, 1998**

by mail: **Association des courtiers et agents immobiliers du Québec**
500 René-Lévesque Blvd. W.
Suite 700
Montréal (Québec)
H2Z 1W7

by fax: (514) 392-4837

An overview

The Consultation Committee on the revision of the Real Estate Brokerage Act, established by the Board of Directors of the ACAIQ, suggests that the Act be brought into line with existing practices by recognizing that all real estate intermediaries (brokers and agents) bear full responsibility for their acts. From now on they would act in their own name, as their "professional" status dictates.

The Committee also suggests that any new candidate for the profession be required to participate in a training period for a term of between six months and two years. This training period would be under the supervision and with the participation of a duly qualified intermediary. The "trainee" would have limited legal capacity and competencies. He would have full responsibility for his acts and the status of intermediary only once his training period was completed.

An intermediary who accumulated a certain experience and acquired greater training, or an intermediary "plus", could have access to reserved rights, including the right to have other intermediaries work for him or to carry on his professional activities through a company or under a business name.

The Committee believes that intermediaries should be awarded the title of "real estate broker". An intermediary "plus" would then be called a "chartered real estate broker".

The Committee also suggests that real estate professionals be offered continuing education under a defined program.

⇒ Name and first name (optional): _____

Member of the public Member of the ACAIQ ▶ ACAIQ #: _____

If you have any comments and/or additional suggestions,

please use the space provided at the end of the questionnaire.

Return by mail: ACAIQ – 500 René-Lévesque Blvd. W.

Suite 700, Montréal (Québec) H2Z 1W7 or by fax: (514) 392-4837

The "trainee" (ref. p. 6)

1. There should be an obligation to participate in a training period in order to join the profession. (If you answer "Against", go to question 12)

For Against No opinion

2. Before becoming a "trainee", what minimum diploma should be required?

- A high school diploma
- A college diploma
- A university diploma
- No opinion

3. Before becoming a "trainee", a candidate should have completed basic real estate training.

For Against No opinion

4. The following concepts should be included in the specific real estate training required before becoming a "trainee" (check off your choices)

- Civil law
- Real estate law
- Mathematics
- Architecture and construction
- Comparative market analysis
- Real Estate Brokerage Act and professional ethics
- General principles of drafting contracts
- Other: _____

5. Before becoming a "trainee", the candidate should demonstrate a good comprehension of the language (French or English) used in professional practice.

For Against No opinion

6. During the training period, the following concepts should be studied: (check off your choices)

- Drafting contracts and use of forms
- Real estate brokerage methodology (presentation of promises to purchase, keeping records and registers, etc.)
- Real estate appraisal
- How to deal with a client (intermediary role, obligation to advise)
- Marketing
- Financing
- Other: _____

7. The training period supervisor and the regulatory body (ACAIQ) would evaluate the training period by means of qualitative and quantitative criteria (courses, work, examinations).

Qualitative criteria:

For Against No opinion

Quantitative criteria:

For Against No opinion

8. The "trainee" should have limited legal capacity and should only be able to act under the supervision of the person responsible for his training period.

For Against No opinion

9. The "trainee" should be prohibited from signing brokerage contracts without the supervision of the person responsible for his training period.

For Against No opinion

10. The "trainee" should be prohibited from acting as an intermediary in a promise to purchase without the supervision of the person responsible for his training period.

For Against No opinion

11. The "trainee" should be prohibited from receiving compensation directly and splitting it.

For Against No opinion

The intermediary (ref. p. 7)

12. After the training period, the intermediary should have the capacity to perform his professional acts on his own (full independence and full responsibility).

For Against No opinion

13. After the training period, the intermediary could have the choice of acting alone or through a group.

For Against No opinion

14. After the training period, the intermediary would be responsible for maintenance of his records and registers:

For Against No opinion

- if he chose to act through a group, he would have the obligation to delegate the keeping of certain records and registers to this group.

For Against No opinion

15. After the training period, the intermediary would be responsible for receiving his compensation directly and splitting it:

For Against No opinion

- if he chose to act through a group, he would have the obligation to delegate collection of his compensation to this group.

