

# BROKER

PROFESSION

Mélanie Turgeon

## FROM PREPARATION TO ACTION



**ANNUAL GENERAL MEETING:  
MEETING THE CHALLENGES**

—  
**SERGE BROUSSEAU  
STEPS DOWN  
AS CHAIRMAN:  
REPORT AND MESSAGES**



**BUYER'S BROKER:  
WHAT TO DO WHEN YOUR CLIENT  
IS INTERESTED IN AN FSBO PROPERTY**

**FARCIQ:**  
A VERY  
SELF-ASSURED  
FUND!

**OACIQ**



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Organisme d'autoréglementation du courtage immobilier du Québec

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The advertisements published in it are intended for real estate and mortgage professionals. They are not the expression of any opinion, position or action of the OACIQ, whose main mission is to protect the public, according to the Act.

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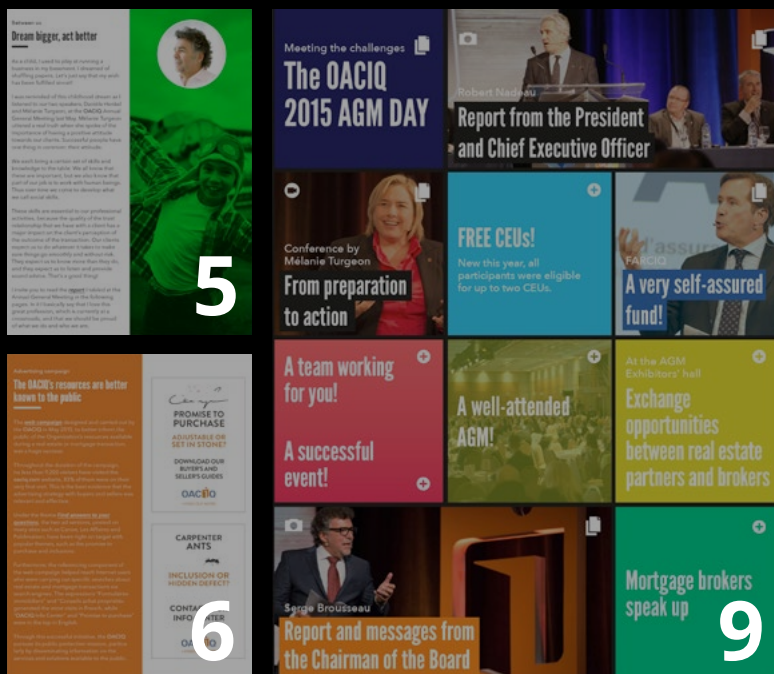
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Mélanie Turgeon, during her conference at the OACIQ 2015 AGM held on May 13, 2015, at the Boucherville Mortgage Hotel.



