

Comments of the
Association des courtiers et agents immobiliers du Québec
on the **Report on the Application
of the Real Estate Brokerage Act**



Association des courtiers
et agents immobiliers
du Québec

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courtiers et agents immobiliers
du Québec on the Report on the
Application of the Real Estate
Brokerage Act**

Presented by the Association des courtiers
et agents immobiliers du Québec

April 2005

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Association des courtiers
et agents immobiliers
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The primary mission of the Association des courtiers et agents immobiliers du Québec (ACAIQ), the only regulatory body created under the Real Estate Brokerage Act, is to ensure the protection of the public through the enforcement of rules of professional ethics and the professional inspection of Québec's 14,000 or so real estate brokers and agents to ensure that they pursue their activities in accordance with the Act.

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Introduction

The Report on the Application of the Real Estate Brokerage Act: a clear commitment by the government's to effect the necessary changes

The Association des courtiers et agents immobiliers du Québec (ACAIQ) welcomes the Report on the Application of the Real Estate Brokerage Act tabled on June 15, 2004 by Minister of Finance Yves Séguin

This Report shows that the Government of Québec is committed to improving the regulatory structure of real estate brokerage while continuing to ensure the protection of the public. The ACAIQ also subscribes to the government's regulatory streamlining objective.

The various scenarios proposed by the Minister of Finance raise questions for the professional community and the public. For this reason, the ACAIQ urges the government to hold a public consultation, by invitation, in order to allow the various stakeholders to express their views on these questions. The public nature of this consultation will ensure the required transparency of process while allowing organizations that are most directly involved to be present and learn about the various representations.

This document constitutes the ACAIQ's initial reflection on the proposals contained in the government Report. As indicated by the Minister of Finance, the revision of this Act is a lengthy process that was initiated in 1997 by the ACAIQ. In November 2000, the ACAIQ submitted a brief to the government on the revision of the Real Estate Brokerage Act. The result of a long consultation and analysis process, this document entitled "Fully responsible real estate brokers for greater protection of the public", painted a detailed portrait of the profession based on the results of numerous consultations held for this purpose as well as the ACAIQ's observations as the supervisory body responsible for enforcing the law. In fact, the Minister stressed the value and usefulness of this reflection in his introduction to the Report. The Minister also noted that the ACAIQ had consulted consumer protection organizations, real estate brokers and agents as well as real estate boards. ■

Since receiving the government Report, the ACAIQ has held consultations with various organizations, including the Quebec Federation of Real Estate Boards, real estate boards and the majority of franchisers active in the field of real estate brokerage. Several real estate brokers and agents were also consulted. Through these exchanges, the ACAIQ observed that there is a widespread consensus within the industry concerning the Report's proposals. For instance, it is clear that maintaining self-regulation is a priority for the majority of stakeholders. This issue is discussed in more detail in the ACAIQ's comments on the potential creation of a Bureau du courtage immobilier.

This document contains the ACAIQ's comments and suggestions regarding each of the proposals contained in the Report on the Application of the Real Estate Brokerage Act. It is not an exhaustive analysis of the principles outlined, but rather an expression of the practical considerations that they raise, given the main purpose of this Act, which is to protect the public. ■

Bureau du courtage immobilier – Option 1

Hybrid regulatory body

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

-
- 1.1 That the ACAIQ, an association of members, be replaced with a hybrid regulatory body, i.e. an organization that is neither governmental (the Minister appoints a minority of directors) nor self-regulating (a minority of directors are brokers).
-

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier as stated in the government Report.

As indicated in the Report, none of the organizations who submitted briefs to the Minister proposed this option. The main reasons for this disagreement are the loss of self-management and self-regulation for real estate brokerage, the elimination of the institution of syndic and, more generally, the complete revision of the legal regulatory structure proposed under this option.

In his introduction to the Report, the Minister noted that he expected the public and real estate brokers and agents to discuss the mode of regulation and advise him of their preference, adding that regardless of the structure chosen, he believed that the public would be well protected. However, the Report also indicates that the government favours the creation of a Bureau, but that it would not object to the second option (ACIQ), in spite of the costs it entails. The ACAIQ feels on the contrary that the costs will be much higher if the Bureau is created, if only because of the many structural changes proposed.

Regulatory structures

The Report indicates that the current regulatory structure involves six authorities:

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

The Report concludes that the regulatory system is cumbersome and complex, for the reasons indicated. The ACAIQ disagrees that creation of the proposed Bureau would streamline the regulatory structures.

This issue is important in that the Report identifies the regulatory streamlining objective as the main reason for going from a self-regulating organization (the ACAIQ) to a regulatory body (the Bureau du courtage immobilier).

Multiplicity of regulatory authorities

The first of these reasons regards the multiplicity of authorities that can adopt regulations, i.e. three (the ACAIQ board of directors, the meeting of members of the ACAIQ and the government). With the proposed Bureau, there would be two regulatory authorities (the Bureau and the government), i.e. one less than the current situation. However, in practice, this would not represent a significant change. For one thing, it is important to note that the meeting of members of the ACAIQ only has regulatory power over a few items. In eleven years since the law was enacted, the meeting was only called upon a few times to vote on regulatory amendments. As for the ACAIQ board of directors, an initial regulatory amendment project was pre-published in 1996 and never saw final publication. More recently, a second project was pre-published. For another thing, the main problem here is not the number of authorities, but rather the cumbersome and complex nature of the regulatory adoption process, a problem which would not be solved by the creation of the proposed Bureau.

Supervision of the ACAIQ by the Registraire des entreprises

The second argument raised in the Report to show that the structure is cumbersome and complex concerns the supervision of the ACAIQ by the Registraire des entreprises. As the Report itself indicates, the Registraire is also responsible for administering the Act, “although in fact, the ACAIQ administers the legislation on a day-to-day basis”. As for governmental supervision of ACAIQ regulations, it would also exist for the regulations of the proposed Bureau.

The Fonds d’indemnisation as a separate legal person

Concerning the existence of the Fonds d’indemnisation as a separate entity, the ACAIQ proposes, in its comments on proposals 32.1 to 32.10, that it be integrated with the regulatory body, regardless of the option chosen. The Fonds is the only organization of its kind in Québec that does not exist within the regulatory body itself, as indicated in the government Report: “Note that within professional orders and the financial sector’s regulatory structure, administration of the compensation regime is not entrusted to a separate legal person.” This is explained by the fact that when the Fund was created in 1985 under the former Act, there was no self-management body, since this legislation was managed by a government agency. Unfortunately, this situation was not corrected when the current Act was adopted in 1991.

Activity overlap

The Report presents a final argument to illustrate the cumbersome and complex nature of the current system, i.e. the overlap between the activities of the ACAIQ and those of the real estate boards and the Federation, especially when it comes to training activities. Assuming that such overlap does exist, it does not stem from the law and, especially, has nothing to do with the analysis of professional activity regulation in the revision process of a law. In fact, and with good reason, the Report does not identify voluntary membership organizations among the authorities of the regulatory structure.

Mission to protect the public

The Report supports the option of creating a Bureau to further focus the organization's mission on its public protection objective. The role of defending the interests of brokers and agents would clearly be left to the associations created for this purpose.

The ACAIQ feels it inappropriate to more or less pit the protection of the public against the promotion of professional interests.

The protection of the public relies first and foremost on quality services provided by well-trained professionals. Ensuring this protection in this manner benefits the entire industry, in that it can only encourage a greater number of consumers to use the services of a broker. The Report in fact states: "there is no systematic conflict between the public interest and the private interests of brokers. Everybody wins when brokerage activities are carried out honestly and skilfully".

The Report also states that in practice the ACAIQ plays an important albeit limited role in administering the law because of the role and powers of the Registraire des entreprises. However, the Report also specifies the following: The Registraire des entreprises is charged with administering the *Real Estate Brokerage Act* although in fact, the ACAIQ administers the legislation on a day-to-day basis".

The Report indicates that although the Bureau would not be overseen by the Registraire des entreprises, the public interest would be safeguarded by the composition of the board of directors: six out of eleven directors would not be brokers or agents. The ACAIQ disagrees with this statement, which suggests that a board made up of a majority of practitioners in regular contact with the public is less effective in safeguarding public interest. In reality, the reverse is true due to the insight that the directors have into the problems encountered.

Self-management and self-regulation: important and effective principles to ensure better protection of the public and progressive professional practices

In its 2000 brief on the revision of the Act, the ACAIQ proposed that the principles of self-management, self-regulation and self-discipline be maintained. Through its experience of the last eleven years as a regulatory body, the ACAIQ has found that these principles have efficiently and practically enabled it to enforce the rules provided under the law while fulfilling its primary mission of protecting the public. Since self-discipline is being maintained in all the options mentioned in the Report, the ACAIQ will limit its comments to the other two components.

The ACAIQ recommends the maintenance of a regulatory body in which the majority of board members are elected directly by the members of the profession rather than appointed. It also proposes to maintain the principle of self-regulation and to reinforce self-discipline.

Like professional orders with which it shares many similarities (mission, structures, etc.), the fact that the ACAIQ's board of directors is made up of a majority of professionals whose activities are governed by law enables it to fully understand the issues related to the practice

of real estate brokerage and their impact on the protection of those who use the services of real estate brokers and agents. This allows us to develop and implement the necessary measures and to propose additional solutions to government authorities where necessary, including through legislative or regulatory amendments. An example of this involvement by the ACAIQ is its intervention for several years now in the field of building inspections, a major component of public protection. The importance of the institution of syndics and, more generally, the maintenance of the current legal regulatory structure, are discussed further on in this document.

In addition, the ACAIQ governance model calls for its affairs to be administered by a board of directors, which includes a Chairman. A President and CEO appointed by the board administers and ensures the continuity of ACAIQ activities by assuming the responsibilities of planning, organizing, managing and controlling resources, programs and operations, in accordance with the Rules of Internal Management of the ACAIQ.

Although it objects to the creation of a Bureau du courtage immobilier, the ACAIQ has prepared the following comments on the proposals related thereto.

Bureau du courtage immobilier PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

1.2 Consequently, the notion of members and that of meeting of members be eliminated.

ACAIQ Comments

Since the ACAIQ disagrees with the option of creating a Bureau du courtage immobilier as stated in the Report, it cannot agree with the idea of eliminating the notion of meeting of members.

1.3 The name "Association des courtiers et agents immobiliers du Québec" be replaced with that of "Bureau du courtage immobilier".

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ's comments on the name of the regulatory body are found under proposal 5.1.

1.4 The mission of the Bureau consist in protecting the public in the field of real estate brokerage.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ's comments on mission of the body are found under proposal 5.2.

1.5 The Bureau be responsible for the administration of the Act.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

Board of directors – Appointed members

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ's comments on the number of directors are found under proposal 6.1.

2.2 The number of directors appointed by the government authority and having no ties to the real estate brokerage industry be raised from two to five.

ACAIQ Comments


The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

This proposal means that six directors out of eleven would not come from the profession, given the restrictions to the election of the eleventh director outlined under proposal 2.8 hereafter. Concerning the government authority mentioned in this proposal, the Report indicates a little earlier that in fact the Minister would make the appointments.

This marked decrease in the number of practitioners would risk creating a disembodied organization, removed from day-to-day practices of which a strict but realistic oversight remains the best guarantee of protection for the public. In its 2000 brief, the ACAIQ suggested rather that the number of government appointed directors be raised from two to three.


The ACAIQ's comments on the experience of appointed directors are found under proposal 6.1.

2.3 These five directors be appointed by the Minister, not by the government.

 **ACAIQ Comments**

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

Subject to the comments expressed under proposal 2.2, the ACAIQ is not opposed to the Minister making the appointments. The ACAIQ's comments on these appointments are found under proposal 6.1.

 **Board of directors – Elected members**
PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

2.4 Brokers must elect from among themselves five other directors according to terms and conditions determined by regulation of the Bureau.

 **ACAIQ Comments**

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ's comments on election procedures are found under proposal 6.2.

2.5 A person shall not be elected a director or remain so if he holds a position as a director or manager with a real estate franchiser or a position as a director or manager in an association or a firm that defends the interests of real estate agencies (real estate brokerage firms), real estate franchisers or brokers, or a paid position within the Bureau.

 **ACAIQ Comments**

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ's comments on the restrictions outlined in proposal 2.5 and on the notion of “manager” under proposal 6.2.

2.6 The Bureau be granted the power to stipulate, by regulation, the terms and conditions of election by brokers of the five directors and the rules to ensure fair representation of brokers, including, if applicable, the possibility for brokers of a territory to elect a set number of directors and rules to ensure that directors do not use the same franchise.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ's comments on election procedures are found under proposal 6.2.

Is it necessary to limit the number of directors that use the same franchise? The ACAIQ has not had any bad experiences in this regard. It is important to note that about 70% of brokers and agents work for a franchised company. What happens if a director changes affiliations mid-mandate? Would they have to resign and, if so, who would have to resign? These questions are far from being hypothetical, since this type of change occurs regularly in real estate. In addition, brokers and agents vote for a person, not for a banner. Does that mean that the nomination of one or more individuals would have to be refused due to the actual or expected composition of the board of directors? What would happen if one banner bought out another?

To contain such a restriction using simple, easy to enforce rules appears very difficult and the experience of organized real estate brokerage in this area speaks volumes. Setting up rules regarding conflicts of interest and mechanisms to protect the board's work from paralysis would be more appropriate and enable the objective to be met. The restriction regarding the franchise (banner) used by the directors should not be retained. And if it is, the notion of "franchise" would have to be clearly defined, since there are no provisions to this effect in ordinary law. Finally, what is the meaning of the words "fair representation of brokers"? This is a vague and ambiguous expression that should not be used.

This proposal does not meet the deregulation and regulatory streamlining objective that constitutes one of the two main objectives of the Report's proposal, the other of course being the protection of the public.

2.7 The directors appointed by the Minister and those elected by brokers must, at a meeting, elect an eleventh director (an independent person) by a majority of at least two thirds of the votes cast.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

What would happen if two thirds of the votes, i.e. seven out of ten members, were not obtained? What would be the procedure to settle this impasse? What is the meaning of the words "an independent person"? This is a vague and ambiguous expression that should not be used.

More generally, the rules regarding the creation of the Bureau's board of directors include, for only eleven directors, three different modes of accession (election by brokers; appointment

by Minister; election by member of the board of directors). This proposal does not meet the deregulation and regulatory streamlining objective that constitutes one of the two main objectives of the Report's proposal, the other of course being the protection of the public.

2.8 The eleventh director shall not possess or have possessed interests in a real estate brokerage firm, or be or have been an agent or broker or work or have previously worked in another capacity in the real estate brokerage field.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The exclusion in this proposal is much too wide-ranging and could deprive the regulatory body of key skills. The ACAIQ suggests at the very least that the words “or work or have previously worked in another capacity in the real estate brokerage field” be removed. Finally, regardless of an individual's career path, it should be possible to re-examine their candidacy after a period of time.

Complaints – Conciliation and mediation

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

3.1 The Bureau receive complaints filed in the real estate brokerage field, unless they concern disputes between real estate agencies or real estate brokers regarding the sharing of compensation.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

Proposal 3.1 should be included within the general framework of the Report's second option, i.e. Association des courtiers immobiliers du Québec (ACIQ).

In the processing of complaints by the proposed Bureau, “disputes between real estate agencies or real estate brokers regarding the sharing of compensation” are excluded. This exclusion must be clarified. In practice, several files processed by the ACAIQ deal precisely with this type of situation that usually involves the public, i.e. sellers or buyers who feel that their rights were violated. A large portion of these cases deal with the obligation of brokers and agents to collaborate, including in the negotiation and the presentation of promises to purchase. An important aspect of the obligation to collaborate deals with the sharing of compensation. The more active the market is, as it has been for the last several years, the more the ACAIQ is called upon to review cases of this nature. The parties to these transactions, buyers and sellers, are very often the first to be affected by the violation of the collaboration obligation.

