

Real Estate Brokerage

# Seller

Practical Guide

Revised edition



Association des courtiers  
et agents immobiliers du Québec

Published and produced by the Association des courtiers  
et agents immobiliers du Québec

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## What you should know about selling your home

Selling a house is a complex and delicate operation. This is why the Association des courtiers et agents immobiliers du Québec has prepared this brochure, which contains the main steps you need to follow before, during and after the sale of your home. In it you will find many useful tips to guide you and help you complete your real estate transaction in a satisfactory manner.

### ACAIQ Mission

Created under the *Real Estate Brokerage Act*, the Association des courtiers et agents immobiliers du Québec's primary role is to protect the public by overseeing the activities of all real estate brokerage professionals. It ensures that real estate brokers and agents pursue their activities in accordance with the Act and its regulations. Among the ACAIQ bodies contributing to the protection of the public is the Professional Inspection Committee, whose role is to oversee broker and agent activities, including by auditing their records, books, accounts and registers.



Association des courtiers  
et agents immobiliers  
du Québec



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1

Your protection in real estate brokerage



# Role of the real estate broker and agent

Selling an immovable requires extensive technical knowledge. This is why we recommend that you use the services of a real estate brokerage professional in order to make sure that all the operations involved in selling an immovable will be completed in accordance with standard practice.

The main function of the real estate broker or agent is to act as intermediary in the purchase, sale or rental of an immovable. He plays a prospecting role by finding an immovable for the buyer and a client for the seller; he plays a negotiating role by facilitating communications between the parties involved and, mainly, he plays an advisory role and helps the parties define their needs and complete their real estate transaction in a satisfactory manner.

## Distinction between real estate broker and agent

The differences between a real estate broker and agent have to do with their respective levels of responsibility.

A chartered real estate broker may employ or authorize to act on his behalf a chartered or affiliated real estate agent. On the other hand an agent is only authorized to act on behalf of a broker. Under the law, the broker bears full responsibility for the professional actions of the agents or brokers representing him. ▶





## Compulsory certificate

All real estate brokers and agents in Québec must hold a certificate of practice issued by the Association des courtiers et agents immobiliers du Québec. A consumer who engages in a real estate transaction through someone who does not hold such a certificate cannot benefit from the protection mechanisms provided under the *Real Estate Brokerage Act*, as these only apply to the professional actions of real estate brokers and agents who are authorized to practice. Therefore, before you do anything, check with the ACAIQ, including by consulting the membership register on the ACAIQ website at [acaiq.com](http://acaiq.com), to make sure your broker or agent holds a valid certificate of practice. If not, this should be reported to the ACAIQ.

## Duties and obligations of real estate brokers and agents

Real estate brokerage is an activity which is regulated and controlled in order to protect the public in real estate transaction. The *Real Estate Brokerage Act*, the *By-Law of the ACAIQ* and the *Rules of professional ethics of the ACAIQ* define how the profession should be practiced, so that consumers may be served fairly and competently.

## Loyalty to the customer

Real estate brokers and agents are bound by a strict obligation of loyalty to their clients, and must promote their interests and protect their rights. They must act equitably toward each party to a real estate transaction.

## Obligation to disclose

If your real estate broker or agent has a personal relationship with the other party or if he is acting on his own behalf, he must inform you in writing prior to the signing of the promise to purchase.

Similarly, if your real estate broker or agent is to receive compensation from a financial institution or a professional recommended by him, he must also inform you in writing.

## Advising and informing objectively and accurately

The real estate broker and agent must advise and inform the parties to a transaction objectively and must provide them with all the explanations they need to fully understand and appreciate the services they are providing. They must also inform the parties of any factor which could negatively impact the object of the transaction.

The real estate broker and agent must also be able to demonstrate the accuracy of the information they are providing using relevant documentation. This information verification principle must be upheld throughout the sales process, as the broker and agent are responsible for the information they are disseminating.



# Consumer protection mechanisms

## Professional development

To obtain a certificate of practice from the ACAIQ, candidates must take a series of specialized real estate brokerage courses. This compulsory training leads to an attestation of collegial studies and is a prerequisite to take the profession's entrance examination.

## Entrance examination

The profession's entrance examination is a mechanism that ensures the consumers that a real estate broker or agent has the knowledge and competence required to provide adequate service. ▶





### Info ACAIQ

Info ACAIQ is the information centre of the Association des courtiers et agents immobiliers du Québec. It provides information to consumers and to members of the profession on the *Real Estate Brokerage Act* and its regulations, the brokerage contract, the promise to purchase and all other real estate brokerage forms produced by the Association, as well as any question related to the ACAIQ activities, products and services.