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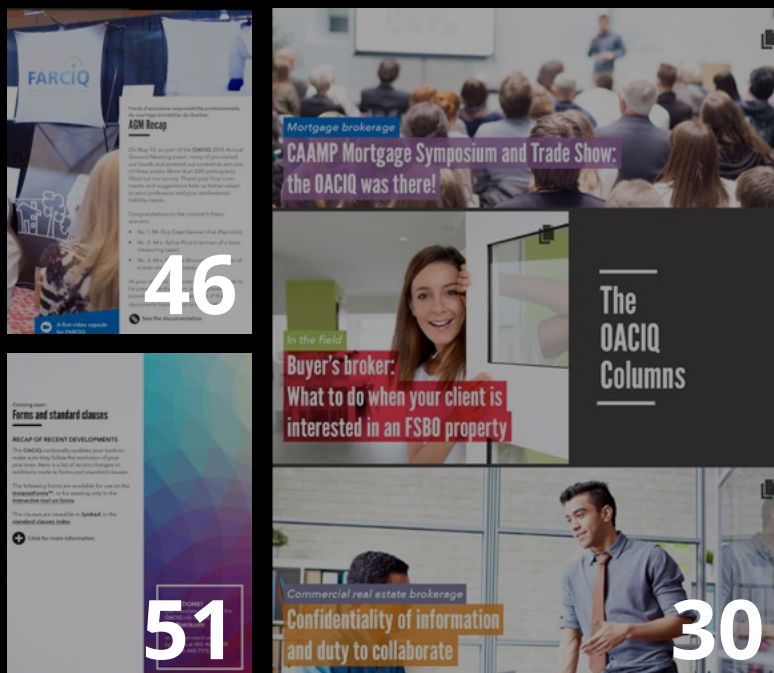
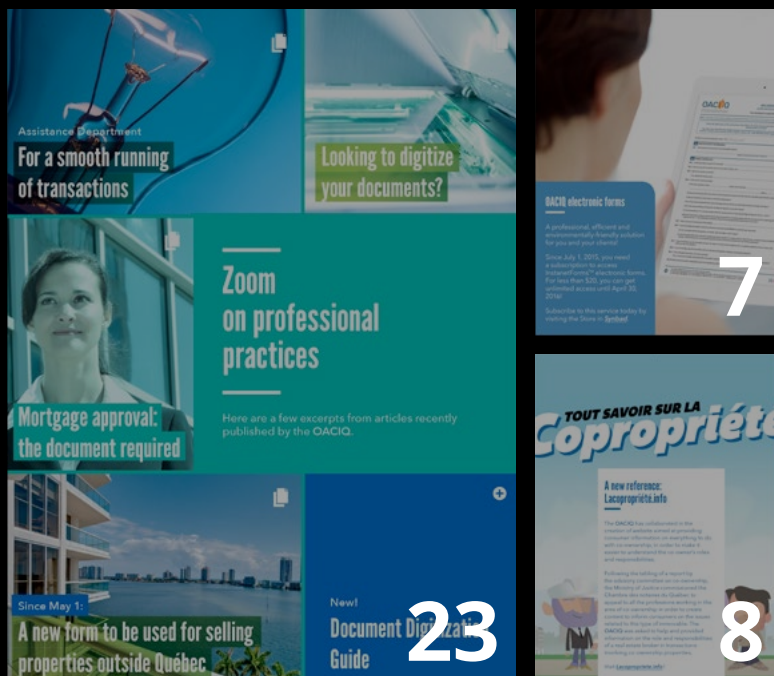
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Between us

## Dream bigger, act better

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As a child, I used to play at running a business in my basement. I dreamed of shuffling papers. Let's just say that my wish has been fulfilled since!

I was reminded of this childhood dream as I listened to our two speakers, Danièle Henkel and Mélanie Turgeon, at the **OACIQ** Annual General Meeting last May. Mélanie Turgeon uttered a real truth when she spoke of the importance of having a positive attitude towards our clients. Successful people have one thing in common: their attitude.

We each bring a certain set of skills and knowledge to the table. We all know that these are important, but we also know that part of our job is to work with human beings. Thus over time we come to develop what we call social skills.

These skills are essential to our professional activities, because the quality of the trust relationship that we have with a client has a major impact on the client's perception of the outcome of the transaction. Our clients expect us to do whatever it takes to make sure things go smoothly and without risk. They expect us to know more than they do, and they expect us to listen and provide sound advice. That's a good thing!

I invite you to read the **report** I tabled at the Annual General Meeting in the following pages. In it I basically say that I love this great profession, which is currently at a crossroads, and that we should be proud of what we do and who we are.

Best wishes for the future, and enjoy your summer!



**Serge Brousseau**  
Chairman of the Board of Directors  
OACIQ

## Advertising campaign

# The OACIQ's resources are better known to the public

The **web campaign** designed and carried out by the OACIQ in May 2015, to better inform the public of the Organization's resources available during a real estate or mortgage transaction, was a huge success.