Concerning the settling of a dispute over the sharing of compensation between two brokers, while it is true that there is a conciliation and mediation procedure for brokers who are members of real estate boards, what happens when one or even both brokers are not members of that voluntary membership organizations? In such cases, ordinary courts of law have jurisdiction, which, in practice, represents a lengthy and costly process. The conditions pertaining to conciliation and mediation, including regarding their confidentiality, are discussed in the ACAIQ's comments on proposal 25.1.

And last, it would be preferable to use the expression “request for investigation” or “request for assistance” rather than the word “complaint” in order to avoid confusion with the disciplinary process, which begins with the filing of a complaint.

3.2 The Bureau must act as conciliator or mediator if the interested parties so wish, except for disputes between real estate agencies or real estate brokers regarding the sharing of compensation.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ's comments on this type of conciliation and mediation are found under proposal 7.3.

Information and references – Additional training

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

3.3 The Bureau act as an information and reference centre.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

Proposal 3.3 should also be included in the Report's second option, i.e. Association des courtiers immobiliers du Québec (ACIQ). From its inception in 1994, the ACAIQ Information Centre has been answering calls from the public, brokers and agents. In addition to offering a valuable source of information for them, the Centre allows the ACAIQ to be informed quickly on professional practices when necessary, to provide additional information to the public and to brokers and agents.

3.4 The Bureau du courtage immobilier may not provide training other than compulsory additional training if it is not otherwise available.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The reasons why the proposed Bureau could not give the training are not explained, the Report simply stating that “for practical reasons, the extent to which it can offer training should be clarified”. In addition, the presence of this restriction in a law would, to our knowledge, be a first for a regulatory body responsible for protecting the public. The opportunity to provide continuing education is vital for this type of organization. As indicated in the Report, the actions taken by the ACAIQ in this regard are motivated by the fact that public protection hinges on the competence of brokers and agents. In practice, this protection is first and foremost a function of prevention and information, and training is an excellent tool to this end. The regulatory body should approve the content and delivery methods of any compulsory continuing education. In addition, if basic training was not available in certain areas, it should be made accessible. Details regarding such accessibility are provided in the comments under proposal 7.1. Concerning the importance of continuing education in the public protection role of a regulatory body, the ACAIQ’s comments are found under proposal 7.2.

3.5. The Bureau may, by petition, apply to a judge of the Superior Court to issue an injunction in any matter relating to the Act or its regulations.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ’s comments on the suggestions contained in proposal 3.5 are found under proposal 7.4.

Powers of the Minister and the government

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

4.1 In principle, the supervisory powers of the Registraire des entreprises over the ACAIQ, in particular its power of inspection, be transferred to the Minister.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.


The ACAIQ agrees with this proposal, which should also be included in the second option outlined in the Report, i.e. the Association des courtiers immobiliers du Québec (ACIQ).

4.2 The government approve with or without addition or amendment the regulations of the Bureau du courtage immobilier.

 **ACAIQ Comments**

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ's comments on regulatory streamlining are found under proposal 28.1.

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

 **ACAIQ Comments**

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ's comments on the suggestions contained in proposal 4.3 are found under proposal 8.1

Improved status quo – Option 2



Association des courtiers immobiliers du Québec (ACIQ)

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

The ACAIQ disagrees with this proposal.

The word “association” is being retained, whereas in its 2000 brief, the ACAIQ proposed that a name that better reflects the mission of the regulatory body be found, because the current name of the ACAIQ is confusing as to its mission. The word “association” carries notions of voluntary membership, which can give the impression that the regulatory body’s mission is to represent exclusively the interest of its members, whereas its primary role is to ensure the protection of the public. The professional status of the ACAIQ is therefore improperly represented by this term.

The ACAIQ has conducted a study on different terms, the results of which are outlined below. However, it feels that none of these terms are appropriate. For this reason, the ACAIQ proposes that the regulatory body be given the name of “Immobilier Québec”.

Result of the terminological study for alternate names for the ACAIQ

Bureau du courtage immobilier

The term “Bureau” is used to designate a government agency that centrally manages similar activities and carries out administrative mandates. The ACAIQ is not a government agency, but the dictionary Le Robert provides a wider definition that could apply, i.e. Establishment open to the public providing a service of collective interest (e.g. Bureau de la publicité).

Autorité du courtage immobilier

This name designates an economic, scientific or other organization that officially exerts some authority at the national or international level. However, an administrative authority is a public administration responsible for enforcing the law. Since the ACAIQ is not a public agency, this name could create confusion, especially given the new “Autorité des marchés financiers”, which is a government agency.

Régulateur du marché immobilier

The term “régulateur” is not used to mean an organization. It would have to be a regulatory body. But then, such organizations are governmental and are usually called “régie”, and sometimes “commission”. The ACAIQ is not a government agency.

Collège des courtiers immobiliers

The name “Collège des courtiers immobiliers” is inaccurate, since the definition of the term “college” found in various dictionaries involves the notion of individuals sharing the same dignity, a sacred function. “Dignity” means a function, title or charge that confers a high rank on someone.

Association des courtiers immobiliers

The term “Association” designates a group of individuals who on a permanent basis, pool their knowledge and activities in order to defend or promote their common interest, but with a purpose other than that of sharing profits. It is confusing because rather than illustrate the idea of protecting the public, it gives the impression of an association that protects its members.

Conseil du courtage immobilier

A “conseil” is an advisory body whose primary function is to advise a Minister on government policy and the main directions of a given activity sector. The members of a “conseil” may conduct research or studies and relay any findings, conclusions and recommendations derived therefrom to the Minister.

Mission of the Association

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal. This should be the primary, but not the only, mission. This mission should not be interpreted as preventing the enactment of rules of conduct to be followed between brokers. Due to the close interaction between brokers in a real estate transaction, the enforcement and, in certain cases, the reinforcement of the obligation to collaborate are essential to ensure the protection of the public, which requires among other things a market that is open, dynamic and competitive.

The opportunity already stated in the Real Estate Brokerage Act for the regulatory body to provide continuing education is an essential component of the mission to protect the public. Comments on continuing education are provided in more detail under proposal 7.2 of the Report.

Proposal 3.3 has no equivalent in the ACIQ option. This proposition reads as follows: “The Bureau act as an information and reference centre “. This proposal should be included for the Association des courtiers immobiliers du Québec.

Board of directors

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief , this because of the valuable contribution of government-appointed directors.

Although the Report does not specify it, the ACAIQ assumes that the number of directors will remain at eleven. As mentioned in its brief, the ACAIQ feels that this number is appropriate. In addition, maintaining the principle of self-management allows to a balance to be maintained between the requirements of public protection and the pursuit of professional activities, within as flexible a framework as possible. Concerning the experience of the appointed directors, these should be selected based on their ability to contribute to the resolution of problems involving the protection of the public in the field of real estate. A similar principle is already included under section 46 of the Real Estate Brokerage Act for the appointment by the government of certain board members of the Fonds d’indemnisation du courtage immobilier, i.e. that they shall be “persons who, by reason of their activities, are capable of making a significant contribution to solving problems in the field of real estate brokerage”. They should also have the required skills in matters regarding management and governance.

Finally, not only should socio-economic groups be consulted, as already stipulated in section 81 of the Act, but also the regulatory body. The Act already stipulates that the government must consult the ACAIQ regarding the selection of certain board members of the Fonds d’indemnisation du courtage immobilier, i.e. the four directors who are members of the ACAIQ.

The ACAIQ recommends that the length of the mandate of directors be increased from two to three years, in order to allow for more efficient governance.

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

ACAIQ Comments

Although these restrictions could deprive the regulatory body of important skills, the ACAIQ feels that this will help avoid conflicts of interest and the appearance of conflicts of interest. The notion of “manager” will have to be clarified. Is it a reference to the notion provided for in the Civil Code?

The ACAIQ suggest that election procedures not be set by regulation, due among other things to the time required by the regulatory process. The means used to hold elections should not be restricted, so as to allow electronic voting, which could help increase participation and reduce costs. Currently, the rules regarding the election of directors are outlined in the Act and in the Rules of Internal Management of the ACAIQ. These rules should be completely reproduced in the Rules of Internal Management to facilitate their adoption and amendment.

Basic training

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

7.1 The ACIQ not be allowed to provide basic training.

ACAIQ Comments

The ACAIQ agrees with this proposal.

Accessibility of basic training

However, if basic training is not available in certain regions, the regulatory body should at least be authorized to make it accessible. This issue of accessibility, far from being theoretical, was already discussed by the ACAIQ in its 2000 brief. Basic training courses are sometimes difficult to get, especially out in the regions. The same applies to English language courses. This problem of accessibility becomes more acute in the case of chartered real estate broker courses. Candidates must sometimes wait up to two years before they can take the ACAIQ exam because teaching establishments have trouble finding enough students to form classes. Few institutions give the courses, even though several are authorized to do so. Courses are frequently cancelled. This situation creates a major impediment to the development of professional skills and the emerging workforce. It can also result in a shortage of certificate holders in certain regions or in certain categories, encouraging illegal brokerage.

The ACAIQ recommends that the accessibility of these courses be improved. To this end, although certain courses are already offered in a distance education format, this accessibility should be extended and the means of getting it be diversified (correspondence, television, the Internet, etc.). If basic training is revised, it will be important to ensure that a distance option is available within a reasonable time frame.

Granting of equivalencies

Concerning the review of applicant files for certification purposes, including the granting of school equivalencies, the current mechanisms should be revised so that the regulatory body be given the necessary powers, facilitating access to individuals who have adequate training. For example, it is very difficult for people who have a relevant university education to obtain college level equivalencies, which further exacerbates the general problem of accessibility.

As indicated by the Minister of Finance in his introduction to the Report, free trade agreements and economic globalization represent major changes that justify the need to update the Real Estate Brokerage Act. The resulting increased mobility of the labour force illustrates the importance of giving the necessary powers to the regulatory body regarding the granting of equivalencies.

Private interest training

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ disagrees with this proposal.

The reasons why the ACIQ could not give the training are not explained, the Report simply stating that “for practical reasons, the extent to which it can offer training should be clarified”. In addition, the presence of this restriction in a law would, to our knowledge, be a first for a regulatory body responsible for protecting the public. The opportunity to provide continuing education is vital for this type of organization. As indicated in the Report, the actions taken by the ACAIQ in this regard are motivated by the fact that public protection hinges on the competence of brokers and agents. In practice, this protection is first and foremost a function of prevention and information, and training is an excellent tool to this end.

Also, what is the meaning of the expression “essentially of private interest”? Aside from how it should be interpreted, what is the purpose of restricting the opportunity for the regulatory body to offer certain types of training? Does this mean, for example, that the regulatory body could not offer continuing education courses on the administration and management of a brokerage firm? Yet in practice, the ACAIQ has observed that deficient management of a brokerage firm has a direct impact on the quality of the professional services a broker gives to his clients, including in the handling of disputes.

Importance of continuing education for enhanced public protection

In its 2000 brief, the ACAIQ recommended that continuing education be made compulsory.

For several years now, the ACAIQ has made continuing education activities and conferences available to brokers and agents on practice-related topics, including the use of mandatory forms. However, this training is not compulsory. Yet, most lapses are due to a lack of skills development. Compulsory continuing education would also have the advantage of encouraging inactive members (holders of suspended certificates, for instance) to keep up-to-date. This would improve the protection of the public, since those who do not meet requirements would be forced to quit the profession.

Currently, only the ACAIQ board of directors has the power, following a recommendation by the discipline committee, to force a broker or an agent to successfully complete a development course.

The ACAIQ proposes that the professional inspection committee be able to oversee the professional competence of real estate brokers and to recommend that they update their knowledge by taking and passing a refresher training and/or refresher course, which could be ordered by the board of directors of the regulatory body according to pre-established standards. Failure to comply with a recommendation could result in a temporary suspension of the broker's permit. Brokers would of course have the opportunity to present their point of view, following procedures similar to those outlined in the Professional Code.

The legislator has recognized in the current Real Estate Brokerage Act the pivotal role played by continuing education in the ACAIQ's mission:

“66. 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.”

This section accurately states the reality of the ACAIQ. Through its main components, i.e. discipline, professional inspection, the Info ACAIQ Information Centre and the Assistance Service, the ACAIQ is able to identify practices that cause problems and to propose appropriate corrective action. Thus the ACAIQ is in daily contact with consumers, brokers and agents. This is where a fundamental aspect comes into play, i.e. the preventive role that the ACAIQ must play through the use of continuing education, in order to protect the public. The ACAIQ feels that the protection of the public is first and foremost ensured through the use of preventive measures. Of course where necessary, curative means such as the disciplinary process must be used. However, this process has a clear limit: it only comes into play after the fact and does nothing in the way of compensation.

This is why it is not surprising that the Act grants the ACAIQ the power to provide continuing education to brokers and agents. Indeed, professional orders have similar powers under the Professional Code, which allow orders to impose a refresher training or course. The Act respecting the Distribution of Financial Products and Services grants *Chambre de la sécurité financière* and the *Chambre de l'assurance de dommages* the power to set by

regulation the rules regarding compulsory professional development. A chamber can also offer professional development services and advisory services in quality control and compliance with professional requirements. And last, it can enter into an agreement with anyone to provide compulsory upgrading and professional development sessions. These various avenues appear very interesting and would enable the ACAIQ to achieve some of the objectives stated above.

It would be necessary for the regulatory body to have the power to recognize the training provided by other institutions and to mandate some of them to offer certain activities on its behalf.

In addition to public protection, the future of the real estate broker profession is largely dependent upon the ability of its members to offer quality services, and thus represents another factor to take into consideration when evaluating the relevance of continuing education. With the advent of new technologies, consumers need less of an intermediary who will simply help in the sale or purchase of an immovable, and more of an advisor whose role will go far beyond the transaction. However, the advent of new technologies is not the only explanation.

The enactment of the current Real Estate Brokerage Act has considerably increased the professional obligations of brokers and agents. A look at the decisions of the ACAIQ discipline committee and ordinary courts of law of the last eleven years shows that professional conduct is now evaluated on the basis of the rules established in the Act and its regulations and that the level of skill required of them is considerably higher.

Given this, not only is continuing education essential to the protection of the public, it is also essential to maintaining competitiveness within the profession. The restriction provided in proposal 7.2 of the government Report would be a step backward, inasmuch as the current law does not limit the ACAIQ in the achievement of this key component of its mission.

Conciliation and mediation

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

In the proposed obligation for the ACIQ to act as conciliator or mediator, “disputes between real estate agencies or real estate brokers regarding the sharing of compensation” are excluded. This exclusion must be clarified. In practice, several files processed by the ACAIQ deal precisely with this type of situation that usually involves the public, i.e. sellers or buyers who feel that their rights were violated.

A large portion of these cases deal with the obligation of brokers and agents to collaborate, including in the negotiation and the presentation of promises to purchase. An important aspect of the obligation to collaborate deals with the sharing of compensation. The more active the market is, as it has been for the last several years, the more the ACAIQ is called upon to review cases of this nature. The parties to these transactions, buyers and sellers, are very often the first to be affected by the violation of the collaboration obligation.

Finally, concerning only the settling of a dispute over the sharing of compensation between two brokers, while it is true that there is a conciliation and mediation procedure for brokers who are members of real estate boards, what happens when one or even both brokers are not members of those voluntary membership organizations? In such cases, ordinary courts of law have jurisdiction, which, in practice, represents a lengthy and costly process.

The conditions pertaining to conciliation and mediation, namely regarding their confidentiality, are discussed in the ACAIQ's comments on proposal 25.1.

Also, proposal 3.1 has no equivalent in the ACIQ option. This proposal reads as follows: "The Bureau receive complaints filed in the real estate brokerage field, unless they concern disputes between real estate agencies or real estate brokers regarding the sharing of compensation". This proposal should be included for the ACIQ, taking into account the structures proposed hereunder in the comments regarding proposal 25.1 of the Report.

Request for injunction

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal. This would help stop the illegal practice of real estate brokerage and prevent the commission of repeated violations by a broker before the application of the disciplinary process such as temporary suspension.