For Against No opinion

16. After the training period, the intermediary could hold his own trust account in order to receive deposits on real estate transactions:

For Against No opinion

Continued ▶

Questionnaire / Consultation – Revision of the Real Estate Brokerage Act

Page 1

Brief of the ACAIQ

Review of the Real Estate Brokerage Act

➡ Name and first name (optional): _____

Member of the public Member of the ACAIQ ▶ ACAIQ #: _____

If you have any comments and/or additional suggestions, please use the space provided at the end of the questionnaire.
Return by mail: ACAIQ – 500 René-Lévesque Blvd. W.
Suite 700, Montréal (Québec) H2Z 1W7 or by fax: (514) 392-4837

16. If he chose to act through a group, he would have the obligation to delegate maintenance of the trust account to this group.
 For Against No opinion

17. The intermediary would not be authorized to have other intermediaries or "trainees" working for him.
 For Against No opinion

18. The intermediary could not carry on his professional activities through his own company.
 For Against No opinion

The intermediary "plus" (Ref.: p. 8)

19. The training to become an intermediary "plus" should include the study of the following concepts: (check off your choices)
 Business law
 Corporate management
 Accounting and taxation
 Advanced drafting of contracts
 Duties of the training period supervisor
 Other: _____

20. The intermediary "plus" could carry on his professional activities through a company or act under a firm name (registration).
 For Against No opinion

21. The intermediary "plus" could keep the records and registers and maintain the trust accounts of the intermediaries or intermediaries "plus" working within the same group.
 For Against No opinion

Professional Titles (Ref.: p. 6, 7 and 8)

22. All intermediaries would bear the title of "real estate broker".
 For Against No opinion
 Other: _____

23. All intermediaries "plus" would bear the title of "chartered real estate broker".
 For Against No opinion

24. All "trainees" would have to bear the title of real estate broker trainee and could also be authorized to use the title of: (check off)
 Real estate agent
 Other: _____

Groups (Ref.: p. 9)

25. Intermediaries "plus", intermediaries and "trainees" could be grouped in a company or under a firm name.
 For Against No opinion

26. This company or partnership would not hold a real estate broker's certificate but could identify itself as a real estate broker, provided that it is registered with the regulatory body.
 For Against No opinion

27. This company or partnership would be subject to the obligations of the intermediary prescribed in the Act.
 For Against No opinion

28. The intermediaries and intermediaries "plus" would continue to bear full and complete responsibility for professional acts committed, even if they are part of a group.
 For Against No opinion

29. The acts of intermediaries would also incur the liability of the group within which they were practicing as well as that of the intermediary "plus" acting as this group's representative.
 For Against No opinion

30. The acts committed by a "trainee" would not only incur the liability of his training period supervisor, but also that of the group or the intermediary "plus" in whose name he would be practicing his profession.
 For Against No opinion

31. Banners should be subject to certain rules applicable to intermediaries, particularly with respect to advertising.
 For Against No opinion
Comments: _____

Training (Ref.: p. 10)

32. The courses provided to become a "trainee", intermediary or intermediary "plus" could be given as distance education courses (by correspondence, television, Internet, etc.).
 For Against No opinion

33. Do you have any comments on the specialized training and titles or designations which could be awarded after this training is successfully completed?
Comments: _____

34. The profession's involvement should be mandatory in the development of a training program based on procedures that allow for cooperation between the regulatory body (ACAIQ) and educational institutions.
 For Against No opinion

Continued ▶

Questionnaire / Consultation – Revision of the Real Estate Brokerage Act Page 2

➡ Name and first name (optional): _____

Member of the public Member of the ACAIQ ▶ ACAIQ #: _____

If you have any comments and/or additional suggestions, please use the space provided at the end of the questionnaire.
Return by mail: ACAIQ – 500 René-Lévesque Blvd. W.
Suite 700, Montréal (Québec) H2Z 1W7 or by fax: (514) 392-4837

35. A relevant continuing education program should be offered to intermediaries.
 For Against No opinion
Comments and/or suggestions: _____

36. Such a continuing education program should be:
 Mandatory
 Optional
Comments and/or suggestions: _____

Place of business (Ref.: p. 11)