### Assistance ACAIQ

Our Assistance Department (Assistance ACAIQ) is the door to soliciting help from the Association and reporting violations. Whether submitted by a consumer or a member of the Association, requests for assistance in resolving a dispute are handled by an Assistance

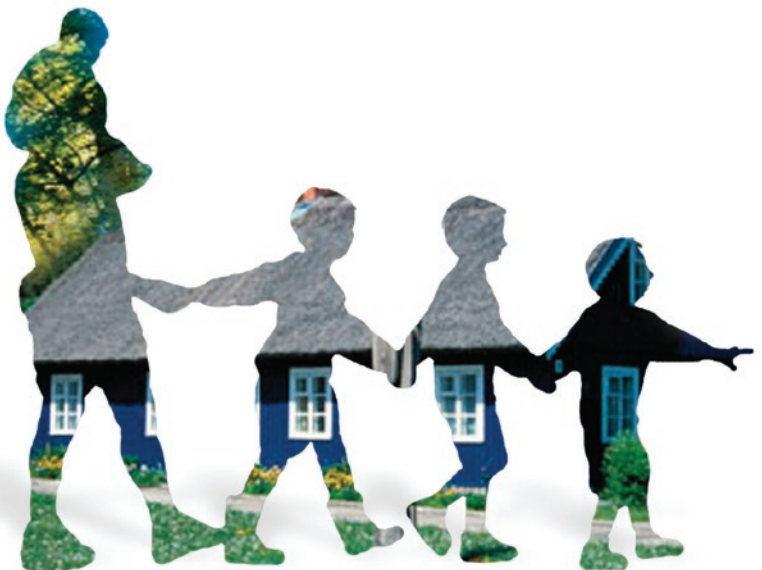
Department analyst, who can provide information regarding the recourses available and intervene with the broker or agent involved to help find a solution to the problem.

### Professional Inspection Committee

The role of the Professional Inspection Committee is to ensure that the work methods of real estate brokers and agents are in accordance with the rules of the profession. The Committee carries out inspections of its members and makes appropriate recommendations.

### Syndic

The role of the Syndic is to carry out an investigation if he has a reason to believe that real estate brokers or agents are engaging in acts against the *Real Estate Brokerage Act* and its regulations. If such is the case, he files a complaint with the Discipline Committee.





## Discipline Committee

The Discipline Committee has the authority to impose fines, to suspend or cancel a violator's right to practice. It cannot, however, compensate or indemnify the injured parties.

## Illegal Practice

Requests involving an individual who does not hold a certificate and, consequently, is not a member of the Association, are handled by our Legal Affairs Department. Where an inquiry reveals that this individual has violated the provisions of the *Real Estate Brokerage Act* and its regulations, the Association could initiate proceedings before the Court of Québec, Criminal and Penal Division. In such a case, the person requesting assistance could be subpoenaed to appear as a witness.

## Professional liability insurance

Real estate brokers must take out professional liability insurance to provide consumers with additional financial protection in case of fault, error, negligence or omission.

## Fonds d'indemnisation du courtage immobilier

The Fonds d'indemnisation du courtage immobilier has the authority to compensate consumers who are victims of fraud, dishonest transaction or misappropriation of funds which must be deposited in a trust account.







# The brokerage contract

If you entrust the sale of your home to a real estate broker, you will be required to sign a brokerage contract. This brokerage contract establishes a professional relationship between you and your broker for a given period of time. It details the obligations of the broker and the seller.

## Types of brokerage contracts

### Exclusive brokerage contract

In an *exclusive* brokerage contract, the seller agrees not to use the services of another intermediary for the sale of his property. This type of contract guarantees to the broker that the efforts made to sell the property will be compensated at the time of the sale. The seller can also expect his broker to devote maximum time and effort to sell his property.

### Non-exclusive brokerage contract

In a *non-exclusive* brokerage contract, the owner retains the right to sell his immovable himself or through another person of his choice. This type of contract, although it may appear advantageous at first glance, can have a major drawback in that the broker risks losing his compensation to a competing intermediary, regardless of the effort he may have put in, which could lead him to devote less energy to the sale of your property.

### Content of the brokerage contract

The brokerage contract officializes the obligations to which the broker and his client have agreed. The following are the main elements the contract must contain for the sale of a chiefly residential immovable with less than five dwellings. ▶





### Identification of the parties

The brokerage contract must identify the parties bound by it and should include the following information:

- Name and address of the broker;
- Name and certificate number of the agent;
- Name(s) and address(es) of the owner(s).  
In the case of a company, the company name must be indicated and in the case of an estate, it is the name of the person representing it. If the seller is acting through a representative, a proxy must be provided to the broker.

Note: It is very important that your broker verify that you are the sole owner of the immovable. If your spouse is the owner, you do not have the authority to represent him/her without first obtaining a proxy. However, the spouse's intervention is sometimes required. For instance, the immovable or a portion thereof may be the subject of a declaration of family residence, or the seller's matrimonial regime may require the spouse's intervention.

### Object and term of contract

The object of the contract defines the reason binding the parties, i.e. the sale of an immovable. The term specifies when the contract will expire. If no expiration date and time are indicated, the contract will expire 30 days after coming into effect.

### Description of immovable

When you want to sell your home, several important details must be collected and verified right from the beginning (lot size, amount of taxes, general condition of the house and its main components, etc.). It is essential that you provide your broker or agent with all the information pertaining to the immovable, as well as all documents that will allow him to fulfill his role, including the act of acquisition. The certificate of location describing the current condition of the immovable is needed when the brokerage contract is signed. If corrections have to be made, this is a good time to do it. You will also need the certificate of location at the signing of the act of sale.

The brokerage contract must contain a detailed description of the immovable, including:

- address;
- cadastral designation;
- lot measurements and area.

If the immovable is held in co-ownership, the contract must specify whether it is a divided or an undivided co-ownership. You also have to specify the number of parking and storage spaces included in the sale, and their numbers. A copy of the declaration of co-ownership and the by-laws of the immovable should be provided to the broker when the brokerage contract is taken up.