Also, in matters of illegal practice, the ACAIQ does not have all the tools it needs to play its role as effectively as possible. Recommendations to this effect are outlined on page 81 of this document.

Approval of exams and standard contracts

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal which will provide more flexibility in the certification exam updating process, to the extent where they will no longer need to be approved by an authority separate from the regulatory body.

In its 2000 brief, the ACAIQ suggested that there should be one exam per subject matter. Before issuing a certificate, the ACAIQ has applicants write a “general” exam in order to determine if he/she has the necessary knowledge. Successful completion of this exam is a condition to the issuance of the right of exercise. The passing mark is 70%. Sometimes a candidate will fail in one subject covered in the general exam, for example the course on the Act, but still gets a passing grade. To avoid this situation, we would need to have the power to implement one exam per subject rather than a general exam, or any other appropriate form of evaluation. This would also eliminate the problem experienced by several candidates from the regions who are often obliged to receive their training over a period of several years due to the non-availability of certain courses. Such exams would also do a better job of testing the knowledge of applicants while helping increase their level of competence and adapt to new practices. There should be a maximum period in which all of the exams would have to be written.

8.2 The organization that supervises the ACIQ may order it to revoke its approval of a standard contract or form [see the subdivision on standard contracts and forms below].

ACAIQ Comments

The ACAIQ would like to know what the objective of this power is.

In addition, if this proposal is retained, this power would have to be clearly delimited, so that, for instance, the motives that can be invoked to exercise it do not exceed what is reasonably required. Because of its activities and the expertise it has developed regarding standard forms, the ACAIQ is in the best position to determine the provisions which should or should not be included on these forms to ensure the protection of the public. Additional comments on forms are found under proposal 30.1.

Field of application

Brokerage acts

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

- 9.1 Only real estate agencies and real estate brokers may carry out real estate brokerage acts, subject to the exemptions stipulated by regulation and special authorizations.
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ACAIQ Comments

The ACAIQ agrees with this proposal.

If it is retained, exemptions would have to be clearly stated and the concept of special authorizations would need to be clarified and delimited.

Concerning the exemptions provided under section 2 of the Act, several would require clarification. This section lists the persons who are not subject to the law, including advocates and notaries who engage in brokerage transaction “in the course of their practice”. Among others, the case of an employee whose employer is not a broker would need to be clarified. Additional comments regarding this issue are found on page 79 of this document (Definition of the activity of real estate broker).

The ACAIQ’s comments regarding special authorizations are found under proposal 9.5.

Sale of a business

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

- 9.2 In the case of the purchase or sale, in a single contract, of all the assets of a business, the exclusive right of exercise of brokers and brokerage firms be maintained only if the assets of the business, by value, consist mainly of real property.
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ACAIQ Comments

The ACAIQ disagrees with this change to the field of application of the Real Estate Brokerage Act.

The need to oversee activities in this field of activity is no less than for other transactions, as stated in the government Report itself. For one thing, the Report indicates that the public concerned by real estate brokerage is made up not only of individuals (consumers), but also of firms. For another, the need to protect the public in this area from a contractual point of view is thus explained in the Report:

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

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

If proposal 9.2 is retained, how will the meaning of the expressions “mainly of real property” and “by value” be circumscribed? These are very vague expressions which could be interpreted differently from one situation to the next. This will create great uncertainty, as much for the regulatory body as for the businesses that engage in these activities. This uncertainty will also apply to businesses and individuals who deal with these intermediaries without knowing whether or not they are authorized to act, if they have the required skills and if they are subject to any form of oversight. And last, proving illegal practice will be very difficult and will require lengthy, complex and costly investigations.

Lease of real property

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

9.3 Concerning the lease of real property, the exclusive right of exercise of brokers and brokerage firms be maintained when in fact a business is carried on by a person who acts as an intermediary in this field. In other words, as soon as there is a brokerage firm, it is subject to the Act.

ACAIQ Comments

The ACAIQ disagrees with this change to the field of application of the Real Estate Brokerage Act.

The need to oversee activities in this field is no less than for other transactions. This major change is thus explained in the Report:

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

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

In a leasing situation, the parties concerned are the lessor and the lessee (tenant). Very often the former owns one or two buildings comprised of a few dwellings. The ability of several owners to discharge their financial obligations will depend essentially on the extent to which their tenants discharge theirs. The oversight of the intermediaries used to find such tenants therefore has a direct impact on the protection of the lessor's property.

The other party to a lease, i.e. the lessee, will have to sign a lease containing a series of obligations, including that of paying rent, which can vary considerably both for residential and commercial leases. On the residential side, the objective is usually to provide a home for one's family. The Québec legislator has adopted a series of rules concerning the lease of a dwelling that have been incorporated to the Civil Code. A special agency, the Régie du logement, was created. Regarding real estate brokerage, as early as 1985 the legislator set down a series of provisions regarding brokerage contracts for the sale, exchange and rental of an chiefly residential immovable containing less than five dwellings for use by a natural person. Most of these rules, reproduced under sections 32 to 43 of the current Real Estate Brokerage Act, came from similar provisions in the Consumer Protection Act. As in the case of lessors, the rights of lessees can be greatly influenced by the quality of the services rendered by the intermediaries involved in the leasing of a property.

In short, the legislator has long expressed concern for the protection of the parties to the lease of real property. In addition, the ACAIQ has observed in the course of its activities that certain types of tenants can be especially vulnerable, for example seniors. Several firms offer real estate brokerage services in this area without proper certification. They sometimes receive considerable sums that are not deposited in a trust account.

On the commercial side, the government Report states the need to protect small businesses from a contractual point of view:

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

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

In reality, however, for several thousands of small businesses, the rental of commercial space often represents their biggest financial commitment and their lack of knowledge of the rules of the market is only one of the factors that create an imbalance between opposing forces. The oversight of intermediaries in this area is essential to ensure their protection.

If proposal 9.3 is retained, how will the meaning of the expressions “brokerage firm” and “in fact” be circumscribed? These are very vague expressions which could be interpreted differently from one situation to the next. This will create great uncertainty, as much for the regulatory body as for the businesses that engage in these activities. This uncertainty will also apply to businesses and individuals who deal with these intermediaries without knowing whether or not they are authorized to act, if they have the required skills and if they are subject to any form of oversight. And last, proving illegal practice will be very difficult and will require lengthy, complex and costly investigations.

Power to exempt or to authorize

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

9.4 The government be granted the regulatory power to exempt, with or without conditions, a category of persons or groups from all or some of the obligations resulting from the Act and its regulations.

ACAIQ Comments

The ACAIQ disagrees with this sweeping regulatory power.

In addition, in the event that such power is retained, it should be exercised by the regulatory body and not by the government. There again, because of its activities and the expertise it has developed, the regulatory body would be in the best position to determine who could benefit from such an exemption, always in an effort to ensure and maintain public protection.

9.5 The ACIQ or the Bureau du courtage immobilier be granted the regulatory power to determine which brokerage acts, following authorization, may be carried out on a one-time or occasional basis by one or more persons or groups or categories of persons or groups, other than brokers and agencies, as well as the terms and conditions under which such acts may be carried out and the fees payable.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ would like more information on the content of this power. Is the notion of authorization contained in this proposal similar to that of the Professional Code? How is it different from the exemptions mentioned in proposal 9.4?

Also, in terms of mobility between jurisdictions, the ACAIQ does not have the capacity to recognize the training of people already authorized to practice in other jurisdictions, to allow them to practice in Québec. Québec is one of the few jurisdictions where the regulatory body cannot reach an agreement with its counterparts in this area. Several real estate brokerage

regulatory bodies in Canada have revised their law and regulations and some have already reached inter-jurisdiction agreements. The same phenomenon occurs in the United States. Similar agreements have even been concluded between Canadian and American jurisdictions. In Québec, the ACAIQ has received a few requests to this effect, which it cannot pursue.

The ACAIQ recommends that the new act contain provisions allowing the regulatory body to recognize the training of persons already authorized to practice in other jurisdictions for the purpose of issuing a permit in Québec.

Such a measure and any other provisions to promote increased mobility of people practicing real estate brokerage are deemed essential in the overall context of workforce mobility, given the transformation which brokerage will undergo under the drive of information technologies. Naturally, this recognition can only happen within Québec's specific legal context. Thus it would be easy to recognize a financial accounting course taken in Alberta or in Michigan, but difficult, and even impossible, to recognize law courses from other provinces, American states or countries.

Real estate agencies



Permit

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

- 10.1 Partnership and legal persons that want to exercise real estate brokerage activities through a broker be required to obtain a real estate agency permit from the ACIQ or the Bureau.
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ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief, although it is more of a “registration” for the agency than a real estate agency permit, the term “permit” being related to the right to engage in the activity as such. In addition to carrying out their activities on their own, i.e. being self-employed, brokers could practice under various forms of brokerage firms.

Transition

The ACAIQ recommends that the corporations or partnerships who are chartered real estate brokers have their certificates converted to a registration with the regulatory body as real estate agencies. The attached chart compares the current Act with the proposals contained in the government Report, as understood by the ACAIQ, and presents the ACAIQ’s proposals regarding professional titles.

- 10.2 A natural person who acts through a broker representative be required to obtain a real estate agency permit from the ACIQ or the Bureau.
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ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

It would be more of a “registration” for the agency than a real estate agency permit, the term “permit” being related to the right of exercise the activity as such. What is the meaning of this proposal, inasmuch as the natural person is acting directly, unlike, for instance, a legal person? Are we to understand that the notion of agency does not necessarily refer to that of separate juridical personality and that, for example, a broker who hires must register as an agency? Also, the proposal should be to the broker, not the “broker representative”.

Transition

The ACAIQ recommends that a natural person who is a chartered real estate broker, chartered real estate agent or affiliated real estate broker, or who is referred to in sections 7 and 13 of the current Act, can, if they so desire, register as real estate agency. This person would be

recognized as having the required qualifications to act as the manager of an agency and would use the title of chartered real estate broker. The attached chart compares the current Act with the proposals contained in the government Report, as understood by the ACAIQ, and presents the ACAIQ's proposals regarding professional titles.

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

ACAIQ Comments

The ACAIQ agrees with this proposal and has expressed its comments under proposal 11.5.

Responsibility of real estate agencies

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

This is not what had been asked by the Association, i.e. forcing each practitioner to get insurance coverage for their professional acts, although the principle of joint and several responsibility with the real estate agency is accepted. In addition, the proposal should refer to brokers, not to “representatives”.

The ACAIQ's 2000 brief proposed that the liability of real estate brokers remain full and complete with regards to their professional acts and that each natural person have professional liability insurance coverage according to minimum conditions established by law. Their actions however would not involve the responsibility of other brokers in the agency. However, the agency could get liability insurance in addition to that of the real estate brokers and thus offer an added value to the public.

Individuals performing real estate brokerage acts cannot take full civil responsibility for their actions without having access to professional liability coverage that would protect the public in case of fault, error or omission. This responsibility model will not reduce the responsibility of agencies for the actions of the brokers representing them. Rather, it will be a shared responsibility between the agency and the brokers. Agencies will remain fully and completely responsible for their actions of the brokers representing them, as is the case for chartered real estate brokers under the current Act for the actions of their agents.

Additional comments on the full responsibility of persons performing brokerage acts are found under proposal 12.1.

Creation of a professional liability insurance fund

The creation of a professional liability insurance fund administered by the regulatory body and which would henceforth cover all persons, would be more economical. This approach would allow for better control of the administrative process. It would also allow the regulatory body to know the most common faults, errors or omissions and therefore intervene more efficiently to correct undesirable practices, helping to reinforce the protection of the public. This is why in December 2004 the ACAIQ was pleased that the Real Estate Brokerage Act was being amended to allow the creation of this fund. These provisions should be renewed in a new Act. Additional comments on this topic are found under proposal 16.7.

Management duties

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief.

Under the Real Estate Brokerage Act and its regulations, an establishment must be managed by a natural person who devotes himself exclusively to his managerial duties based on the number of agents and the experience of its personnel. The ACAIQ has noted that the expression “devote himself exclusively” creates confusion, including by leading people to believe that a manager is not authorized to engage in brokerage transactions.

Unfortunately, given the economic conditions under which brokerage firms now operate, it is no longer possible in the great majority of cases to afford to support a person who will only fulfil managerial duties. For one thing, the terms governing compensation sharing between real estate brokers and agents have greatly evolved in the last few years. Nowadays, agents retain the greatest portion of the compensation paid by the consumer, with the broker only keeping an amount to cover office expenses, paid each month by the agent. This forces a manager to perform brokerage activities even if he is in a situation where he could be violating the exclusivity rule. This rule is also very difficult, if not impossible in some cases, to enforce for the regulatory body.

The place of residence of managers can be discussed. Also, the term used for “manager” in French should be “directeur” instead of “dirigeant”.

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

ACAIQ Comments

The ACAIQ agrees with this proposal.

A partnership or legal person will not be the holder of a broker permit and special requirements, following proposal 11.6 of the Report, can be provided by regulation for those who wish to manage a real estate agency.

Establishment – Managers and record-keeping

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal.

Under the Act, for every group of 30 agents or any remaining group of less than 30 exceeding a first group of 30 agents working at the same establishment, there must be one natural person who possesses the qualifications of broker and acts as assistant to the person managing the establishment.

Unfortunately, given the economic conditions under which brokerage firms now operate, it is no longer possible in the great majority of cases to afford to support a person who will only fulfil managerial duties. For one thing, the terms governing compensation sharing between real estate brokers and agents have greatly evolved in the last few years. Nowadays, agents retain the greatest portion of the compensation paid by the consumer, with the broker only keeping an amount to cover office expenses, paid each month by the agent. This forces a manager and assistant managers to perform brokerage activities even if they are in a situation where they could be violating the exclusivity rule. This rule is also very difficult, if not impossible in some cases, to enforce for the regulatory body.

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

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief.

Agents do not report much to the establishment to which they are assigned, which has consequences on the role of the establishment and the way books, records and registers are kept. The ACAIQ feels that this reality would be reflected in the regulations pertaining to record-keeping. Thus the establishment would be any place of practice identified as such,

announced publicly and accessible to the consumer. The layout of this location should allow for confidential meetings to take place and for the privacy of information to be maintained. As is currently the case, a person should be designated for each establishment so that the public can have someone to contact in case of a problem with the broker handling their file. This person should hold a certificate of exercise.

In addition, clear rules should be established concerning the place where the books, records and registers should be kept, so that the professional inspection department of the regulatory body can have easy and full access to these for audit purposes.



Manager of real estate agency

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief.

The current training program to become a chartered real estate broker does not allow the person to get the additional skills required to manage a real estate brokerage firm. The ACAIQ recommends that improvements be made to allow the person to learn all the skills and abilities required by this position.

The place of residence of managers can be discussed. Also, the term used for “manager” in French should be “directeur” instead of “dirigeant”.

Transition

The ACAIQ recommends that chartered real estate agents, chartered real estate brokers and chartered real estate brokers natural persons as well as the persons referred to in sections 7 and 13 of the current Act be authorized to act as manager of a real estate agency. They should continue to hold a certificate of practice and could use the title of “chartered real estate broker”.

The attached chart compares the current Act with the proposals contained in the government Report, as understood by the ACAIQ, and presents the ACAIQ’s proposals regarding professional titles.

Brokers

Real estate broker

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

12.1 The title "agent" be eliminated.

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief.

According to a study conducted for the ACAIQ by the firm Créatec Plus in 1997 and validated again in 2001 and 2005 through surveys conducted by the firms Léger Marketing and Crop, the public usually does not differentiate between a broker and an agent. The survey conducted in January 2005 indeed reveals that 58% of respondents did not know the difference.

The ACAIQ has observed that in general, the public does not really understand how real estate brokerage works and believes that, when dealing with a real estate agent, they are dealing with someone who is fully responsible for their own actions. This is not at all the case since the only responsibility of agents in principle is an ethical one.