37. The notion of the real estate intermediary's establishment would no longer be defined in terms of keeping records and registers. Instead, the establishment would be any place of professional practice identified as such, publicly advertised and accessible to the public.
 For Against No opinion

38. A real estate intermediary's establishment should be set up to ensure the confidentiality of conversations with clients and colleagues, and to ensure protection of the personal information held.
 For Against No opinion
Comments: _____

39. A responsible person should be designated for each establishment so that the public can contact him in case of problems with the intermediary handling their file.
 For Against No opinion

Brokerage activity (Ref.: p. 12)

40. A person committing an act of real estate brokerage would be considered to be acting as an intermediary even if he does not receive compensation.
 For Against No opinion

41. What acts committed by a real estate manager should be regulated under the Act?
Comments and/or suggestions: _____

42. Should the sale of shares of a private company be explicitly covered by the Act on the same basis as the sale of a stock in trade?
 For Against No opinion

Forms (Ref.: p. 13)

43. Only a minimum content should be specified for certain forms in a by-law adopted by the profession.
 For Against No opinion

44. The use of forms published by the regulatory body should be an ethical obligation.
 For Against No opinion
Comments and/or suggestions: _____

Fonds d'indemnisation (Ref.: p. 13)

45. The Fonds d'indemnisation should be integrated into the regulatory body (ACAIQ), as is the case for the professional orders.
 For Against No opinion

46. The majority of the members of the Board of Directors should, as is currently the case, be **elected directly** by the members of the profession rather than **appointed**, particularly by the Government.
 For Against No opinion

47. The principles of self-management, self-regulation and self-discipline already established should be maintained.
 For Against No opinion

48. Do you have any comments concerning the proportion of representation of persons appointed by the Government on the Board of Directors of the regulatory body (ACAIQ)?
Comments and/or suggestions: _____

49. What should be the name of the regulatory body (ACAIQ)?
Comments and/or suggestions: _____

50. Other comments and/or suggestions:

Continued ▶

Questionnaire / Consultation – Revision of the Real Estate Brokerage Act Page 3

Appendix 2

Technologies and Real Estate Brokerage: Food for thought

ARTICLE PUBLISHED IN THE DECEMBER 1999 ACAIQ MAGAZINE.

One of the foremost events in the North American real estate brokerage industry is without a doubt the Annual Convention of the National Association of Realtors (NAR): over 23,000 delegates, hundreds of conferences and workshops and some 1,400 booths set up by 700 exhibitors. This event attracts real estate brokers and agents from nearly 30 countries.

It is a place where people meet to get information and training. It features new ideas, new methods and new tools available to us. It also offers a great opportunity to see the future challenges which our profession will face. When it comes to the development of information technologies and their application to the various economic sectors, our neighbours to the south are the undisputed world leaders. They also enjoy a substantial lead with regards to real estate brokerage applications.

We can already see what the new consumer and business models will be in real estate. Many feel that real estate brokerage has evolved considerably in the last ten years with the development of franchising, changes in broker-agent relations and increased agent autonomy.

Even greater changes appear to be in store in coming years, with less emphasis on the practice of real estate brokerage and more on the needs of consumers, the nature of professional services available to them and the way these services will be provided. The ideas expressed and the comments we heard at the NAR Convention as well as the last convention of the Canadian Real Estate Association in Vancouver have led to the following observations.

New means, new needs and new consumer expectations

Traditionally, the value of the real estate broker and agent lied in their role as an intermediary and the exclusive information to which they had access. Today, new information technologies are changing the way consumers contact the various parties to a transaction, including the real estate broker and agent. With the Internet, the consumer himself can look for or list a property for sale or rent and even visit it. He can find financing and have it approved within minutes. He has access to all the information and almost all the services he needs to carry out a real estate transaction, including contacting an agent or broker who meets all his expectations at the price he is willing to pay.

In fact, one of the most popular real estate websites in the U.S., www.homegain.com, enables consumers to post a request for brokerage services by specifying their needs and requirements. Interested real estate brokers and agents submit their proposals. The consumers can compare these and contact the person with the proposal they find most attractive. This service is advantageous for the broker because it makes his prospecting activities easier, but it is especially beneficial to the client, who has full control over the service proposal.