## Selling price

An essential step in the sale of your home is to set a realistic selling price. To do so, you need to know the current status of the market. Your broker or agent can give you an idea of the actual value of your home by comparing it to similar properties currently up for sale or recently sold in the same area. This will make it easier for you to set a fair and competitive price.

You also have to identify the elements that can act positively or negatively on the value of your home:

- location;
- size;
- construction year and condition of the immovable;
- number and layout of rooms;
- construction materials used;
- landscaping;
- features specific to the area;
- etc.

This exercise may lead you to reduce the asking price for your property, because a price that is too high compared to the market will drive buyers away and therefore have a direct impact on the amount of time it takes to sell your property. Remember that an immovable that remains on the market for too long tends to lose value in the eyes of the buyers.

If the owner wishes to change the asking price during the contract, an "Amendments and Notice of Fulfilment of conditions" form must be completed. ▶





### Repayment costs

If the buyer chooses not to take over your mortgage, which is usually the case, you will have to pay back your mortgage loan and have the hypothec cancelled at your expense. The early repayment of your loan may carry a penalty which you will have to pay at the time of the sale (see tables 2 and 3 for the detail of expenses to plan for).

### Inclusions and exclusions

The question of included or excluded items must be examined closely before the brokerage contract is signed. This step of the sale process is too often a cause of dispute between the seller and the buyer. This is why we recommend that you specify as many elements as possible. The best is to cover each item which could lead to confusion by specifying those which are included and those which are specifically excluded, by indicating colour, brand, serial number, etc.:

- water heater or heat pump;
- air conditioning;
- curtain rods and blinds;
- appliances;
- garden house
- electrical fixtures;
- etc.

### Co-ownership fund

The brokerage contract mentions the co-ownership fund when that type of immovable is involved. The expenses related to the maintenance and administration of common areas of the property held in co-ownership are paid through this fund, which is set up by the co-owners to deal with expenses. It is important to note that the sums invested in the fund are not recoverable at the time of the sale of the co-ownership property. These sums must be considered as property taxes.

### Occupancy and signing of the act of sale

The dates of occupancy and signing of the act of sale must be specified in the brokerage contract. The buyer may propose different dates in the promise to purchase, but these are subject to the seller's approval in the same way as the other clauses in the promise to purchase. However, they can be negotiated.

### Multiple listing service

When a service agreement is concluded with your broker or agent, it is a good idea to discuss promotional activities (listing with one or several multiple listing services, advertising, open houses, etc.) to promote the sale of the immovable. These activities must be discussed and specified in the brokerage contract before signing, so that the selling owner knows what to expect.



The Multiple Listing Service (MLS) is no doubt one of the most frequently used promotional tools, as it allows to inform the brokers and agents who work in your area that your immovable is on the market. This service is a central directory listing all the immovables for sale in a given region. Now available on the Internet, the multiple listing service is an effective promotional tool.

If you wish to use this service, you will have to initial the appropriate section on the brokerage contract and make sure your broker has access to this service.

### **Broker's compensation**

The amount and conditions of the broker's compensation must be specified in the brokerage contract. The broker's compensation is usually based on a percentage of the immovable's selling price, but it can also be a lump sum. The compensation must be paid at the signing of the act of sale.

### **Declarations by the seller**

The seller must use reasonable means to provide accurate information to the broker. The brokerage contract must therefore include any factor which might reduce the value of the house. For example, has the house ever had water infiltration? Does it contain pyrite? Is there a particular feature of the immovable which renders it uninsurable or increases the insurance premium?

Are you a non-resident? If so, you must provide a guarantee that you will pay certain taxes imposed by the fiscal authorities.

The declarations by the seller will confirm that you are the sole owner of the immovable and that the immovable is not the subject of a brokerage contract with another broker. They will also state that the immovable is free of any debt, charge or restriction of private law other than the usual and apparent easements of public utility. Otherwise, you will have to inform the broker in your brokerage contract. You must also notify your broker of any notice received from an insurer, the municipality, etc. concerning your immovable.

### **Obligations of the seller**

The brokerage contract clearly states the obligations of the seller. These obligations deal with exclusivity, the documents to be supplied to the broker (certificate of location), advertising, showings, etc.

### **Obligations of the broker**

The obligations of the broker are also specified in the brokerage contract. They deal with loyalty, competence, duty to inform and verify information, advertising, obligations to disclose, conflicts of interest, etc. ▶



### Signing of the brokerage contract

Take the time to read your contract with your broker or agent before signing it and do not hesitate to ask questions if any clause is unclear. The Info ACAIQ information center can answer your questions if necessary.

### Verification of information

Your broker or agent will provide you with a copy of the Detailed Description Sheet of your home so you can make sure the declarations it contains are consistent with those of the brokerage contract. If the sheet contains errors, the broker must correct them and give you a revised copy. The Description sheet will be used to market the property and will be supplied to any person interested in the property.

### Effective date

The brokerage contract becomes effective from the time you receive your duplicate of the contract signed by the seller and the broker or agent. You may withdraw from the brokerage contract within three days following receipt of the contract duplicate.

After this period, if the contract is marked "irrevocable", it cannot be cancelled under any circumstance nor can the term be changed unless the broker or agent agrees.

If the contract is not marked "irrevocable", you may withdraw from the brokerage contract by sending a notice to your broker by registered mail.