Under the Act, an agent can only act for and on behalf of a broker. He has no professional autonomy under the law, even though he is the one carrying out all the brokerage activities (solicitation, signing of brokerage contract, drafting and presentation of promises to purchase, negotiations, etc.).

Brokers carry full civil responsibility for the professional actions of their agents, even though they are practically no longer able to supervise them adequately. The practice of real estate brokerage has evolved, mainly for economic reasons. Brokers have almost nothing to do with their agents' work, although they are still responsible for it under the current Act. Agents are no longer mere employees. In fact, they have acquired great professional independence from their employer and more and more carry out their activities away from the broker's supervision.

Need to provide for full responsibility of persons carrying out brokerage acts

In the ACAIQ's opinion, the fact that the law does not make all persons engaging in real estate brokerage acts fully responsible for their action is harmful to the protection of the public, if only in terms of the recourses available.

The ACAIQ recommends that any person acting as real estate intermediary have full legal capacity and full responsibility for all their professional acts.

Regarding agents, henceforth designated as “real estate brokers”, the ACAIQ is proposing a major and essential change, i.e. full responsibility, both in ethical and civil matters, whether they are acting on their own behalf or on behalf of agency. Thus a person acting as intermediary will have full legal capacity and full responsibility for all their professional acts. This full responsibility will be added to that of the agency. Therefore they will have the same responsibility as several of the professional with whom they work in their practice. This will help increase the protection of the public. The broker will be responsible first, and this responsibility will be covered by the professional liability insurance of which he will be the beneficiary. This responsibility model will not reduce the responsibility of agencies for the actions of the brokers representing them. Rather, it will be a shared responsibility between the agency and the brokers. Agencies will remain fully and completely responsible for their actions of the brokers representing them, as is the case for chartered real estate brokers under the current Act for the actions of their agents.

The attached chart compares the current Act with the proposals contained in the government Report, as understood by the ACAIQ, and presents the ACAIQ’s proposals regarding professional titles.

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

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief.

To the public, anyone performing a brokerage act would be a real estate broker. In addition, the fact that agents are called real estate brokers will not change the business relation between them and the agency on whose behalf they are acting.

For the purpose of distinguishing the level of training and/or experience, the qualifier “chartered” could be used by those brokers who meet the additional requirements to act as manager of a real estate agency.

The ACAIQ recommends the following regarding professional titles:

A real estate broker who is starting or who has completed the probation period provided in the regulations: would use the title of real estate broker. A real estate broker who decides to act on his own behalf would continue to use the title of real estate broker, unless he is qualified to act as a manager of a place of business, in which case he would use the title of chartered real estate broker (see next paragraph).

Agency manager: the ACAIQ propose that the notion of “dirigeant d’agence” be replaced with “directeur d’agence” in French. The first requirement regarding this manager should be that he be a chartered real estate broker.

Chartered real estate broker qualified to act as manager of an agency but not carrying out this responsibility: could use the title of chartered real estate broker. If he decided to act on his own behalf, he would use the same title.

Transition

The ACAIQ recommends that chartered real estate brokers (natural person), chartered real estate agents or affiliated real estate brokers as well as anyone referred to in sections 7 and 13 of the current Act, be recognized as having the required qualifications to act as the manager of an agency and be allowed to use the title of chartered real estate broker.

Affiliated real estate agents would use the title of real estate broker.

The attached chart compares the current Act with the proposals contained in the government Report, as understood by the ACAIQ, and presents the ACAIQ's proposals regarding professional titles.

Transition PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ agrees with this proposal, which corresponds to a recommendation expressed in its 2000 brief.

As indicated by the Minister of Finance in his introduction to the Report on the Application of the Act, the increasing level of independence of agents is one of the major changes undergone by the real estate brokerage industry.

Training and exam for autonomous agents

The Report also indicates that the imposition of qualification requirements by the regulatory body is one of the reasons why recognizing this autonomy will not lead to a labour shortage for brokerage firms. Beyond this title change, the new regulatory structure for real estate brokerage professionals should facilitate the transition to full autonomy. The necessity of requiring additional training before allowing current affiliated real estate agents to act on their own behalf as real estate brokers should first and foremost be dictated by the desire to ensure the protection of the public. To this effect, the ACAIQ recommends among other things that they first pass an exam, in order to be at the same level as those who will join the profession after the new Act comes into force.

Current business structures

In addition, the fact that agents use the title of real estate broker will not in itself change the business relationship between them and the agency on behalf of which they are acting. Concerning current business structures, it is important to note that brokerage firms rely in great part on the fact that the agents working under it pay service fees (office space, receptionist and message center, photocopier, word processing, professional forms, etc.). In many cases, the broker is first and foremost a provider of services for the agent. In this context, allowing all brokers to carry out their activities through a company would automatically cause these companies to fear for their profitability and even their survival.

The certification model (permit of exercise) suggested would ensure the protection of the public and a smooth transition, allowing current business models to adapt as smoothly as possible. Proposal 17.1 of the Report on forcing novice brokers to work for an agency for a set period of time before being authorized to work on their own behalf is a good illustration of this.

Transition

The attached chart compares the current Act with the proposals contained in the government Report, as understood by the ACAIQ, and presents the ACAIQ's proposals regarding professional titles.

Minimum training

REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ agrees with this proposal, which corresponds to a recommendation expressed in its 2000 brief.

The regulatory body should also have the power to certify the training programs of teaching establishments. However, stating the duration of training in the regulations could make it difficult to update programs in the future.

The determination of the skills required is done as part of a work situation analysis involving professionals from the field. Following this exercise, it is possible to determine the nature and extent of the training required to carry out an activity. The length of the basic training needed to train competent individuals is based on these criteria. However, certain realities specific to real estate brokerage must be taken into account, including economic considerations. The possibility of recognizing a candidate's background, both in terms of experience and training, should be provided for (equivalency process).

Involvement in program development

The ACAIQ is increasingly taking part in the development of training programs created by teaching establishments. The many requests received by the ACAIQ each day have enabled it to identify clearly the information and knowledge which brokers and agents are lacking. The ACAIQ is particularly likely to be a prime resource since it is the organization that edicts the rules of the art. It is essential that the regulatory body be directly involved in developing training programs.

To this effect, the ACAIQ recommends that the Act call for automatic participation by the regulatory body in the development of the courses and programs given by teaching establishments.

The ACAIQ has briefly examined the Act respecting the distribution of financial products and services. Sub-section 1 of section 200 of this act seems to offer an interesting approach. This provision allows the determination by regulation of “the minimum qualifications required to obtain a certificate, the courses that an applicant for a certificate must take, and the rules relating to the preparation and passing of prescribed exams”. Section 189 of this Act grants the power to enter into agreements with the Government, a government body, a professional order or anyone else. If they prove effective, these provisions look very interesting at first glance.

Along the same lines regarding basic training, the legislator should provide for mechanisms by which the regulatory body would consult with the various partners in the education and real estate brokerage sectors in order to pool their expertise to develop courses that are better adapted to the needs of students. Also, closer involvement of the regulatory body in the training of teaching personnel would have a positive impact on the quality of courses, particularly concerning the Real Estate Brokerage Act and professional practices.

The training of brokers and agents has improved since the current Act has come into force. Despite this and the fact that it is one of the most demanding programs in North America, the comments received in the course of discussions with consumers and brokers and agents are unanimous: training that is better adapted to the needs of the profession and the public is essential in order to be able to guarantee quality services.

Increased criteria to enter the profession

One of the first things we observed regarding training is that aspiring professionals don't always have enough schooling to allow them to follow and understand clearly the principles and concepts that are taught in the initial training courses in CEGEP. This is a big drawback, especially since this initial training also appears to be incomplete.

The ACAIQ recommends that the current training program be improved, including by broadening the field of subjects taught. As is currently the case, an exam administered by the regulatory body would allow verification of the knowledge and skills acquired during the initial training course. Candidates should also take and pass an exam demonstrating their linguistic skills (French or English) in their profession.

The experience of the last eleven years has enabled the ACAIQ to observe that newcomers to the profession are often left to fend for themselves. The practice of real estate brokerage has evolved, mainly for economic reasons. Brokers have almost nothing to do with their agents' work, although they are still responsible for it under the current Act. Agents are no longer mere employees. In fact, they have acquired great professional independence from their employer and more and more carry out their activities away from the broker's supervision. In this context, it is difficult for beginners to go from theory to practice, while representing a major risk for the public.

It is true that the current Act includes rules on supervision by brokers, including:

1. that the agent must report to the establishment to which he is assigned and provide the person running the establishment all the information necessary to the maintenance of books, records and registers;
2. that the representative of a broker who is a legal person or a partnership must devote themselves entirely to the activities of the firm;
3. the rules governing managers and assistant managers of an establishment.

However, these rules, which are difficult to enforce or require a lot of resources, have not proved very effective due to the great level of independence of agents and the economic realities already described in the comments on proposals 13.1 and 14.1, which in fact recommend the elimination of some of these rules.

These realities show even more clearly the need to ensure that basic training is complete by providing new brokers with all the tools they need to pursue their activities.

Developing courses required by the various fields of practice

Since the current Act is designed mainly to oversee residential brokerage, the basic training of real estate agents ill meets the needs of other fields of practice. On the one hand, some of the courses offered as part of basic training are not relevant for people who wish to work in these other fields (mortgage loans, agricultural, commercial and industrial, business, rental property, etc.). On the other hand, brokers and agents who practice their profession in one of these areas don't always have the skills they need to ensure adequate protection of the public.

The ACAIQ recommends that the training program for brokers be reviewed so that the main fields of practice are covered. This way, all real estate professionals would have the basic skills needed to practice in a given field. Those wishing to have a particular field of practice appear on their permit and be able to include it on their business card would have to get their relevant training and experience recognized by the regulatory body. They would also have to take an exam. In addition, the number of fields of practice appearing on a permit should be limited.

Additional training

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ agrees with this proposal.

However, this power should be exercised without having to adopt a regulation each time, due among other things to the time required by the regulatory process. It would be more appropriate to allow the board of directors of the regulatory body to exercise it by resolution, according to the procedures set out in the regulations, for example by a two-third majority vote.

Importance of continuing education for enhanced public protection

In its 2000 brief, the ACAIQ recommended that continuing education be made compulsory. For several years now, the ACAIQ has made continuing education activities and conferences available to brokers and agents on practice-related topics, including the use of mandatory forms. However, this training is not compulsory. Yet, most lapses are due to a lack of skills development. Compulsory continuing education would also have the advantage of encouraging inactive members (holders of suspended certificates, for instance) to keep up-to-date. This would improve the protection of the public, since those who do not meet requirements would be forced to quit the profession.

It would be necessary for the regulatory body to have the power to recognize the training provided by other institutions and to mandate some of them to offer certain activities on its behalf.

Currently, only the ACAIQ board of directors has the power, following a recommendation by the discipline committee, to force a broker or an agent to successfully complete a development course. The ACAIQ proposes that the professional inspection committee be able to oversee the professional competence of real estate brokers and to recommend that they update their knowledge by taking and passing a refresher training and/or refresher course, which could be ordered by the board of directors of the regulatory body according to pre-established standards. Failure to comply with a recommendation could result in a temporary suspension of the broker's permit. Brokers would of course have the opportunity to present their point of view, following procedures similar to those outlined in the Professional Code.

The legislator has recognized in the current Real Estate Brokerage Act the pivotal role played by continuing education in the ACAIQ's mission:

“66. 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.”

This section accurately states the reality of the ACAIQ. Through its main components, i.e. discipline, professional inspection, the Info ACAIQ Information Centre and the Assistance Service, the ACAIQ is able to identify practices that cause problems and to propose appropriate corrective action. Thus the ACAIQ is in daily contact with consumers, brokers and agents. This is where a fundamental aspect comes into play, i.e. the preventive role that the ACAIQ must play through the use of continuing education, in order to protect the public. The ACAIQ feels that the protection of the public is first and foremost ensured through the use of preventive measures. Of course where necessary, curative means such as the disciplinary process must be used. However, this process has a clear limit: it only comes into play after the fact and does nothing in the way of compensation.

This is why it is not surprising that the Act grants the ACAIQ the power to provide continuing education to brokers and agents. Indeed, professional orders have similar powers under the Professional Code, which allow orders to impose a refresher training of course. The Act respecting the Distribution of Financial Products and Services grants *Chambre de la sécurité financière* and the *Chambre de l'assurance de dommages* the power to set by regulation the rules regarding compulsory professional development. A chamber can also offer professional development services and advisory services in quality control and compliance with professional requirements. And last, it can enter into an agreement with anyone to provide compulsory upgrading and professional development sessions. These various avenues appear very interesting and would enable the ACAIQ to achieve some of the objectives stated above.

In addition to public protection, the future of the real estate broker profession is largely dependent upon the ability of its members to offer quality services, and thus represents another factor to take into consideration when evaluating the relevance of continuing education. With the advent of new technologies, consumers need less of an intermediary who will simply help in the sale or purchase of an immovable, and more of an advisor whose role will go far beyond the transaction. However, the advent of new technologies is not the only explanation.

The enactment of the current Real Estate Brokerage Act has considerably increased the professional obligations of brokers and agents. A look at the decisions of the ACAIQ discipline committee and ordinary courts of law of the last eleven years shows that professional conduct is now evaluated on the basis of the rules established in the Act and its regulations and that the level of skill required of them is considerably higher.

Given this, not only is continuing education essential to the protection of the public, it is also essential to maintaining competitiveness within the profession.

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

 **ACAIQ Comments**

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief. The fact that the right of exercise real estate brokerage is based on the issuance of a “certificate of practice” and not on the principle of the “right of exercise”, such as exists with professional orders, make the certification process considerably more cumbersome. The requirement that the agent certificate be linked to that of broker also contributes to this weight.

It should also be mentioned that current regulations do not provide for the use of new communication technologies to manage the membership. Certificate renewals therefore are usually done by mail or in person. In this area, Québec is behind other North American jurisdictions. Our neighbours to the South have created a central system where the records from various states are sent to a single database. Brokers and agents, regardless of their jurisdiction, can make changes to their file directly through the Internet. The regulatory body concerned is automatically informed of these changes and updates its own records accordingly.

Replacing the notion of certificate of practice with the notion of right of exercise, combined with the fact that all individuals authorized to practice real estate brokerage would have the status of broker, with full professional liability and independence, would greatly simplify the certification process and therefore yield sizeable savings. These savings will be further increased if the regulatory body issues and maintains permits electronically.

16.2 Such permit be permanent in principle.

 **ACAIQ Comments**

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief.

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

 **ACAIQ Comments**

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief.

Miscellaneous powers

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ agrees with this proposal.

Under the current Act, the government, and not the regulatory body, has the power to set the requirements for the issuance of certificates. Again, the ACAIQ proposes that the agency “register” with the regulatory body rather than be issued a permit of exercise.

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

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

This proposal requires clarification. Normally brokers, not agencies, would be sanctioned, subject to the responsibility of the directors and managers who have participated in or agreed to a violation. Section 130 of the Real Estate Brokerage Act already partly covers this situation and would require clarification.

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- 16.6 It be determined in the Act that the fines collected from agencies by the ACIQ or the Bureau be paid into a fund for the purpose of educating the public regarding real estate brokerage.
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ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

This proposal requires clarification. Normally brokers, not agencies, would be sanctioned. In addition, the disciplinary process runs a large deficit, even not taking into account the cost of investigations by the syndic. It would be more appropriate that the fines levied continue to be applied to disciplinary process expenses.

16.7 The obligation that agencies and brokers have liability insurance be maintained.

 **ACAIQ Comments**

This does not correspond to the request expressed by the ACAIQ consisting in requiring that each practitioner obtain insurance coverage for their professional acts, although the concept of joint and several responsibility with the real estate agency is accepted.