The Internet also means e-mail and teleconferencing, two tools to facilitate data exchange and negotiating. They simplify and reduce the cost of the transaction process. With the Internet, the consumer may remain anonymous for as long as he wishes. He enjoys great freedom of choice and action and expects precise and quick service. He could potentially become adverse to any agreement threatening to curtail this freedom.

There are already over 40,000 websites devoted to real estate containing some 10 million pages! There are broker, agent and franchisor sites, traditional MLS sites that are partially accessible to the public, sites that are nothing more than databases managed by technology or media companies, other that serve as intermediaries between consumers and brokers, or whose purpose is to create networks, etc. All offer a wealth of information, links and tools to consumers that go well beyond an inventory of properties for sale.

In real estate information, the new Internet business model is simple. It was created by major American websites and is based on the largest and most diversified collection of information possible, including data on properties for sale, neighbourhoods, market conditions, renovations, building inspections, financing, contracts, legal resources, negotiations, etc. This real estate portal model is used by thousands of smaller sites, including broker and agent sites. The development of these portal sites, small and large, is based on multiple partnerships and maximum use of a site's brand name. They are financed by advertising and referral revenue. Some of these sites, including www.homestore.com have already announced that it will soon be possible to conduct a complete transaction on-line, as soon as legislation governing electronic signatures has been adopted. Two bills on the matter were recently under review by the American Congress.

Consumers now have all the means to conduct their own research, find resources, understand the transaction process thoroughly and carry it out without the help of an intermediary, or at least restricting the role of the intermediary to limited or very specialized functions. A recent U.S. study conducted by the firm Arthur H. Little predicts that within a few years in the United States, properties sold directly by the owner could represent up to 45% of the market, up from the current 20%. In Québec, brokers have never reached such high market penetration, so that the proportion of transactions conducted without an intermediary is already higher.

Given the complexity of a real estate transaction and the presence of multiple factors limiting standardization, the adaptation of the transaction process to the requirements of e-commerce will not happen the same way as, say, the sale of books or airline tickets. Instead, we will see a fragmentation of the transaction process, both in consumer needs and professional services offered by real estate brokers. Consumers will henceforth need less of an intermediary and more of an advisor whose role will go far beyond the simple transaction.

New reality and new skills for the broker

Like consumers, brokers also have access to much more information and now have the means to distribute this information very widely. Because of their position, they are better able to turn this information into knowledge that is useful to consumers. They also have new means of approaching and serving customers and becoming known to and appreciated by them. E-mail and websites can make them more efficient and enable them to provide services that are better adapted to consumer needs at a better cost.

Within the next few years, access to high-speed transmission networks will make the Internet more user-friendly, making virtual property showings, meetings, discussions or even negotiations easier through e-mail or teleconferencing. New programming languages, regardless of the platform, will allow consumers to narrow down their search, which will be conducted simultaneously on an unlimited number of websites. Thus, a buyer will need only specify the property features he is looking for in a search engine, and he will get a list of properties fitting his description, regardless of the site on which they are listed. These new programming languages will also facilitate on-line access to tools such as forms, contracts, etc.

Usage will be for websites to be identified by the real estate agent's name, i.e. www.robertsmith.com rather than by the provider's name. A real estate agent will also have to make sure that his site is posted on other sites such as his broker's, the network to which he belongs or any other general or specialized reference site related to real estate. This portal site will allow real estate agents to acquire a strong and independent identity, to create solid relationships with consumers and suppliers and to increase their ability to serve their clients.

The only thing missing before we can talk about virtual transactions and intermediaries, are electronic signatures, a development that is on our doorstep. These intermediaries, with no place of business, get their revenues partly from their professional activities and the virtual links they generate. According to the American study mentioned previously, in a few years almost 20% of real estate transactions will be carried out by these virtual agencies, leaving traditional agencies with only 40% of the market.

Due to profound changes that have taken place in the control and use of information, real estate observers predict that a broker's service proposal will be based less on the property inventory which he represents and more on the services and know-how he will be able to provide and which very often will be required of him piecemeal. This will also involve changes in compensation methods. Traditional commissions based on the value of the property transacted will progressively make way for compensation in the form of fees based on actions and services rendered. Consumers will expect a dramatic drop in the expenses incurred for a real estate transaction.