# Showing your home to its best advantage

Part of success in selling your home depends on the impression which potential buyers will have when they view it. Showing it off properly is therefore of prime importance. Many elements can help get you the best possible price for your property. Some require some expenses, which can probably be recovered when you sell your house. You will find on the next page a Preparation checklist to help you plan how you will prepare your home.

## First impressions

First impressions have a considerable impact on a person's perception after a visit. Therefore, certain visual aspects must be reviewed. Is the outside of the house in good condition? Do gutters need repairs? Is the garage neat? Have broken windows been replaced? Has the grass been cut and raked? Do the hedges and shrubs need trimming? In winter, has the snow been removed? Does the doorbell work? Are door trimmings in good condition?

## Indoor aspect

Have cracks been repaired? Are paint touch-ups necessary? Have leaky faucets been repaired? Are there any burnt out bulbs? Do doors need a drop of oil?

## Bathrooms

Are bathrooms shiny? Has the bathtub been recaulked? Are floors clean?

## Kitchen

Is a thorough cleaning required? Are the sink and faucets clean? Are cupboards impeccable both inside and out?

## Atmosphere

Have lights been turned on? Is the air conditioning on if it's hot? Is there a fire in the fireplace when it's cold? Are curtains open during the day? Have you thought of putting on a little soft music? Do your plants and flowers look healthy? Have animals been removed or locked up during the visit? Is ventilation adequate? ▶



TABLE 1

## PREPARATION CHECKLIST

Checking fixtures			Cleaning		
	To do	Cost		To do	Cost
heating			walls		
electrical system			floors		
water			lights		
air conditioning			windows		
other:			doors		
			cupboards		
			baths		
			showers		
			storage spaces		
			curtains		
			appliances		
			garage		
			garden house		
			other:		
<b>Total cost:</b>			<b>Total cost:</b>		
Painting			Repairs and maintenance		
	To do	Cost		To do	Cost
entrance			facing		
kitchen			roof		
living-room			windows		
restroom			doors		
bedrooms			garage		
basement			landscaping		
outside panellings			fence		
fence			terrace or balcony		
terrace or balcony			paths		
pool			pool		
garden house			parking		
other:			other:		
<b>Total cost:</b>			<b>Total cost:</b>		
<b>Preparation cost grand total:</b>					



**Preparation checklist** (Table 1)

Make a list of the work required to show your home to its best advantage. The perception of visitors towards it will be even better. Perhaps you can do some of the work yourself, which will make your immovable easier to sell without requiring a lot of money. However, some repairs may require the services of a paid supplier. Although these may not guarantee that the selling price will go up to compensate for the cost, they will at least increase your chances of selling your immovable more quickly.

**Selling expenses** (Table 2)

Some additional expenses have to be expected when selling an immovable, to pay for the operations that are at the seller's expense. Following is a list of the main expenses to be planned for.

**Net proceeds from the sale** (Table 3)

The net proceeds from the sale is the residual amount deriving from the sale once all selling expenses have been deducted.

TABLE 2	
CALCULATING SELLING EXPENSES	
■ Mortgage loan balance:	\$
+ Real estate broker or agent commission:	\$
+ Evaluation (if applicable):	\$
+ Notary (cancellation fees, for example):	\$
+ Early repayment:	\$
+ Mortgage discharge:	\$
+ Property tax adjustment:	\$
≡ <b>Total selling expenses:</b>	\$

TABLE 3	
CALCULATING THE NET PROCEEDS FROM THE SALE	
■ Selling price of the immovable	\$
■ Total selling expenses:	\$
≡ <b>Net proceeds from the sale:</b>	\$



# The promise to purchase

The promise to purchase is a contract through which a person undertakes to purchase an immovable. In return, the document also indicates that the seller undertakes to sell the immovable once the promise to purchase has been accepted.

It should be noted that the use of the ACAIQ promise to purchase form by the real estate broker or agent is compulsory for chiefly residential immovables containing less than five dwellings and owned by an individual.

## Content of the promise to purchase

The promise to purchase content is compulsory and it cannot be changed systematically. It is important to make sure that the information contained therein is in accordance with that of the brokerage contract.

## Identification of the parties

The promise to purchase must identify the parties bound by contract, i.e. the seller and the buyer. It should indicate the names and addresses of the seller and buyer.

## Object of the contract

As its name indicates, the object of the promise to purchase is the purchase of an immovable.

## Description of immovable

The promise to purchase must contain a detailed description of the immovable, including address, cadastral designation, measurements and area of the lot.

If the immovable is held in co-ownership, the contract must specify whether it is held in divided co-ownership or undivided co-ownership. It must also specify the number of parking and storage spaces and their numbers.

## Price and deposit

The promise to purchase must indicate clearly the purchase price offered by the buyer. The price statement usually indicates that the payment will be made in full upon the signing of the act of sale.

When presenting a promise to purchase, the buyer may give the listing broker a deposit on the purchase of the immovable. There is a section to this effect on the promise to purchase. The deposit, which must be placed in a trust account, can also be remitted to the collaborating broker or acting notary if the listing broker does not have a trust account. The sum remitted following the terms of the promise to purchase will be applied against the purchase price or refunded to the buyer if the promise becomes void.