Professional liability insurance is a security for real estate brokers who have this coverage, providing the public with a guarantee in the event of a claim for fault, error, negligence or omission that they might commit in the course of their professional activities. Although there are no specific statistics on this subject, the obligation of real estate professionals to provide accurate and verified information to the parties to a transaction is invoked in the majority of claim reports sent to the ACAIQ by insurance companies. Currently, only chartered real estate brokers are covered by liability insurance, which causes various problems due to the fact that the broker is responsible for the professional actions of his agents, even if they are no longer in his employ. This type of drawback would of course be eliminated if the law recognized the full civil responsibility and autonomy of all persons practising real estate brokerage.

In addition, the administration of liability insurance records is often a problem because insurance companies do not fulfill their legal obligation to provide the Association with a copy of all claim reports. This type of information would allow the ACAIQ to analyze any prejudice caused to the public and to focus the ACAIQ's efforts aimed at eliminating practices that are not in compliance with the law. The fact that the effective dates of insurance policies and certificates of practice do not match also causes difficulties, since this can result in a broker not being covered for a period of time, contrary to the requirements of the law.

The ACAIQ's 2000 brief proposed that the liability of real estate brokers remain full and complete with regards to their professional acts and that each natural person have professional liability insurance coverage according to minimum conditions established by law. Their actions however would not involve the responsibility of other brokers in the agency. However, the agency could get liability insurance in addition to that of the real estate brokers and thus offer an added value to the public. Individuals performing real estate brokerage acts cannot take full civil responsibility for their actions without having access to professional liability coverage that would protect the public in case of fault, error or omission.

Creation of a professional liability insurance fund

The creation of a professional liability insurance fund administered by the regulatory body and which would henceforth cover all persons, would be more economical. This approach would allow for better control of the administrative process. It would also allow the regulatory body to know the most common faults, errors or omissions and therefore intervene more

efficiently to correct undesirable practices, helping to reinforce the protection of the public. This is why in December 2004 the ACAIQ was pleased that the Real Estate Brokerage Act was being amended to allow the creation of this fund. These provisions should be renewed in a new Act.

Discretionary power

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

16.8 The ACIQ or the Bureau be granted the power to stipulate, by regulation, the special situations and conditions in which they have discretionary power to refuse to issue a permit, to issue it with or without conditions or limitations, to withdraw it (temporarily or permanently) or to attach conditions or limitations to it, subject to the competence of the discipline committee.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

This proposal requires clarification. What is the meaning of the expression “discretionary power”? Is it a good idea to have such power in the context of the application of a law?

Novice brokers

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief.

According to a study conducted for the ACAIQ by the firm Créatec Plus in 1997 and validated again in 2001 and 2005 through surveys conducted by the firms Léger Marketing and Crop, the public usually does not differentiate between a broker and an agent. The survey conducted in January 2005 indeed reveals that 58% of respondents did not know the difference.

The ACAIQ has observed that in general, the public does not really understand how real estate brokerage works and believes that, when dealing with a real estate agent, they are dealing with someone who is fully responsible for their own actions. This is not at all the case since the only responsibility of agents in principle is an ethical one.

Under the Real Estate Brokerage Act, an agent can only act for and on behalf of a broker. He has no professional autonomy under the law, even though he is the one carrying out all the brokerage activities (solicitation, signing of brokerage contract, drafting and presentation of promises to purchase, negotiations, etc.).

Brokers carry full civil responsibility for the professional actions of their agents, even though they are practically no longer able to supervise them adequately. The practice of real estate brokerage has evolved, mainly for economic reasons. Brokers have almost nothing to do with their agents' work, although they are still responsible for it under the current Act. Agents are no longer mere employees. In fact, they have acquired great professional independence from their employer and more and more carry out their activities away from the broker's supervision.

Need to allow full responsibility of individuals performing brokerage acts

In the ACAIQ's opinion, the fact that the law does not make all persons engaging in real estate brokerage acts fully responsible for their action is harmful to the protection of the public, if only in terms of the recourses available.

The ACAIQ recommends that any person acting as real estate intermediary have full legal capacity and full responsibility for all their professional acts.

A fully empowered intermediary would be the heart of the professional real estate brokerage system and would be designated as "real estate broker". The law would still have to provide for certain limitations to the activities of the real estate broker, which would disappear once he has gained the necessary experience.

The broker could then act on his own behalf if he so wishes. He would necessarily be a party to the brokerage contract and would be responsible for maintaining his own records and registers. He would also have to have professional liability insurance. Being the primary person responsible for the professional act performed, the real estate broker could receive his compensation directly and share it. He could also have his own trust account for deposits received in the course of real estate transactions. The real estate broker could not carry out his professional activities through his own company or act under a company name (assumed name). He could, however, share some overhead expenses with other brokers.

Thus a person acting as intermediary would have full legal capacity and full responsibility for all their professional acts.

If a broker chose to work within a real estate agency, he would have to delegate the management of his trust account, the collection of his compensation and the maintenance of some registers to the agency. This full responsibility will be added to that of the agency. He would then have the same responsibility as several of the professionals with whom he works in his practice. This would increase the protection of the public. The broker would be responsible first, and this responsibility would be covered by the professional liability insurance of which he would be the beneficiary.

Representations

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

The ACAIQ agrees with this proposal, which corresponds to the rule under section 19 of the current Act.

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

The ACAIQ agrees with this proposal, to the extent that it refers to brokers and not to “representatives”. The current Act states that an agent cannot be employed by more than one broker. As mentioned by the ACAIQ in its 2000 brief, some agents work for persons or organizations other than their broker without identifying themselves as agents even when they engage in brokerage acts, including for builders or financial institutions, and receive compensation. The ACAIQ recommends that brokers be prohibited from performing brokerage acts for a person other than himself or the real estate agency with whom he is connected. Provisions will also have to be included to ensure that the broker always acts in that capacity when engaging in brokerage acts, in order to ensure that the public is properly informed and has recourses.

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

The ACAIQ agrees with this proposal.

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ agrees with this proposal.

Insurance representative and others

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a recommendation expressed in its 2000 brief. Section 20 of the Act reads as follows:

“20. In addition to the activities prohibited by government regulation, no broker or agent may pursue the following activities:

- (1) the activity of representative within the meaning of the Act respecting the distribution of financial products and services (1998, chapter 37).
- (2) the activity of dealer or adviser in securities within the meaning of the Securities Act, or of representing such persons, except where, with respect to the activity of dealer in securities or of representing such a dealer, the activity is limited to distributing the securities of a limited partnership pursuing real estate activities.”

In addition, according to sub-section 7 of section 2 of the Regulation respecting the pursuit of activities as a representative adopted under the Act respecting the distribution of financial products and services, the exercise of the occupation of real estate broker or real estate agent is incompatible with the activity of representative, except in connection with brokerage activities relating to loans secured by immovable hypothec. Under section 1 of this regulation, this restriction applies to all representatives referred to in section 1 of this Act, except for securities representatives.

In terms of public protection, the most important thing is to make sure that the actions of a professional are governed by special rules. More and more clients are turning to brokers for advice. For example, should the buyer make a minimum down payment when purchasing a property or, on the contrary, put down his entire capital? Answering this type of question requires the ability to analyse the buyer's financial situation and to determine his immediate as well as future needs. The array of mortgage products and the emergence of brokers concentrating in that area also show an ever-growing consumer need for financial guidance. And finally, in this era of multidisciplinary and interdisciplinarity, the decision to prohibit a professional from pursuing a given activity must be closely examined in order to determine whether there may be other solutions to the problems that these measures are meant to prevent. As long as professionals from different fields are able to form partnerships, other solutions must be proposed.

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

ACAIQ Comments

The ACAIQ agrees with this proposal.

Conflicts of interest and disclosure

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ agrees with these proposals, which correspond to a request expressed in its 2000 brief.

A broker or agent who holds or intends to acquire an interest in an immovable in a transaction must disclose his professional status to the other party. As well, any compensation agreement that could create a conflict of interest between a broker or agent and his client must be disclosed. For example, brokers often receive compensation from financial institutions to whom they refer clients. Under the law, a broker may not share his compensation with anyone other than another broker practising in Québec or in another jurisdiction or with a firm or representative as defined in the Act respecting the distribution of financial products and services. Yet, compensation sharing agreements are sometimes entered into with professionals in fields related to real estate brokerage. This type of practice is illegal.

The ACAIQ recommends that the legislative and regulatory provisions be reviewed to require the disclosure of any conflict of interest. More efficient oversight is needed to ensure better enforcement of the rules concerning client referrals, commissions or any other practice serving the interests of the broker, including by simplifying the disclosure procedure. For example, better supervision would be required regarding double representation, such as when a broker who has a brokerage contract is presenting a promise to purchase on a property for which he has a brokerage contract to sell. The law recognizes the broker's right to represent both parties to a transaction, but in such a case, the regulations state that the broker must disclose this fact to both parties.

Situations where the broker is himself a party to a transaction will also have to be clarified.

The ACAIQ also recommends that monetary considerations be recorded in broker registers. Also, non-monetary considerations (future contracts and other business privileges, trips, gifts, etc.) should be overseen.

Real estate franchisers



Advertising

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

22.1 The rules relating to advertising regarding real estate brokerage and information on properties made available to the public for brokerage promotion purposes apply to agencies, brokers, franchisers and any other person promoting real estate brokerage services.

22.2 The ACIQ or the Bureau du courtage immobilier be granted regulatory power to stipulate specific rules to control advertising or additional rules for franchisers, franchisees and sub-franchisees.

22.3 The ACIQ or the Bureau be granted the power to oversee real estate brokerage advertising and information on properties made available to the public for brokerage promotion purposes.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ agrees with these proposals, which correspond to a request expressed in its 2000 brief.

Any advertising must primarily be based on the veracity of the information conveyed. The effects of competition in advertising by professionals have been the subject of analyses, mainly in terms of freedom of expression following a decision by the Supreme Court of Canada in *Royal College of Dental Surgeons of Ontario v. Rocket*. Regulations regarding advertising prohibit any real estate broker or agent from making false, misleading or incomplete representations. The ACAIQ has noted a clear improvement of practises regarding professional identification, but some adjustments are still needed.

Advertising by brokers and agents does not always allow clear identification of the announcer, which is confusing for the public. This situation is due to several factors, including advertising rules, the relative complex structure of many brokerage firms and the increasing use of brand names owned by franchisers. This phenomenon often gives rise to ads that include certificate holders, legal persons, natural persons, assumed names, franchisees, sub-franchisees, etc., so that the consumer is not sure with whom he is dealing. Beyond the communication problem is the issue of public protection and especially of the recourses the public has under the law.

One of the most common examples of this situation is advertising by franchisers related to the activity of broker. This does not concern advertising by franchisers regarding the purchase of a franchise, which relates to an activity that the legislated has chosen not to oversee up until now. In real estate brokerage, there is still a regulatory provision that requires franchised brokers to indicate on their business cards and letterhead that they are franchisees but are independent and autonomous from the franchiser identified.

As of December 31, 2004, approximately 29% of real estate brokers were franchisees under banners including 100 agents or more, i.e. 450 brokers out of 1,554. Franchised brokers employed 71% of agents, or 8,595 out of 12,065.

In addition, many agents who have the qualifications to be a broker and wish to benefit from the advantages of incorporation without having to set up and manage the infrastructure required by a brokerage firm, sign a sub-franchising agreement. Under this agreement, they represent a legal person whose principal establishment is located at an address similar to that of the main franchisee. The sub-franchisee uses in his name a portion of the main franchiser's name, usually a brand name, and a portion of the sub-franchiser's name, i.e. the main franchisee. The following examples illustrate this phenomenon:

franchiser:	Grandes portes Québec Inc.
franchisee and sub-franchiser:	Grandes portes Saint-Yves Inc.
sub-franchisees:	Grandes portes Saint-Yves Aline Tremblay Inc. Grandes portes Saint-Yves JB Inc.

Normally, only one agent, i.e. the person who wishes to benefit from the incorporation, acts for the sub-franchisee company. Already in 1994, the ACAIQ told brokers and agents that the use of initials to distinguish the sub-franchisee from the main franchisee was confusing and was against the law. This is why all sub-franchisee certificates issued with this feature were accompanied by a caution form the ACAIQ to the effect that the use of such names could eventually be prohibited.

It would also be a good idea to examine the possibility of including real estate advertising made by all companies, even those not under the jurisdiction of the regulatory body, under the Real Estate Brokerage Act. To ensure better consumer protection, all forms of advertising, solicitation or representation would have to show the announcer's name in a way that avoid any confusion (the guidelines developed by the ACAIQ syndic in 1995 are a reference for this).

To this end, the ACAIQ recommends that any person, legal or natural, economic partner or other, who advertises for or on behalf of a broker or jointly with this broker, be required to comply with the Real Estate Brokerage Act and be accountable to the discipline committee of the regulatory body, which could apply sanctions for their action as is currently the case for directors and officers of a broker who is a legal person (section 130 of the Act). This would extend the protection of the public by making all stakeholders from the profession accountable when it comes to promoting services to consumers.

Prohibit comparative advertising

Real estate brokers and agents often quote their performance statistics in their ads. Statistics are normally used to compare one's self to the competition, to gain a promotional advantage. However, this data (number of properties sold, total dollar sales, etc.) can be used in many different ways, depending on the announcer's interest, so that the public often finds itself duped. This type of practice, where it relies on partial or even potentially false information, can become unfair and should not be used in a field where the role of professional advisor should prevail. The law requires that the information used by real estate brokers and agents in their advertising be verifiable and quantifiable. Unfortunately, it is often difficult to verify

the accuracy of this information. The ACAIQ recommends that any type of comparative advertising, both qualitative and quantitative, be prohibited.

Advertising – Injunction

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

22.4 The ACIQ or the Bureau may, in cases of violation of the advertising rules, apply for an injunction to stop the distribution of misleading advertising and require the person or group at fault to produce, within a set time and as required by the tribunal, an advertising message designed to correct the earlier misleading advertising.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier. The ACAIQ agrees with this proposal, which corresponds to one of its requests.

Inspection and discipline

ACIQ Option – Professional inspection

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

23.1 The existing system be maintained.

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a request expressed.

The role of the professional inspection committee is to ensure that brokers and agents use work methods that are consistent with the rules of the profession. More specifically, the committee has a mandate to oversee the work of brokers and agents by auditing their books, records and registers. The Inspection Department has noted that brokerage contract records kept by brokers do not always contain all documents required under the law. Inspectors are often required to remind brokers and agents of their obligation to keep complete records that verify the information contained in the detailed description sheet. This problem is especially important since it is often the source of damages suffered by the public.

The possibility of keeping some documents in electronic form would help brokers comply with their record-keeping requirements. More and more documents are accessible through the Internet, including property title documents thanks to the implementation of the online land register. Proposal 29 of the Report calls for persons and organizations governed by the Act to be allowed to use new technologies to execute their rights and obligations, provided the rules of the Act concerning the legal framework of information technologies are respected, particularly those relating to the integrity of the documents, and if possible to conserve the document and, if desired, print it. However, relevant rules would have to be implemented or special rules be included in the Real Estate Brokerage Act. As indicated by the Minister in his introduction to the Report, the growth in the use of new technologies, in particular the Internet, means significant changes that warrant the updating of this Act.

Grant the power to oversee the professional competence of brokers

Regarding professional inspection, the Real Estate Brokerage Act has a positive impact on the protection of the public, thanks among other things to its preventive interventions. Therefore, identifying certain violations to the rules of the profession before they bear consequences give additional protection to the public. The experience of the committee shows that in a great majority of cases, corrective action is taken following its recommendations. Although the usefulness of the committee has been highlighted in recent years, the role it was given (section 108 of the Act), i.e. “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 its range of action.

Indeed, it prevents the committee from stepping in when flaws are observed in the ability of brokers and agents to carry out their activities properly. The power to oversee the competence of brokers should be given to the professional inspection committee in order to give it more latitude in order to encourage the members of the profession to improve their skills. Better yet, the power to recommend to the board of directors of the regulatory body to order certain professionals to successfully complete a training and/or refresher course, and to limit or suspend the right of these members to carry out their professional activities until they have met this obligation, would maximize the impact of the inspection visits and improve public protection.