The broker's new environment will also feature an increased number of direct contract agreements between brokers and buyers, thus clarifying the rights and obligations of each party. A recent survey conducted by the National Association of Realtors with consumers who had recently purchased a property indicates that 84% would choose a personal broker if they were to buy again. This represents an important trust factor between the client and his broker. Purchasing brokerage will also change the collaboration mechanisms between brokers on which various factors are based, including the current compensation sharing system. It is also believed that the broker will use the information systems he needs on a fee rather than a membership basis, as is the case with traditional multiple listing services. Competition as well as development and maintenance costs for these services will encourage consolidation. In fact, the consolidation of brokerage firms already illustrates this phenomenon.

Conclusion

These observations provide food for thought on just about every aspect of the practice of real estate brokerage. To continue serving the consumer professionally, real estate brokers will have to acquire the new skills imposed by technological conversion, at a level beyond that of the consumer. They will also need to acquire the skills required by the new environment in which they will be working and by their advisory role. The qualities needed to play this role will in many ways vary from those of the traditional real estate intermediary.

Appendix 3

History of the framework of real estate brokerage in Québec

The Corporation des courtiers en immeubles de la province de Québec was established in 1954. Its mission was to ensure the protection of the public and the advancement of the professional interests of real estate brokers.

The Real Estate Brokerage Act was adopted in 1962. This first version of the Act would be amended in 1967 to create the Service du courtage immobilier, a government agency responsible for the application of the Act. At that time, the Superintendent of real estate brokerage was responsible for issuing licences for brokers and agents, and the registration certificates necessary to engage in real estate brokerage activities.

In 1972, the Quebec Real Estate Association (AIQ) replaced the Corporation des courtiers en immeubles de la province de Québec. The main role of the AIQ was to provide services for developing the qualifications of members of the profession, but its mission extended to other aspects of real estate brokerage practice. Between 1974 and 1988, the Association adopted a Code of Ethics, a disciplinary process and a method for conciliation and arbitration for all of its members, which at the time included 95% of holders of brokerage licences.

The current Real Estate Brokerage Act was passed in 1991 and became fully in force in 1994. This act provided notably for the establishment of the Association des courtiers et agents immobiliers du Québec (ACAIQ) in place of the AIQ which was dissolved by the Act. Membership in the Association, whose mission was to protect the public through the supervision of the professional practice of all real estate brokers and agents working in Québec, was mandatory. The Association was given the responsibility of ensuring the application of the profession's Act and regulations.

As an extension of the former Act, which already contained a number of provisions for ensuring the quality of services provided by real estate brokers and agents, the Real Estate Brokerage Act reaffirms the total commitment of the government to protecting the public by providing the means of exercising much more effective monitoring of real estate brokerage. In fact, the creation of additional mechanisms for protecting the public, such as the control of access to the profession by means of an examination, the professional inspection and monitoring of real estate brokers and agents by a Syndic and a Discipline Committee that penalize any infraction of the Act have very quickly raised the quality of the practice of real estate brokerage professionals in a significant way.

In 1998, the Association's Board of Directors adopted a strategic plan in which it interpreted its mission in a more dynamic way:

"The mission of the Association is to monitor and promote the public interest by providing an appropriate and adequate supervision for the profession, just and equitable regulation and the consistent and effective training of real estate brokers and agents." The Board of Directors added its own prospective vision to this interpretation of its mission to guide its action over the next few years:

“As a supervising and monitoring organization, the ACAIQ will contribute to promoting, in the eyes of the public, the professionalism and competence of real estate brokers and agents during real estate transactions in Québec. The ACAIQ will be distinguished by its organizational efficiency, the quality of its involvement in training and its expertise concerning the evolution of the real estate market.”

Over the next few years, the Association’s main goal will be the professional development of real estate brokers and agents. This field of endeavour will take up a large part of the Association’s resources, since continuing education remains the most effective means of ensuring that the public receives high-quality services and, as a result, is adequately protected.



Association des courtiers
et agents immobiliers du Québec