## Declarations and obligations of the buyer

The promise to purchase contains a clause stipulating that the buyer has examined the immovable and declares that he is satisfied therewith. It is highly recommended to have the immovable inspected by a building expert. In the case of an immovable held in co-ownership, the buyer specifies that he has examined the declaration of co-ownership, including the by-laws of the immovable and the reserve fund, and declares that he is satisfied therewith. It is important to make the promise to purchase conditional to the review of these documents.

The promise to purchase also stipulates that the buyer undertakes to pay transfer duties, a tax imposed by a municipality to transfer a property right on its territory. This tax represents 0.5% of the selling price (or the highest of the valuable consideration indicated on the act of transfer or the value indicated on the municipal valuation roll) for the first \$50,000, 1% of the portion between \$50,000 and \$250,000, and 1.5% of the portion of \$250,000 and over.

The cost of the act of sale (notary fees) is also paid by the buyer.

Finally, the declarations of the buyer stipulate that he undertakes not to sell his rights in the promise to purchase, unless authorized by the seller in writing.

## Declarations and obligations of the seller

The seller also makes a number of declarations in a promise to purchase. He must guarantee that the property and accessories are free from hidden defects, unless otherwise specified

in the promise to purchase. The seller also declares that he is not aware of any factor liable to reduce the value of the immovable. In addition to hidden defects, in theory, he continues to be responsible for any defects of which he was aware but did not declare.

The seller must also declare that he has not received any notice from a competent authority indicating that the immovable does not conform to the laws and regulations in force, or any notice from an insurer, following which he has not fully remedied the defect.

The seller must certify that the immovable is serviced by a water and sewer system or other water treatment system, or otherwise specify the systems used for water supply and disposal.

He must confirm that the immovable is not part of a housing complex, that it is not subject of the *Act to preserve agricultural land* and that it is not classified or recognized as cultural property under the *Cultural Property Act*.

The seller further declares that the immovable conforms to the law and regulations relating to protection of the environment.

In the case of an immovable with leases, this must be mentioned in the declarations of the seller.

## Delivery of the immovable

The promise to purchase contains a clause by which the seller promises to deliver the immovable in the condition in which it was when the buyer examined it. ▶



### **Costs relating to repayment and cancellation**

The costs relating to the repayment and cancellation of any debt secured by hypothec not assumed by the buyer must be borne by the seller.

### **Ownership documents**

The promise to purchase states the obligations of the seller regarding the titles of ownership. Thus the seller must supply the buyer with a valid title of ownership, free of any debt, charge or other restriction of private or public law other than the usual easements. He must provide authenticated copies of the title of acquisition and the certificate of location describing the current state of the premises. The seller pays for a new certificate.

### **Defect or irregularity**

The promise to purchase includes a mechanism in case the buyer discovers a defect or irregularity affecting the titles or a non-compliance to a guarantee provided by the seller after the signing of the promise to purchase.

### **Intervention of spouse**

The promise to purchase also contains a clause stipulating that the seller must supply a document evidencing his spouse's consent if rendered necessary by his matrimonial regime.

### **Declarations and obligations common to the parties**

The promise to purchase contains a number of declarations and obligations which apply to both parties:

- the choice of notary for the signing of the act of sale;
- the adjustments relating to property taxes, general taxes, co-ownership expenses, fuel reserves and income or expenses relating to the immovable;
- the date of signing of the act of sale;
- holding of the broker's compensation by the notary;
- the inclusions and exclusions, as well as leased appliances.

### **Reference to annexes**

The promise to purchase may contain a reference to annexes. These are part of the promise to purchase. Annex A, for example, contains all the clauses relating to price and financing, whereas Annex B includes standard clauses applicable to the transaction, including the building inspection clause. There are some others such as Annex G, Annex Pyrite, Declarations by the seller, etc.

### **Conditions of acceptance**

The conditions of acceptance of the promise to purchase set deadlines for the acceptance and notification. The acceptance period on the promise to purchase sets the date and time by which the seller must accept the promise to purchase. During this period, the buyer may not withdraw his promise of purchase. The notification of acceptance deadline sets a period during which acceptance must be notified by the seller to the buyer in order to be valid. These deadlines are important: if not adhered to, the promise to purchase is null and void.

It should also be noted that a counter-proposal may be presented after the acceptance deadline.



## Signatures

The promise to purchase must include the buyer's and seller's signatures as well as that of their respective spouses, if applicable. Each copy must bear the original signature of each of the parties. A witness's signature is recommended but not essential to the validity of the contract.

### REMEMBER!

Make sure you read and understand any promise to purchase you receive. Ask your broker or agent any questions you may have so that no doubt remains in your mind.

#### **Declarations**

Your declarations in the brokerage contract must also appear on the promise to purchase. If some elements do not appear, you can add them using a counter-proposal.

#### **Cadastral designation**

Check the accuracy of your cadastral designation (number, estate or township) and the area of the lot.

#### **Checking the dates**

Make sure the dates for the act of sale, the allocations and the occupancy are in accordance with your needs and do not transfer your rights until the act of sale is signed.

#### **Inclusions and exclusions and conditions**

Make sure that inclusions and exclusions as well as any rented equipment are indicated in your consent and that the buyer's conditions are achievable in the time period specified.

#### **Receiving a promise to purchase**

As seller, you have the right to receive all promises to purchase presented as a result of the listing of your immovable. To avoid any future problem in this regard, make sure you follow-up.