How can the expression “professional competence” be defined? In 1983, a joint committee of the American Law Institute and the American Bar Association (ALI-ABA), i.e. the Committee on Continuing Professional Education - A Model Peer Review System, developed a definition of the professional competence of an attorney:

“Legal competence is measured by the extent to which an attorney (1) is specifically knowledgeable about the fields of law in which he or she practices, (2) performs the techniques of such practice with skill, (3) manages such practice efficiently, (4) identifies issues beyond his or her competence relevant to the matter undertaken, bringing these to the client’s attention, (5) properly prepares and carries through the matter undertaken, and (6) is intellectually, emotionally, and physically capable.

Legal incompetence is measured by the extent to which an attorney fails to maintain these qualities.”

This definition has been used and adapted by some professional orders.

The Professional Code makes some mention of the notion of competence but does not define it. Two provisions appear to be more significant, i.e. the second paragraph of section 112 and section 122.1:

“112. [...]At the request of the Bureau, the committee or one of its members shall inquire into the professional competence of any member of the order indicated by the Bureau; the committee or one of its members may also act of his own initiative in this regard. The committee or one of its members may, with the authorization of the Bureau, retain the services of experts for the purposes of such inquiry. The Bureau may also appoint investigators to assist the committee in the exercise of its functions or one of its members in the performance of his duties; the committee may also act on its own initiative by selecting investigators from among those whose names appear on a list that may be established by the Bureau.”

“122.1. The syndic or assistant syndic shall inform the professional inspection committee if he has reasonable grounds to believe that a professional’s practice of the profession or professional competence should be the subject of an inspection or inquiry, as the case may be, under section 112.”

These provisions are interesting tools to intervene quickly, including when public protection can be jeopardized due to inappropriate practices. The Professional Code contains a series of

provisions regarding this subject, for example the right for an order to require a professional to successfully complete a refresher training or refresher course or both.

In addition, the Act respecting the distribution of financial products and services states that a “Chamber may offer services to its members, such as professional development sessions for sectors other than the financial planning sector, and advisory services in quality control and compliance with professional requirements”. Advisory services in quality control and compliance with professional requirements is similar to the issue of professional competence.

The ACAIQ recommends that the professional inspection committee be able to oversee the professional competence of brokers and recommend that they update their skills by successfully completing a refresher training and/or refresher course, which could be required by the board of directors of the regulatory body according to pre-established standards. Failure to comply on the part of the brokers concerned could result in a suspension of their permits. Brokers would of course have the opportunity to present their point of view, following procedures similar to those outlined in the Professional Code for members of professional orders.

Bureau option – Power to inspect and file a complaint

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

Who would have that power within the Bureau? Following what procedures? The report simply states “Should the Bureau option be adopted, the provisions relating to inspection will have to be adapted”. The professional inspection system under the Real Estate Brokerage Act works well and only requires a few adjustments to be even more efficient. The ACAIQ has included suggestions to this effect in its comments on proposal 23.1 of the Report.

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

How would the proposed Bureau file a complaint? By resolution? The way in which this power would be exercised would need to be clarified. It is important that the decision as to whether

or not to file a complaint be taken by an authority separate from the board of directors of the regulatory body. This authority already exists, i.e. the syndic, and should be maintained. In its comments on proposal 25.1, the ACAIQ has suggested changes to make it even more efficient.



ACAIQ Option – Syndic

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

25.1. The existing system be maintained.

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a request expressed.

The ACAIQ syndic investigates if he has reasons to believe that a broker or agent has violated the Act. If so, he can file a complaint with the discipline committee. Any broker or agent who does not abide by the Act and regulations governing the profession can be called before the ACAIQ discipline committee.

Appointment of syndic

The board of directors of the ACAIQ appoints a syndic selected from the membership, someone who has carried out the activity of broker or agent for at least five years and, if applicable, one or more assistant syndics among members who have been carrying out one of these activities for at least three years. The ACAIQ recommends that this minimum experience requirement be eliminated. It would also recommend that the syndic or, at the very least, the assistant syndics not have to be the holders of a permit of exercise. Also, the role of the syndic would need to be clarified and a method provided to evaluate his performance.

Ethical conciliation

The syndic often plays the role of conciliator when members of the profession are under investigation, although this type of intervention is not provided under the Real Estate Brokerage Act, unlike the regulations of professional orders. Often when examining a case, the syndic will explain to the professionals concerned not only the reasons for the investigation, but also the potential risks to the public and the profession, in order to prevent future errors.

The ACAIQ recommends that the syndic's power of ethical conciliation be officially recognized. This would give the syndic more flexibility in fulfilling his role, making his task easier and his work more effective. Conciliation could help avoid systematically turning to the regular disciplinary process unless absolutely necessary, as long as the public interest is put first and that justice is served.

Review committee

When the syndic decides not to file a complaint with the discipline committee, his decision cannot be reviewed and persons who disagree have no other alternative but to file their own complaint before the committee. In order to improve the transparency of the disciplinary process, the ACAIQ recommends that the decisions of the syndic not to file a complaint be reviewable upon request by an independent review committee, created within the regulatory body and made up of persons with the ability to evaluate such decisions, as is the case with professional orders.

Creation of an Assistance Service

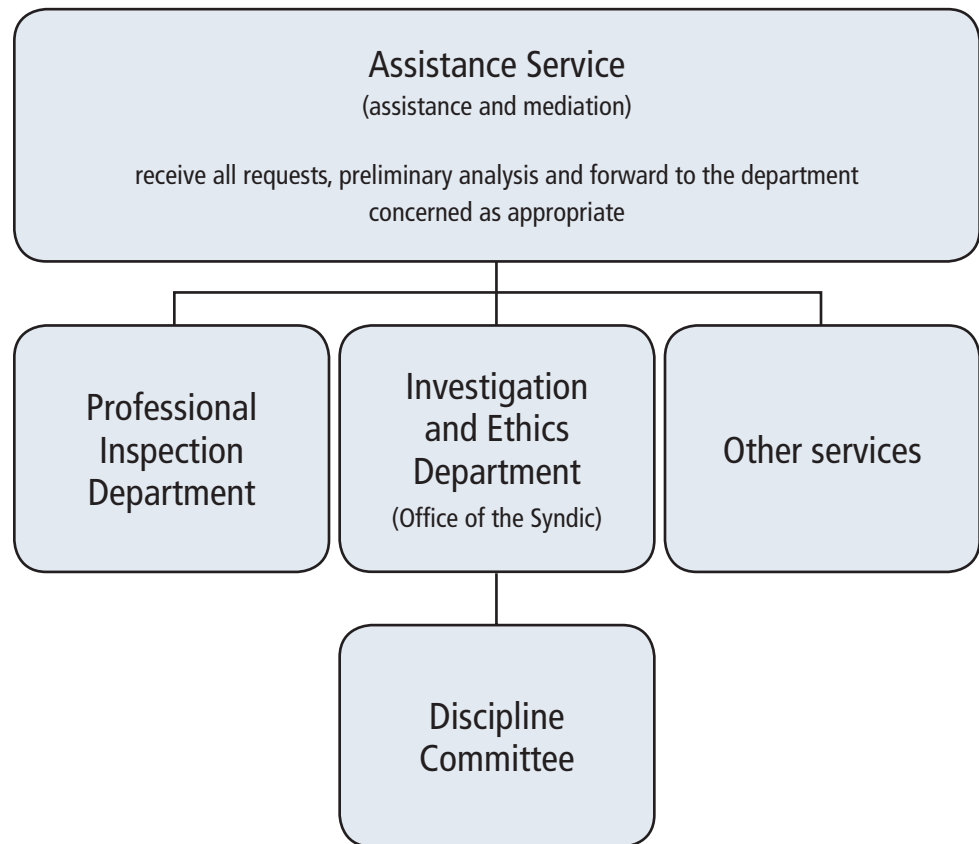
Through the years, the number of requests for investigation received by the Office of the Syndic has increased consistently: 1,200 requests for investigation a year leading, in some years, to some 100 complaints filed with the discipline committee.

An analysis of these requests by the ACAIQ has shown that in many cases, an investigation is not required, that the violations did not concern ethical issues but simply a lack of knowledge on the part of the brokers and agents concerned. Through its research, the ACAIQ has also noted that the public and brokers and agents have very different perceptions of what constitutes a “professional fault”. The latter often have the impression that the ACAIQ applies penalties for errors without much consequence, and lets off people who have committed major faults. The public, for its part, feels that any error or fault, however small, should be punished.

All these observations have led the ACAIQ to develop a more efficient way of examining requests for investigation while fulfilling its public protection role and providing brokers and agents with all the support they need. Thus an Assistance Service was created within the ACAIQ in 2002.

Since the fall of 2002, all requests for investigation are forwarded to this service which, after a quick analysis, directs them to the department concerned. Only those cases requiring investigation are sent to the Office of the syndic. This simple preliminary analysis procedure has greatly reduced the number of requests for investigation and waiting times. When the motives stated do not justify an investigation, the analysts from the Assistance Service contact the initiator of the request and the agent directly to provide an explanation, recommend corrective action such as a change in attitude, refresher training, etc. Other cases are transferred to the departments concerned (certification, illegal practice, etc.). The creation of this new service has made everyone’s life, including consumers, brokers and agents and the office of the syndic, much easier. The experience of the last two years attests to a huge success and the objectives have been greatly exceeded. However, the ACAIQ feels that this procedure would be even more effective if it were included in the new Real Estate Brokerage Act.

The ACAIQ suggests the creation of the following structure:



The law should also provide for conciliation powers for the Assistance Service, same as for the syndic. It would also be advisable for the ACAIQ to be able to act as arbitrator in civil disputes involving consumers, at their request, as is the case with professional orders.

The information collected during conciliation or arbitration sessions should remain confidential and the files thus created should not be accessible if the case is brought before the courts. More generally, assistance records should be confidential and not be entered into evidence, unless a special authorization is given by the parties involved regarding certain documents. Assistance service staff should not be forced to testify. As an example, the Professional Code states that “the answers or statements given or made by the person who requested the holding of the inquiry or by the professional during a conciliation attempt may not be used or admitted as proof against the professional in judicial or quasi-judicial proceedings, except in the case of a hearing before the committee on discipline in relation to an allegation that, with the intention to mislead, the professional gave an answer or made a statement he knew to be false”.

Preventing abuse of civil recourses

When real estate brokers and their clients enter a dispute over services and compensation, more and more often the dispute is brought before the civil courts by the broker, as demonstrated by the mounting jurisprudence. Traditionally, this decision to sue a client was taken by the broker. This is no longer the case. The structure of brokerage firms and the resulting increased autonomy of agents make it so the decision to sue a client now lies much more with the agent than with the firm. Factors such as the quality of customer relations and the firm's image are less and less taken into account. Consequently, lawsuits are not only more frequent, but they can become abusive. If the Real Estate Brokerage Act makes real estate intermediaries fully accountable for their actions, it appears necessary to include provisions to prevent abuses in this regard, without limiting the rights of individuals.

The ACAIQ recommends that clear provisions be included in the Act to ensure that a broker cannot bring abusive and vexatious lawsuits before civil courts. Such provision should be supplemented by a rule of ethics to the effect that a broker cannot intimidate someone into paying compensation or damages.

Bureau option – Elimination of syndic

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

26.1 The syndic not be maintained.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ disagrees with this proposal. The syndic is an important institution that has proven its worth and is known to the public.

The Report indicates that it does not appear necessary to maintain the syndic “in a regulatory body such as the Bureau that will have sufficient inspection powers and the independence needed to file complaints with the discipline committee”, where it “seems justified within a self-regulating body to guarantee independent and impartial decisions”. Section 121 of the Professional Code states that “the Bureau must take steps to preserve the independence of the syndic and of the assistant and corresponding syndics at all times in the exercise of their functions”.

The comments issued regarding for proposal 24.2 above remain relevant: How would the proposed Bureau file a complaint? By resolution? The way in which this power would be exercised would need to be clarified. It is important that the decision as to whether or not to file a complaint be taken by an authority separate from the board of directors of the regulatory body. This authority should enjoy some measure of protection, like the syndic and the assistant syndics of the ACAIQ, who may only, according to section 124 of the Act, be removed from office by a vote of two thirds of the members of the board of directors of the ACAIQ.

More generally, the proposals contained in the Report on the creation of a Bureau du courtage immobilier have the effect, if this option is chosen, to brush aside several elements within the current system that work well, that are recognized by the public and the brokers and whose legal framework has been the subject of judicial decisions that have established stability in the determination and interpretation of applicable rules. Why make such drastic changes when the system in place has proved to be efficient?

Also, the confidentiality of the syndic's records will have to be examined based on the ACAIQ's comments on page 81 of this document regarding the protection of personal information.

Discipline

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal, which corresponds to a request expressed in its 2000 brief about maintaining the principle of self-discipline.

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

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

These rules should not be set out in a regulation but in the Act itself, as is currently the case. In addition, the ACAIQ recommends that all of the rules regarding the introduction and instruction of a complaint, the decisions and sanctions related thereto as well as appeal procedures be set out in the new Real Estate Brokerage Act and no longer refer back to the Professional Code as is currently the case. The legislative reference contained in sections 135

and 136 of the current Act, “adapted as required”, has been the cause of many problems of interpretation, including several leading to disputes before the courts. Also, several sections of the Professional Code to which the Real Estate Brokerage Act refers have been changed without input or even knowledge on the part of the ACAIQ. In some cases, new interpretation problems have resulted from those changes. Finally, some notions are very different in these two pieces of legislation and make the required adaptations difficult.

Specify the recourse to an appeals tribunal

Currently, appeals from decision of the ACAIQ discipline committee are heard by the Court of Québec, i.e. a single judge, rather than by the Professional Tribunal where the Bench is comprised of three judges from the Court of Québec specializing in disciplinary law. However, under section 136 of the Real Estate Brokerage Act, the Court of Québec refers to sections 164 to 177.1 of the Professional Code when hearing the appeal. The appeal of disciplinary decisions in the first instance is therefore done under different conditions. The ACAIQ recommends that the appeal of decisions of the discipline committee lie exclusively with the Professional Tribunal. This harmonization of the appeals procedure is essential to offer justiciables a coherent system for the implementation of quality justice at the lowest cost possible. The fact that the Professional Tribunal is an appeals tribunal devoted exclusively to professional law and that three-judges Benches are hearing cases are important guarantees in this respect.

Review the selection or replacement mechanism of the secretary and chairman of the discipline committee

The ACAIQ discipline committee is composed of not less than three members appointed for a term of three years. The chairman is appointed by the government, after consultation with the Barreau, from among advocates having at least ten years of practice. The government also appoints a substitute to act when the chairman is unable to do so. The current Act does not call for the appointment of a substitute for the secretary of the discipline committee.

The ACAIQ recommends that the notion of substitute chairman be eliminated and replaced by vice-chairmen, i.e. ad hoc vice-chairmen for special cases. These vice-chairmen could sit at the same time as the chairman when necessary. The ACAIQ also recommends that the selection mechanism for the chairman and the vice-chairmen take the shape of a contest supervised by a selection committee. Likewise, the Act should be amended to provide for the appointment of substitute secretaries who could replace the discipline committee secretary in his absence.

Appointment of assessors

In addition to the chairman or substitute chairman, the other two members of the discipline committee are appointed by the board of directors from among the members of the ACAIQ. The experience of the last eleven years has shown that very often the individuals appointed do not necessarily have the availability to sit, especially since some complaints can require several days of hearings. This phenomenon is exacerbated by the fact that the real estate market has been very active in the last few years and that assessors, who are not paid when they sit on the committee, can suffer significant revenue loss. We have also observed that sitting only occasionally does not allow assessors to gain all the abilities needed to carry out their role. It would therefore be advisable, based on these observations, to make changes to the process of appointing members of the profession to the discipline committee.

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

ACAIQ Comments

The ACAIQ agrees with this proposal, which reiterates a rule established by jurisprudence within the application of the current Real Estate Brokerage Act. However, the meaning of the second art part of the sentence requires clarification. The obligation to collaborate in an investigation by the syndic should remain for the person who no longer holds a permit.