Throughout the duration of the campaign, no less than 9,200 visitors have visited the **oaciq.com** website, 83% of them were on their very first visit. This is the best evidence that the advertising strategy with buyers and sellers was relevant and effective.

Under the theme **Find answers to your questions**, the two ad versions, posted on many sites such as Canoe, Les Affaires and Publimaison, have been right on target with popular themes, such as the promise to purchase and inclusions.

Furthermore, the referencing component of the web campaign helped reach Internet users who were carrying out specific searches about real estate and mortgage transactions via search engines. The expressions "Formulaires immobiliers" and "Conseils achat propriété" generated the most visits in French, while "OACIQ Info Center" and "Promise to purchase" were in the top in English.

Through this successful initiative, the OACIQ pursues its public protection mission, particularly by disseminating information on the services and solutions available to the public.



**PROMISE TO  
PURCHASE**

**ADJUSTABLE OR  
SET IN STONE?**

**DOWNLOAD OUR  
BUYER'S AND  
SELLER'S GUIDES**



**CARPENTER  
ANTS**



**INCLUSION OR  
HIDDEN DEFECT?**

**CONTACT OUR  
INFO CENTER**



## OACIQ electronic forms

A professional, efficient and environmentally-friendly solution for you and your clients!

Since July 1, 2015, you need a subscription to access InstanetForms™ electronic forms. For less than \$20, you can get unlimited access until April 30, 2016!

Subscribe to this service today by visiting the Store in **Synbad**.

[illegible]

# **TOUT SAVOIR SUR LA** **Copropriété**

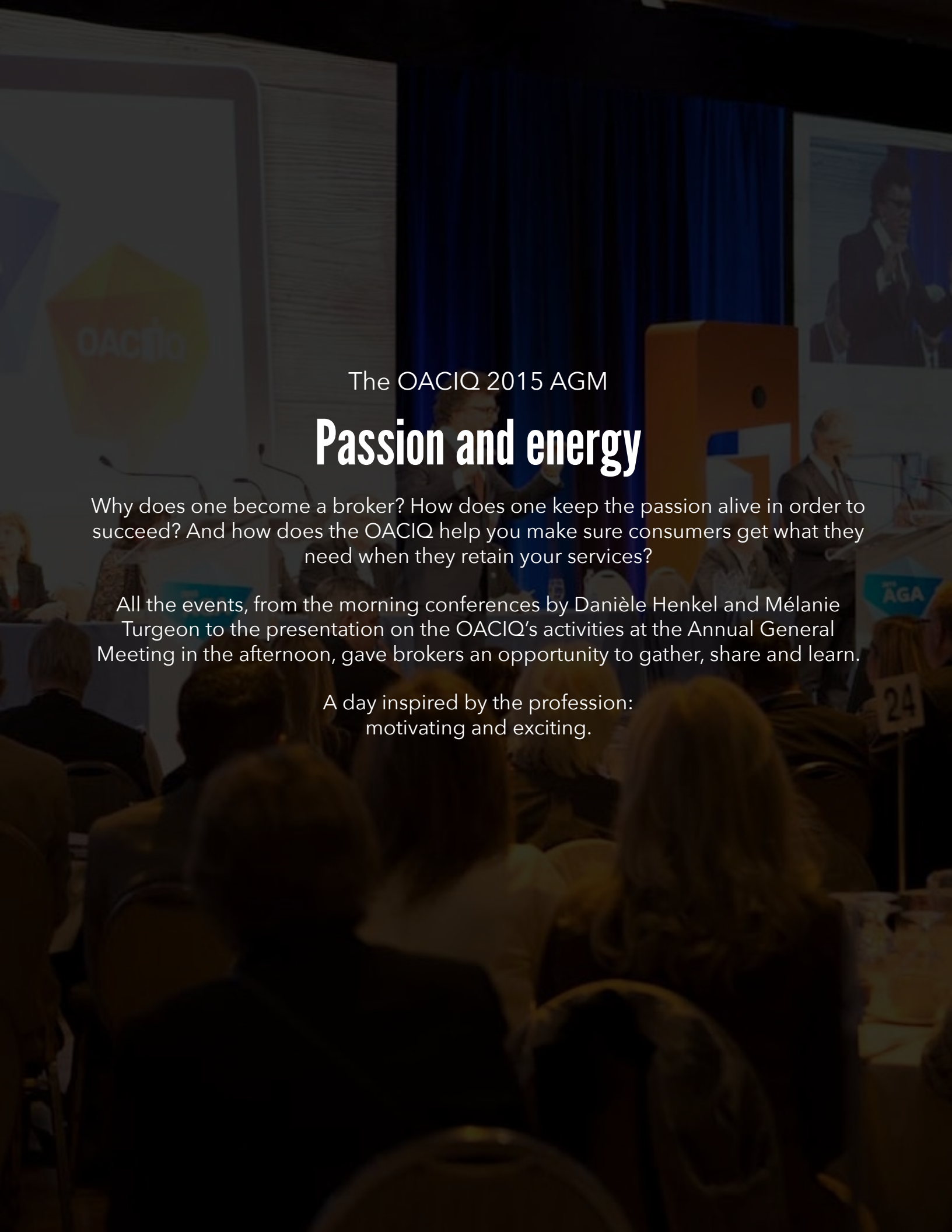
## **A new reference:** **Lacopropriété.info**