# The counter-proposal

As the owner-seller of an immovable, you may accept or refuse any promise to purchase presented to you. You may also choose to present a counter-proposal to the buyer. The first purpose of the counter-proposal is to signify to the buyer that you have rejected his promise to purchase. It also allows you to accompany your refusal by a new proposal that would be acceptable to you.

You can make a counter-proposal to include or exclude certain items, change the selling price or simply to further clarify your offer.

The buyer in turn may use a counter-proposal form to reply to your counter-proposal, and so on.

## Amendments

A counter-proposal has the effect of canceling all previous counterproposals made by the buyer or the seller. Taking into account the particulars in the promise to purchase, all inclusions and exclusions must be repeated, including the elements retained by the parties in previous steps.

The agreement that will bind the buyer and the seller will consist in the promise to purchase as amended by the last counter-proposal.

## Conditions of acceptance

The conditions of acceptance of the counter-proposal set a deadline for its acceptance and notification. Therefore, just like in the promise to purchase, the acceptance period on the counter-proposal sets the date and time by which it must be accepted. During this period, the proposer cannot withdraw his counter-proposal, and the notification deadline is the date and time during which the acceptance must be notified in order to be valid.





# The Exclusive Brokerage Contract Purchase of an immovable

There are several ways in which the buyer of an immovable can have a successful search and complete a real estate transaction. He may act alone, in which case he may have to deal directly with the owner of the immovable he wishes to purchase if the seller has elected to sell his property without the services of a broker. Then, the buyer is left to his own devices, both to evaluate the immovable and to carry out the transaction.

The buyer may also choose to go through a real estate broker. Traditionally, the real estate broker accompanying a buyer does so without a contract. If the buyer transacts on a property sold through the broker with whom he is working, the broker will receive compensation from the seller with whom he has a contract to sell. This changes nothing to the fact that the broker's client is the seller, not the buyer.

If the buyer transacts on a property sold by a broker other than the one whose services he has retained, again he will not be required to pay compensation to the broker directly, as this compensation will be paid by the other broker as collaborator.

A buyer may also elect to sign a brokerage contract for the purchase of an immovable, setting the objects and terms of the broker's mandate, including compensation paid directly by the buyer to the broker. Although this is not yet common practice, it could be beneficial for a buyer to sign such a contract under certain circumstances, especially where the immovable he wishes to purchase is being sold directly by the owner. ▶





It is recommended to the buyer who signs a contract with a broker to purchase an immovable to use the standard form published by the Association des courtiers et agents immobiliers du Québec. The ACAIQ's Exclusive Brokerage Contract – Purchase of an immovable has been developed to ensure maximum protection for the consumer while clearly outlining

the bases on which the broker will act. It includes provisions for the main and additional features of the immovable, the price and the purchasing terms desired. The contract also defines the compensation paid to the buyer's broker, as well as the buyer's and the broker's mutual obligations.





# The property transfer

Once the promise to purchase or the counter-proposal has been accepted and all the conditions have been fulfilled, the next step is to make the transaction official. The two main components at this stage are the title examination and the act of sale. The property transfer requires the services of a notary, but your real estate broker or agent continues to play a central role at this step of the real estate transaction. Among other things, he will make sure that all documents required are available and will bring assistance in case any problem arises.

## Title examination

The notary will do the necessary research in order to guarantee the buyer an undisputable title of ownership. Using the certificate of location, he will verify whether the lot measurements are accurate, whether the immovable is actually erected on the lot sold, if the house was built in accordance with municipal by-laws and zoning laws. He will also verify if the neighbour's property encroaches on the lot, if there are rights of passage, etc.

Through the title examination, the notary will be able to detect the charges or real rights likely to affect or limit the right of ownership.

## Act of sale

The final step of the transaction is the drafting of the act of sale, which officializes the purchase of the immovable. In it, the notary specifies the clauses and conditions that are essential to the protection of your rights.

## Registration of rights of ownership

Once the act of sale is final, the notary will register the transaction with the Land Registry Office. He may retain the funds until this step has been completed.



3

Are you satisfied?



# Don't be afraid to ask any questions you may have to your real estate broker or agent

You are about to enter into a real estate transaction and you still have a thousand questions. Don't hesitate to ask these questions to your real estate broker or agent. If you are not entirely satisfied, contact the manager of the establishment or the broker for whom your agent works. He will make sure that you have all the information you need to make an enlightened decision.

## Info ACAIQ

The Info ACAIQ information center can also provide information concerning the *Real Estate Brokerage Act* and its regulations, the brokerage contract, the promise to purchase and other forms issued by the Association, as well as any topic related to the ACAIQ's activities, products and services.

## Info ACAIQ

(450) 462-9800 or 1 800 440-7170  
info@acaiq.com

## Assistance ACAIQ

Our Assistance Department (Assistance ACAIQ) is the door to soliciting help from the Association and reporting violations. Whether submitted by a consumer or a member of the Association, all requests for assistance are received by this department and analyzed to determine the nature of the problem and which of the Association's departments is best qualified to handle it.