Regulatory powers

ACAIQ Option – Regulatory authorities

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ agrees with this proposal. However, regarding contributions, the ACAIQ drafted a recommendation in its 2000 brief, i.e. to examine the funding methods of the regulatory body so that its revenues are no longer based almost exclusively on the contributions paid by the members of the profession. The diversification of revenue sources would minimize the uncertain nature of the organization's funding. The ACAIQ also recommends that the board of directors be able to set contributions by resolution.

Government approval

Some laws, such as the Professional Code or the Act respecting the distribution of financial products and services, state that some of the rules of the organizations governed thereby are not subject to government approval. It would be appropriate to provide for this in the new Act, regardless of the option chosen. In May 2002, the working group on the revision of the regulations and their process, made up of representatives from the Office des professions and professional orders, submitted a set of recommendations ("Pour un allègement des processus administratifs et réglementaires"). As indicated in this document, it was the first priority of the action plan for the updating of Québec's professional system launched in November 1999.

Here are some of the recommendations it contained: eliminate the regulatory nature of certain standards (an order's office affaires, means of communication to take part in a session, choice of head office); streamline the regulatory adoption process and classify the standards adopted by orders to include them in a regulatory process that is as streamlined as possible.

Although these recommendations have not yet translated into legislative changes, it would be important to provide for the regulatory provisions decreed by the regulatory body regarding the subjects raised in this report to benefit from the same flexibility regarding their adoption. As indicated by the Minister in his introduction to the Report, the adoption of the government's regulatory streamlining policy is one of the substantial changes that justify the updating of the Real Estate Brokerage Act. The Minister also stated that this streamlining was one of the two main objectives of the Report's proposals, the other of course being the protection of the public.

ACIQ Option – Regulatory powers for the government

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ disagrees with this sweeping regulatory power (exemptions). In addition, in the event that such power is granted under a new Act, it should be exercised by the regulatory body and not by the government. There again, because of its activities and the expertise it has developed, the regulatory body would be in the best position to determine who could benefit from such an exemption, always in an effort to ensure and maintain public protection. And last, it would be appropriate to specify what the object of such exemptions is.

The ACAIQ's comments on the compensation fund are found under proposals 32.1 to 32.10 of the Report.

Bureau Option – Regulatory powers

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ disagrees with this sweeping regulatory power (exemptions). In addition, in the event that such power is granted under a new Act, it should be exercised by the regulatory body and not by the government. There again, because of its activities and the expertise it has developed, the regulatory body would be in the best position to determine who could benefit from such an exemption, always in an effort to ensure and maintain public protection.

Rules concerning contracts

Use of new technologies

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

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

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The ACAIQ agrees with this proposal. However, relevant rules would have to be implemented or special rules be included in the Real Estate Brokerage Act. As indicated by the Minister in his introduction to the Report, the growth in the use of new technologies, in particular the Internet, means significant changes that warrant the updating of this Act.

This would simplify the maintenance of brokers' books, records and registers in electronic format. The integrity and confidentiality of information would have to be ensured as well as access to the information by the regulatory body's professional inspection committee.

Compulsory notices

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

30.1 The ACIQ or the Bureau du courtage immobilier be granted the power to stipulate by regulation, for the contracts and forms it specifies, the notices, stipulations and information that are compulsory, those that are forbidden, the additional optional notices or stipulations and, as applicable, the terms and conditions in all such cases.

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

This proposal seems interesting. However, it is essential that the content of the forms be determined by the regulatory body. Also, the Report indicates that forms could include the notice "This contract has not been approved by the Association des courtiers immobiliers du Québec". Does this mean that a broker could use a contract that does not constitute a sound professional practice in the opinion of the regulatory body? The development of standard forms is an important means of ensuring public protection. The Real Estate Brokerage

Act and its regulations contain several measures regarding the use of mandatory forms. These forms (brokerage contract, promise to purchase, etc.) have been the subject of many comments from the public and the members of the profession.

Review regulations related to forms based on the needs of the public

Based on their comments, the public and real estate professionals agree: the current forms are difficult to understand and their length discourages reading. Although the ACAIQ is conscious that changes are needed, the development and updating of the forms required under the law is difficult due to the constraints of the regulatory process. The ACAIQ recommends that the use of certain of its forms be an ethics requirement. It also recommends that the regulatory body be granted the necessary powers to change the content of mandatory forms without having to submit the changes to government approval.

Importance of forms for public protection

Standard real estate brokerage forms have been in use for over 25 years. The need to standardize professional practices and ensure more harmonious transactions was one of the main reasons that motivated voluntary membership associations to develop this type of document. The Association de l'Immeuble du Québec, whose rights and obligations were transferred to the ACAIQ under the current Act, thus developed a series of forms, the use of which was made mandatory for its members under the contract which then bound them. When the use of certain forms proved problematic due to content, the Association gathered comments and suggestions from the public and its members and quickly made the necessary corrections. This feedback was received through the telephone information service already in place at the time. Also, the former Real Estate Brokerage Act, in force up until the beginning of 1994, already recognized this fact:

“20. The Government may make regulations to determine

[...]

(j) the form and the minimum content of the real estate brokerage contract covered by Division III.1 after consultation with the Association de l'Immeuble du Québec;”

Although the government never exercised this power, this provision was a first step in this area. The current Act, in force since 1994, goes much further. The determination of the format, content and rules regarding use, not only of the brokerage contract, but also of any mandatory form, is no longer a function of the government's regulatory power, but rather that of the ACAIQ. Real estate brokerage thus went from the right to be consulted to the right to set mandatory rules by regulation. However, in reality, the forms developed by the ACAIQ and approved by a special general meeting held in August 1993, have undergone major changes between pre-publication in the Gazette officielle du Québec and final publication.

These forms have long been criticized by the public and by brokers and agents as being difficult to read, too long and incompatible with information technologies. The fact that the content of these forms is governed by regulation makes them very difficult to update. Markets and professional practices are evolving rapidly, and it is essential that the ACAIQ be able to react quickly by adapting the tools already in place, as well as developing new ones. The use

of new technologies, including forms development software that include file management functions, requires flexibility in the conduct of business, which entails the ability to react and adapt quickly. This is why the regulatory framework must provide for flexible and adaptable rules.

Providing for an ethical obligation to use certain forms of the regulatory body, without crystallizing their content by regulation, is a good solution both for the protection of the public and for the smooth operation of brokerage firms. Of course, the forms developed by the regulatory body will have to be in line with its main mission, i.e. the protection of the public. Should this become necessary, the government's supervisory power over the regulatory body would provide a guarantee to this effect.

The current situation regarding forms is an interesting example of the comments published in a document entitled "*Rapport du groupe conseil sur l'allègement réglementaire au premier ministre du Québec*": "Regulations that overstress the means can also delay innovation by requiring the application of standards and technologies that have become obsolete." This document highlighted the complexity and lack of clarity of mandatory documents under certain laws.


The ACAIQ also wishes to have the power to change form content without having to submit the changes to the government's approval under the regulatory process. In 1996, the ACAIQ wanted to make changes to the content of mandatory forms. Over 1,000 brokers and agents, after receiving the draft regulation amending the content of the forms, then drafted their comments and suggestions, which were sent to the board of directors. Unfortunately, despite the many working meetings that followed, the draft regulation never saw final publication in the *Gazette officielle du Québec* to come into force. This cumbersome nature of the regulatory process prevents quick reaction to situations that occur as part of the evolution of the real estate market. The ACAIQ can only intervene through recommended forms, as it has done for example in the pyrite file.

The ACAIQ would like to see the mandatory minimum content for residential forms maintained. To ensure better public protection, this use should be made mandatory even when the owner of the property is not a natural person. A buyer also needs protection, as already recognized by the legislator in the situations stated under articles 1785 and following of the Civil Code of Québec.

Form and use– Right to rescind and others

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

30.2 The ACIQ or the Bureau be granted the power to determine by regulation the rules for the form and use of all contracts and forms, or only of those it specifies.

 **ACAIQ Comments**

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The rules regarding the use of mandatory forms should apply to all forms completed by a broker or agent. These contract drafting rules are key to ensuring the protection of the parties to a transaction.

31.1 Rules specific to the brokerage contract concerning the sale or exchange of a residential property no longer be stipulated in the Act but rather by regulation, subject to the stipulation in the Act of the client's right to rescind, within three days, the brokerage contract regarding the sale or exchange of a residential property and subject to the broker's right to demand his remuneration in the circumstances currently stipulated in the Act.

 **ACAIQ Comments**

The right to rescind should not be limited to the sale or exchange. Leasing should be maintained. In fact, it would be simpler to refer to the transactions referred to in section 1 of the Act.

31.2 Concerning the sale or exchange of a residential property, the protection of the regulations no longer be denied to partnerships and legal persons.

 **ACAIQ Comments**

The ACAIQ agrees with this proposal. However, the right of withdrawal should not be limited to the sale or exchange. Leasing should be maintained. In fact, it would be simpler to refer to the transactions referred to in section 1 of the Act

31.3 The requirement that the copy of the brokerage contract given by the broker to the client be a paper copy be eliminated, subject to the condition that the technology used permits to conserve and print the contract.

 **ACAIQ Comments**

The ACAIQ agrees with this proposal. However, relevant rules would have to come into force.

Fonds d'indemnisation

Fonds d'indemnisation – Miscellaneous rules

PROPOSALS FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

Under the ACIQ option:

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

Under the Bureau du courtage immobilier option:

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

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

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

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

32.6. The Act stipulate a compensation committee.

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

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

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

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

ACAIQ Comments

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

Subject to the comments outlined below, the ACAIQ agrees with proposals 32.1 to 32.10, as long as the Fund is integrated to the regulatory body, regardless of the option chosen. The Fund is the only organization of this nature in Québec that is not created within the regulatory body itself, as indicated in the government Report: "Note that within professional orders and the financial sector's regulatory structure, administration of the compensation regime is not entrusted to a separate legal person". This is explained by the fact that when it was created in 1985 under the old Act, there was no self-management organization and this legislation was managed by a government agency. In addition, proposal 32.9 should not result in judicializing the process.

Increase monetary coverage

Fund administrators rule on the eligibility of a claim and, if applicable, determine the amount of compensation to be paid to a claimant, with a maximum of only \$15,000 for each brokerage transaction being the subject of a claim. Given the size of the amounts involved in transactions, the ACAIQ recommends that the maximum compensation payable by the Fund be raised to \$75,000 per brokerage transaction and per claimant.

Appointment and composition of board of directors of the Fund

The Fonds d'indemnisation du courtage immobilier is a body separate from the ACAIQ, whose seven board members are appointed by the government. Four are selected from among ACAIQ certificate holders, after consultation with the ACAIQ. In this, the Fund differs from what is found in professional orders or at the Bureau des services financiers. The ACAIQ recommends that the Fund's board of directors still be composed of seven members, i.e. four permit holders and three individuals who can contribute to the resolution of problems related to the protection of the public in the field of real estate, all appointed by the regulatory body.

Gaining the power to suspend contributions

The revenue of the Fonds d'indemnisation du courtage immobilier produces surpluses of about \$300,000 a year, so that excess revenue over expenses had reached more than \$5,000,000 by the end of 2004. The interest alone exceeds total annual contributions. The ACAIQ recommends that the Fund be given the power to decide, on the basis of actuarial

criteria and recommendations, if contributions should be raised or suspended. It will also be necessary to take into account the potential allocation of a portion of these surpluses to the creation of a professional liability insurance fund.

Fonds d'indemnisation – Contributions

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

The ACAIQ disagrees with the option of creating a Bureau du courtage immobilier.

The determination of the contribution should be done by the regulatory body and not the government, regardless of the option chosen.

Professional Code

34.1

PROPOSAL FROM THE REPORT ON THE APPLICATION OF THE REAL ESTATE BROKERAGE ACT

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

ACAIQ Comments

The inclusion of this option on the Report on the Application of the Real Estate Brokerage Act is surprising. Like the first option on the creation of the Bureau du courtage immobilier, it was not proposed by any of the organizations who submitted briefs to the Minister, at least not to the ACAIQ's knowledge.

Options 2 (ACIQ) and 3 (professional order) have many similarities, and several of the recommendations submitted by the ACAIQ in fact refer to the tools already included in the Professional Code. The pros and cons of each option will need to be assessed, including regarding the regulatory powers of the Real Estate Brokerage Act and the Professional Code.

The ACAIQ has not completed its reflection on this third option and intends, among other things, to hold consultations before issuing additional comments on this option.

Topics not discussed in the Report on the Application of the Real Estate Brokerage Act

Our comments on some of the topics not discussed in the Report are outlined below.

Supervision of mortgage brokerage

The Act respecting the Autorité des marchés financiers has amended the Real Estate Brokerage Act, removing brokerage of loans guaranteed by immovable hypothec. The transfer of this field of activity was postponed twice and is now scheduled for January 1, 2006. However, brokers and agents who work in this area and who in large part have gathered under a voluntary membership organization, i.e. the Canadian Institute of Mortgage Brokers and Lenders (CIMBL), have expressed the wish to continue to be governed by the Real Estate Brokerage Act. The ACAIQ is open to granting this request.

Supervision of building inspections

A building inspection is an important step in a real estate transaction and a key element of public protection. This is why the ACAIQ always recommends that buyers have a complete inspection done of the property before buying, in order to make sure it is in good condition. However, individuals working in the field of building inspections are not subject to any

specific oversight. Not surprisingly, quality standards in this field are erratic. Many inspectors have no liability insurance, whereas others call themselves professionals without having adequate training. The ACAIQ recommends that the real estate broker's obligation to advise his clients to have a building inspection done before purchasing a property be included as a specific provision under the Act, including the obligation to file the inspection report with the transaction record, which currently does not always happen.

In addition, a building inspection being essential to guarantee the protection of the public, the ACAIQ recommends that this activity, like real estate brokerage, be governed by legislation. This way, members of this profession will be subject to regulations and a code of ethics, in addition to being covered by professional liability insurance.

The ACAIQ has already issued instructions to brokers and agents, aimed first at ensuring that buyers receive the best possible advice in this matter. Since then, the ACAIQ has developed a new training activity on evaluating the quality of an immovable. Together with the Québec Association of Building Inspectors (QABI), the ACAIQ has also developed and revised standards of practice, a service agreement and a Declarations by the seller form regarding the condition of his property. The use of this document should be made mandatory under the new Act.

In the longer term, the primary objective remains the same, i.e. to ensure that this professional activity is overseen by legislation as quickly as possible. Several recent reports have eloquently highlighted the threat this represents to the protection of the public. In the last few years, several American states have enacted laws to oversee building inspections. A recent study shows that over 50% of American states oversee this activity at various levels. The Association of Real Estate Law Licensee Officials (ARELLO), which is active in the vast majority of American states and Canadian provinces, including Québec, and several other countries has set up a task force to study this important issue.

The ACAIQ is there first and foremost to oversee the practice of real estate brokerage. The fact that it could potentially play a similar role for building inspections will have to be the subject of consultations, including with other organizations whose members or a portion thereof work in this field, i.e. orders of architects, chartered appraisers, engineers and technologists.

Compulsory maintenance of a trust account

Currently, brokers are not obligated to maintain a trust account. A broker or agent however has an obligation to recommend that a reasonable deposit be paid in trust to the contracting broker (listing), except if the broker has issued a statement to the effect that he did not wish to receive any sums on behalf of others. For the protection of the public, the ACAIQ recommends that the maintenance of a trust account be made compulsory and that any deposit paid in the course of a transaction performed through a real estate broker as well as any cash advance be deposited therein. When a deposit is paid to the broker, the ACAIQ can always intervene in case of irregularity, which is of course not the case when the deposit is deposited elsewhere, with a notary for example. This obligation would also result in making brokers more accountable. If a broker chose to work within a real estate agency, he would have to delegate the management of his trust account to the agency. The rules regarding the

management of trust accounts will have to be streamlined, while maintaining and improving the protection of the sums deposited therein.