# Useful links

## Real Estate Associations

### Association des constructeurs d'habitations du Québec (APCHQ)

[www.apchq.com](http://www.apchq.com)

## Consumer protection organizations

### Fonds d'indemnisation du courtage immobilier

[www.indemnisation.org](http://www.indemnisation.org)

✉ [info@indemnisation.org](mailto:info@indemnisation.org)

### Option consommateurs

[www.option-consommateurs.org](http://www.option-consommateurs.org)

✉ [info@option-consommateurs.org](mailto:info@option-consommateurs.org)

### Protégez-vous

[www.protegez-vous.qc.ca](http://www.protegez-vous.qc.ca)

[courrier@protegez-vous.qc.ca](mailto:courrier@protegez-vous.qc.ca)

## Consumer Aid Services (SAC)

[www.service-aide-consommateur.qc.ca](http://www.service-aide-consommateur.qc.ca)

✉ [sac\\_04@inno.org](mailto:sac_04@inno.org)

## Government organizations

### Office de la protection du consommateur

[www.opc.gouv.qc.ca](http://www.opc.gouv.qc.ca)

### Canadian Mortgage and Housing Corporation (CMHC)

[www.cmhc-schl.gc.ca](http://www.cmhc-schl.gc.ca)

### Société d'habitation du Québec

[www.shq.gouv.qc.ca](http://www.shq.gouv.qc.ca)

## Professional organizations

### Quebec Association of Building Inspectors

[www.aibq.qc.ca](http://www.aibq.qc.ca)

### Chambre des notaires du Québec

[www.cdnq.org](http://www.cdnq.org)

✉ [admin@cdnq.org](mailto:admin@cdnq.org)

### Ordre des arpenteurs géomètres du Québec

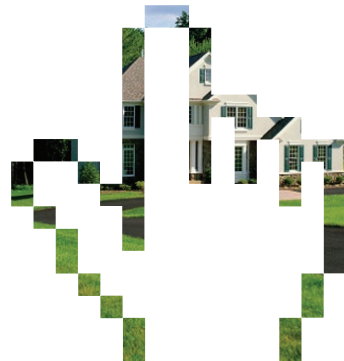
[www.oagq.qc.ca](http://www.oagq.qc.ca)

✉ [oagq@oagq.qc.ca](mailto:oagq@oagq.qc.ca)

## On-line search

### Multiple Listing Service (MLS) Canada

[www.sia.ca](http://www.sia.ca)





# Glossary

## A

### **Act of sale**

A contract, usually drawn up by a notary, used to officialize the sale of an immovable to a buyer.

### **Amortization**

Period required to pay back a mortgage loan in full through regular payments. The amortization is usually based on fixed terms of 10, 15, 20 or 25 years.

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

Organization created under the *Real Estate Brokerage Act* whose main mission is to protect the public by overseeing the activities of all real estate brokerage professionals practicing in Québec.

## B

### **Brokerage contract**

Agreement under which a person authorizes a real estate broker to act for a given period of time, as intermediary in the purchase, sale, rental or exchange of immovable property. The brokerage contract officializes the rights and obligations of the broker and his client by mutual consent.

In an exclusive brokerage contract the client agrees, for the term of the contract, not to use the services of a broker other than the one with whom he signed the contract. Usually, the exclusive brokerage contract also states that the client who is party to the contract cannot sell or buy the immovable himself.

### **Building Inspection**

General verification of the state of the main components of an immovable (foundation, structure, roof, heating system, electrical system, etc.) to assess condition.

### **Cadastral designation**

Information concerning an immovable (location, area, value, etc.), contained in the cadastre for a given region.

### **Cadastre**

Public register containing the technical data on each immovable in a given region (lot). A lot number used to publish the applicable rights is assigned to each property indexed in the cadastre.

### **Cancellation**

Cancellation of an agreement or the registration of a right through which one is freed from certain obligations, under certain conditions. Cancellation of hypothec.

### **Certificate of location**

Document containing a report and a plan, in which the land surveyor expresses his opinion on the location and condition of an immovable compared to the titles and the cadastre as well as laws and regulations governing the immovable.



### **Certificate of practice**

Operating permit issued by the Association des courtiers et agents immobiliers du Québec to any natural person, partnership or legal person who meets the legal requirements to carry out real estate brokerage activities in Québec. The granting of a certificate by the ACAIQ is conditional to the successful completion of a series of specialized real estate brokerage courses and an entrance examination to the profession.

### **Charge**

Amount to be paid according to a preset deadline. Tax payable on the use of a public utility, for example.

### **Co-ownership**

Immovable in which the ownership is divided between several owners. Right of ownership shared between several persons concerning a single property or a group of properties.

Co-ownership is undivided when the right of ownership is not accompanied by a material division of the property.

Co-ownership is divided when the right of ownership is divided between the co-owners in fractions (lots) each containing a unit, materially divided, and a portion of the common area.

### **Co-ownership fees**

Expenses related to the maintenance and management of the common areas of a co-ownership property. Monthly payment, usually fixed, used to set up a fund to pay for current

and unforeseen expenses (repairs, equipment replacement, etc.).

### **Counter-proposal**

A proposal presented in reply to a promise to purchase or to another counter-proposal and which in itself constitutes a new Promise.

Note: The first purpose of the counter-proposal is to signify refusal of a proposal by the other party to the transaction.

### **Deposit**

A sum of money that accompanies a promise to purchase an immovable. The deposit must be placed in a trust account and will be deducted from the balance payable at the signing of the act of sale, or it will be returned to the proposer if the sale does not go through.

### **Description sheet**

Document on which a real estate broker or agent has presented the features (construction year, taxes, measurements, etc.) of an immovable covered by a real estate brokerage contract.

### **Downpayment**

Personal contribution of the buyer to the financing of an immovable. Cash portion deducted from the selling price, which determines the amount of financing required to complete the purchase.

Note: If the downpayment for the purchase of the immovable is less than 25% of the purchase price, the loan must be insured by the Canadian Mortgage and Housing Corporation (CMHC) or by GE Capital Mortgage Insurance Canada.

**E****Easement**

Restriction of the right of ownership for reasons of private interest, general interest or public use. Right of access or use of land by others, for a defined purpose (passage, parking, public utilities, etc.).

**Evaluation**

Process which consists in estimating the market value of an immovable based on the general condition of its components and its specific features. The evaluation is often the result of a comparison with similar immovables up for sale or having recently been sold in the same area.

**F****Financing**

Means used by a buyer to acquire an immovable. Financial resource, often in the form of a mortgage loan provided to the buyer by a financial institution for the purchase of an immovable (see Mortgage loan).

**Fonds d'indemnisation du courtage immobilier**

Body created under the *Real Estate Brokerage Act*, to which all real estate brokers and agents in Québec contribute to indemnify consumers who are victims of fraud, dishonest transaction or misappropriation of funds or other goods by a real estate broker or agent, which, under the *Real Estate Brokerage Act*, must be deposited in a trust account.

**H****Hypothec**

Real right granted to a creditor on an immovable as collateral for a debt. This right gives the creditor, in case the repayment terms are not respected by the borrower, the option to exercise certain remedies such as taking the immovable in payment or selling it in a judicial sale. (See Financing and Mortgage loan).

**I****Indirect costs**

Additional expenses to be paid when buying an immovable, including building inspection, property evaluation, loan application, notary fees, taxes, insurance, etc.

**Interest rate**

Percentage representing the amount of interest produced by an amount of one hundred dollars. A 6.5% interest rate will produce an interest amount of \$6.50 payable to the lender for every \$100 borrowed.

The interest rate is used to calculate the amount to be paid to the lender in exchange for financing to allow the buyer to purchase an immovable.

**M****Mortgage loan**

Method of financing in which the immovable is used as collateral for debt repayment.

**Mortgage loan insurance**

Insurance taken out by the buyer of an immovable in order to guarantee the payment of the monthly instalments required to reimburse a mortgage loan in full.



Note: If the downpayment for the purchase of the property is less than 25% of the purchase price, the loan must be insured by the Canadian Mortgage and Housing Corporation (CMHC) or by GE Capital Mortgage Insurance Canada.

### **N** **Net proceeds from the sale**

Residual amount deriving from the sale of an immovable once all selling expenses have been deducted, i.e. mortgage loan balance, broker compensation, legal fees, tax adjustments, etc.

### **P** **Principal**

Amount of money borrowed through a mortgage loan.

### **Professional liability insurance**

Professional liability insurance is taken out by real estate brokers to protect themselves against the financial consequences of any fault, error, negligence or omission which their representatives or themselves could be responsible for in the course of their activities.

### **Promise to purchase**

Undertaking by a person to purchase an immovable under certain conditions set by that person. Contract through which the seller agrees to sell the immovable once he has accepted the promise to purchase.

### **R** **Real estate agent**

A natural person who holds a certificate issued by the Association des courtiers et agents immobiliers du Québec authorizing him to carry out brokerage transactions for the purchase, sale or rental of immovables.

A real estate agent is only authorized to act for and on behalf of a broker. He acts as a representative of the broker.

### **Real estate broker**

Natural person, partnership or legal person who holds a certificate issued by the Association des courtiers et agents immobiliers du Québec and authorizing them to carry out brokerage transactions on behalf of others for the purchase, sale, rental or exchange of immovable properties, against compensation. A real estate broker may employ real estate brokers or agents to represent him. The Act gives the broker full responsibility for the professional actions of the persons who represent him.

### **Real estate brokerage**

The professional activity of real estate brokers and agents. Brokerage transactions and professional acts carried out by real estate brokers and agents concerning the purchase, sale, rental or exchange of immovable properties. Profession which can only be practiced by holders of a certificate issued by the Association des courtiers et agents immobiliers du Québec.

### **Right of ownership**

Recognition which gives the owner of a property the right to use, enjoy and freely and fully dispose of the property, to the extent of the limits and conditions imposed by law.



### **Right of withdrawal**

Privilege which a natural person has to withdraw a real estate brokerage contract for the sell of his immovable within three days following receipt of the contract duplicate signed by both parties, unless there is a written waiver. After this period, if the contract is marked "irrevocable", it cannot be cancelled under any circumstance nor can the term be changed unless the broker or agent agrees.

Note: The right of cancellation applies when the contract involves a chiefly residential building containing less than five dwellings.

### **Selling expenses**

Additional expenses to be paid when selling an immovable, including mortgage loan balance, real estate broker compensation, notary, tax adjustments, etc.



### **Transfer duties (Welcome tax)**

Tax imposed by a municipality on any transfer of right of ownership on its territory.

### **Trust account**

Deposit account at a financial institution in which a real estate broker can deposit the amounts entrusted to him in the course of a real estate transaction.

When presenting a promise to purchase, the buyer often gives the listing broker a deposit on the purchase of the immovable. This deposit must be placed in a trust account.



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## Info ACAIQ

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