In addition, the terms regarding the refunding of sums held in trust should be clarified in a regulation. And, as is currently the case, the interest earned by these accounts should be paid to the regulatory body and be used for public protection.

Also, payments made by consumers to builders and developers for the purchase of new homes should be the subject of an in-depth review.

Registers based on the various fields of practice

Rules governing the maintenance of books, records and registers of real estate brokers and agents were primarily designed for residential brokerage and consequently are ill-adapted to certain fields of practice (commercial, industrial, mortgage brokerage, etc.), creating problems for professional inspection. The ACAIQ recommends that the law be changed to review the regulations applicable to the management of books, records and registers, so that regulatory rules be based on the specific characteristics of the various areas of real estate brokerage.

Criminal acts and disciplinary faults in another jurisdiction

The current law does not contain specific provisions, as provided for in the professional Code, giving the ACAIQ parameters for refusing to issue or suspending a certificate when the person has been found guilty of a criminal act related to the activity of broker, here or abroad. Due to this lack of a provision, the ACAIQ is very limited as to its ability to intervene, even if it is aware of an offence.

Nor are there any provisions to allow consideration of the fact that a person has been found guilty of disciplinary fault related to the activity of broker in another jurisdiction to suspend or limit this person's right of exercise. There is no reference to cases of professionals in other fields who have been sanctioned for certain acts, including violations related to trust accounts, either in Québec or in other jurisdictions.

The ACAIQ recommends that the Act include specific provisions on how and under what terms the regulatory body may refuse, suspend or limit a person's right of exercise when this person has been found guilty, in Canada or in another jurisdiction, of a criminal act related to the activity of broker. Similar provisions should be provided for persons having had a disciplinary decision against them related to the activity of broker outside Québec.

Power to enter agreements

The regulatory body should have the right to enter into agreements relating to the administration of the law, including to exchange information with organizations whose mission is of a public nature.

Definition of the activity of real estate broker

In its description of the activity of real estate broker, the Real Estate Brokerage Act states that "a person who, for compensation and for others, engages in a brokerage transaction... is pursuing the activity of real estate broker".

This definition, harmless at first glance, implies that in the absence of compensation, a person is not considered to have pursued the activity of broker, even if this person has engaged in a brokerage act. In other words, it is difficult for a court to find someone guilty of illegally practising the profession without proof of compensation. Unfortunately, this portion of the proof is often difficult to establish, so that violators can escape justice even if it is shown that they were acting without a certificate. The public cannot be adequately protected if it is served by non-qualified, non-supervised people.

A consultation of certain laws shows that the notion of compensation or fees is not part of the definition of professional activity. Under these provisions, it is sufficient therefore for a person to engage in certain acts on behalf of others to be considered to be practising the profession in question, regardless of whether or not compensation is being paid or received.

The ACAIQ recommends that the notion of compensation be removed from the definition of the activity of broker and that anyone engaging in brokerage acts be considered as having acted as real estate broker. The ACAIQ could then take action against anyone who engages in a brokerage act illegally, without having to worry about the matter of compensation, which changes nothing to the risk to which the public is exposed.

Also, the expression “brokerage transaction” is not defined in the Act. This vagueness causes problems of interpretation. The ACAIQ recommends that the meaning of this expression and some provisions of the law be clarified, including regarding exemptions. It is generally agreed that a person engages in a brokerage activity when acting as an “intermediary” between two parties toward the conclusion of a contract. This made it possible to say that a finder’s fee constituted compensation under the law. A new law should clarify this to prevent any improper interpretation.

Some acts are identified as being characteristic of a broker’s work. Establishing the value of an immovable, listing the immovable with the Multiple Listing Service, advertising or announcing the immovable, providing information on the immovable to prospective buyers, providing information and advising the seller or the buyer, soliciting prospective buyers on behalf of the seller, negotiating, drafting, receiving and presenting promises to purchase or to sell, are all part of the activity of real estate broker. However, each and all of these acts do not have to be present to indicate the presence of real estate brokerage.

The definition of a brokerage act should also take into account the evolution of e-commerce and its impact on the scope of the professional acts as well as territorial issues, securitization activities (ownership of a portion of the share capital of a legal person who owns an immovable and that includes the rights of a real estate owner) and relocation. We are also witnessing the development of a new market where the broker will increasingly act as intermediary between his clients and the providers of goods and services. Care will have to be taken so that any definition, though sufficiently specific, does not cause new practices to escape the oversight of the regulatory body.

Protection of personal information

A few years ago, the Superior Court declared that professional orders and their syndics and assistant syndics were not governed by the Act respecting the protection of personal information in the private sector. Bill 122 was tabled to ease the uncertainty surrounding the legal system applicable to orders regarding access to information. This Bill proposed to have orders governed by a hybrid access-to-information regime.

As mentioned in its brief on this Bill, the ACAIQ meets with the same difficulties as do orders in the area of access to information. One of the problems concerns the personal information collected by the syndic in the course of investigations. In this regard, the Commission d'accès à l'information (the Commission) wondered on a few occasions about the applicability of the Act respecting access to documents held by public agencies and the protection of personal information or the Act respecting the protection of personal information in the private sector.

In a Report entitled "Une réforme de l'accès à l'information : Le choix de la transparence" (Access to information reform: choosing transparency), the Commission recommended the adoption of provisions concerning orders contained in Bill 122. In December 2004, a new Bill was tabled. Bill 86 proposes various amendments regarding access to information and protection of personal information. According to the Bill's explanatory notes, the Professional Code would be amended to have orders, regarding documents obtained to control the practice of the profession, governed by the general access-to-information and protection of personal information regime. Some of its provisions would be adapted to the particular context of orders. As for the other documents, they would be governed by the Act respecting on the protection of personal information in the private sector. The ACAIQ is currently analyzing this Bill and plans to reiterate the position presented when Bill 122 was studied, i.e. being governed by the same regime.

Although the ACAIQ is not a professional order in the legal sense of the expression, it appears inconceivable that it would be governed by an access and protection of personal information regime different from that of orders, given the similarity of their structures, mission and powers and the type of information they process.

Private Security Bill

The ACAIQ has submitted a brief to the Committee on Institutions concerning the Private Security Act (Bill 88), aimed among other things at overseeing investigation activities.

It appears that investigations or other steps taken by ACAIQ personnel as part of the application of the Real Estate Brokerage Act are activities that could be referred to in this Act. The ACAIQ does not feel that its activities can be considered "private security" activities and the members of its staff, in the course of their work, should be exempt from the application of this eventual law.

Powers conferred by the Act respecting public inquiry commissions

Only the syndic and assistant syndics of the ACAIQ already have the powers and immunity granted to commissioners under this law.

In penal matters, the law states that the ACAIQ can mount an investigation file, but no provisions gives it the power to investigate, including by summoning witnesses for questioning, or to search. Yet, professional orders and other professional regulatory bodies are usually given search powers or even powers provided under the Act respecting public inquiry commissions.

Although some complaints and investigations lead the ACAIQ to believe that the law has been violated, the ACAIQ was not able, in some cases, to prosecute the individuals suspected of being in violation since it didn't have the proof needed to convince a court of their guilt. When the ACAIQ initiates penal proceedings for illegal real estate brokerage, it must prove beyond a reasonable doubt all essential components of the violation. Thus the ACAIQ has had to close investigation files for lack of proof, whereas it was probable that the individuals under investigations had indeed violated the law.

For this reason, the ACAIQ recommends that the regulatory body be granted the powers conferred by the Act respecting public inquiry commissions.

Presentation of a promise to purchase conforming to the seller's conditions

A recent decision by the Court of Appeal of Québec could have a major impact on the practice of real estate brokerage and the protection of the public. The following passage from the decision of the Court raises questions: "When a promise to purchase conforms perfectly to the offer to sell, the parties are bound. There has been an offer and acceptance of this offer (art. 1386 C.C.Q.). When a prospective seller refuses to follow through on his commitment, the prospective buyer may sue the seller, force him to perform his obligation by transferring title, or claim damages for the prejudice suffered (art. 1590 C.C.Q.)."

Without going into an exhaustive analysis of this decision, it is important to mention the uncertainty that it creates. Thus in the event where more than one promise to purchase conforming to the selling conditions of a property are presented simultaneously, does that mean that the seller is bound to more than one buyer? Also, the brokerage contract is a service contract under which the parties, i.e. the seller and the broker, agree that the broker will act as intermediary for the sale of an immovable. This is the intention of the parties and the broker cannot conclude a prospective transaction on behalf of his client. Details will have to be included in the new Act and regulations to clarify this situation.

Payment of compensation to a legal person who is not registered as a real estate agency but is controlled by the holder of a real estate broker permit

The ACAIQ would be favourable to the new Real Estate Brokerage Act authorizing the payment of compensation to a legal person who is not registered as a real estate agency but is controlled by the holder of a real estate broker permit. Thus an agency could pay to the legal person controlled by a real estate broker employed by or authorized to act on its behalf all or a portion of the compensation received as part of a transaction where the broker has acted as intermediary. In the event where this suggestion is retained, the necessary oversight rules would have to be established concerning the share capital of the legal person to whom the payment would be made.

Duration of exemptions regarding training and exams

Under the current Act, persons who wish to be issued a certificate are exempted from demonstrating that they meet the training requirements and pass the exam administered by the ACAIQ if they apply for this certificate within two years following, for example, the expiration of their certificate.

The ACAIQ proposes that this exemption be reduced to one year. Anyone applying for a permit after this period, but no later than three years after having been the holder of a permit, would have to take and pass an exam. After three years without a permit, the applicant would also be required to take the basic training.

Conclusion

The Report on the Application of the Real Estate Brokerage Act does a good job of defining the needs regarding the oversight of real estate brokerage, an exercise that clearly illustrates the need to proceed quickly with its modernization.

Since receiving the government's report, the ACAIQ has consulted various organizations. These exchanges enabled us to note the existence of a large consensus within the industry concerning the Report's proposals.

Thus it is clear that maintaining self-management and self-regulation is a priority for the stakeholders as a whole. The application over the last eleven years of these principles to the field of real estate brokerage has shown that this is the best way to ensure optimum public protection. This system allows a balance to be maintained between what is required for this protection and the pursuit of professional activities, within the most flexible framework possible.

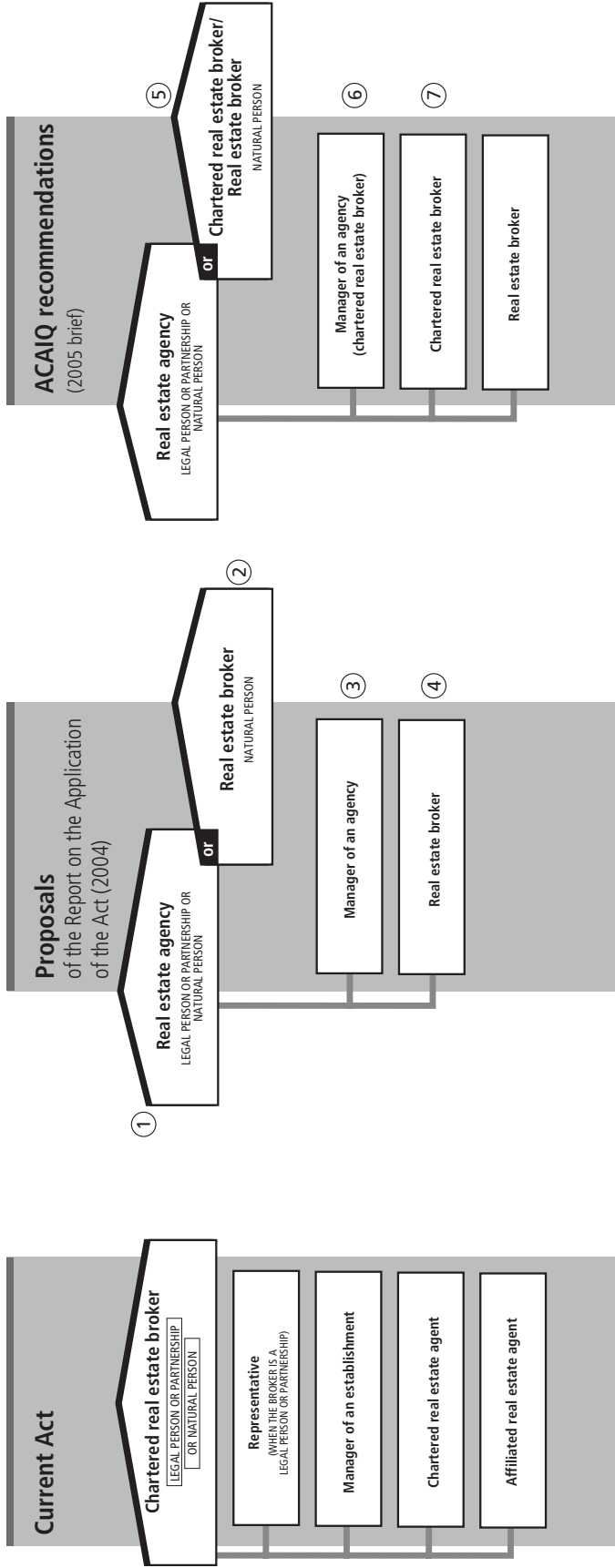
This is why the ACAIQ disagrees with the option of creating a Bureau du courtage immobilier as stated in the government Report. Apart from losing the self-management and self-regulation aspects, the main reasons for this disagreement are the elimination of the institution of syndic and, more generally, the complete revision of the legal regulatory structure proposed by under this option.

In this context, the ACAIQ recommends that the second option presented in the Report, i.e. the creation of the Association des courtiers immobiliers du Québec (ACIQ), be retained, subject to giving the organization an appropriate name that leaves no doubt as to its primary mission of ensuring the protection of the public.

Under the first option, i.e. the creation of a Bureau du courtage immobilier, the Report states that oversight by a supervisor would no longer be necessary. This is why the Report recommends that supervisory powers of the Registraire des entreprises over the ACAIQ be transferred to the Minister. However, the second option (ACIQ) states that the maintenance of a self-regulating organization would require supervision by a government authority, as is currently the case with the Registraire.

The ACAIQ recommends not only the maintenance of a self-managed and self-regulated organization, but also that the supervision powers of the Registraire des entreprises over the ACAIQ be transferred to the Minister of Finance or at least a directorate of this department.

The ACAIQ's comments and suggestions included in this document are based on considerations stemming from eleven years of enforcing the Real Estate Brokerage Act on a daily basis. The ACAIQ considers that the vast majority of the proposals contained in the Report on this application of this Act will enable it to fulfill its primary mission, i.e. ensuring the protection of the public, even more efficiently.



1- Real estate agency: A partnership or legal person wishing to practice real estate brokerage through a broker or a natural person acting through a broker representative must obtain a real estate agency permit (proposals 10.1 and 10.2 of the Report).

2- Real estate broker (self-employed natural person): After working with an agency for the period determined by regulation, a real estate broker may work for himself (proposal 17.1 of the Report). If he wishes to act through a broker representative, he must obtain a real estate agency permit (proposal 10.2 of the Report).

3- Manager of an agency: Must meet the special requirements for persons who manage a real estate agency (proposal 11.6 of the Report).

4- Real estate broker: After working with an agency for the period determined by regulation, a real estate broker may work for himself (proposal 17.1 of the Report) or continue working with an agency. Existing affiliated real estate agents, henceforth called real estate brokers, will be granted the possibility to act on their own behalf provided they meet the qualification requirements (proposal 13.1 of the Report).

5- Chartered real estate broker (natural person) qualified to act as the manager of an agency but who does not act as such: If the broker decides to work for himself, he would continue to use the title of chartered real estate broker.

6- Manager of an agency: The ACAIQ proposes to replace the notion of "dirigeant d'agence" in French by that of "directeur d'agence" (both "managers" in English). The first requirement of the manager should be that he is a chartered real estate broker.

7- Real estate broker qualified to act as manager of an agency but who does not act as such: He could use the title of chartered real estate broker. If he decides to work for himself, he would use the same title (see point 5).