The **OACIQ** has collaborated in the creation of a website aimed at providing consumer information on everything to do with co-ownership, in order to make it easier to understand the co-owner's roles and responsibilities.

Following the tabling of a report by the advisory committee on co-ownership, the Ministry of Justice commissioned the Chambre des notaires du Québec to appeal to all the professions working in the area of co-ownership in order to create content to inform consumers on the issues related to this type of immovable. The **OACIQ** was asked to help and provided information on the role and responsibilities of a real estate broker in transactions involving co-ownership properties.

Visit [Lacopropriete.info](http://Lacopropriete.info)!





The OACIQ 2015 AGM

## Passion and energy

Why does one become a broker? How does one keep the passion alive in order to succeed? And how does the OACIQ help you make sure consumers get what they need when they retain your services?

All the events, from the morning conferences by Danièle Henkel and Mélanie Turgeon to the presentation on the OACIQ's activities at the Annual General Meeting in the afternoon, gave brokers an opportunity to gather, share and learn.

A day inspired by the profession:  
motivating and exciting.

Meeting the challenges

# OACIQ 2015 AGM DAY



Robert Nadeau

## Report from the President and Chief Executive Officer



Conference by  
Mélanie Turgeon

## From preparation to action



## FREE CEUs!

New this year, all  
participants were eligible  
for up to two CEUs.



FARCIQ

## A very self-assured fund!



A team working  
for you!



A successful  
event!



A well-attended  
AGM!



At the AGM  
Exhibitors' hall

## Exchange opportunities between real estate partners and brokers



Serge Brousseau

## Report and messages from the Chairman of the Board



## Mortgage brokers speak up



Conference by Mélanie Turgeon

## From preparation to action

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For years she flew down the slopes of the Alpine Ski World Cup, piling on the successes. Today, she applies her proven training methods to her activities as a real estate broker.

At the Annual General Meeting event, in a very popular conference, she shared some of the lessons learned on her way to the top so others could draw inspiration from them and reach their own peaks. A lot can be learned from this winner's experience and resilience.

### 1. TRAINING

She climbs the steps to the stage as she did the podium steps back in her glory days, relaxed and smiling, the very image of success. Everyone gathered at the Mortagne Hotel in Boucherville is awed by her success and curious to find out how this world champion managed to achieve her goals, and what they can learn from her.

But first, Mélanie Turgeon humbly says: "In this journey of many imperfections, my wish is that you leave here with a little something that is perfect for you."

Then the answer comes, simple and luminous: "Everything starts with a dream." She tells of the thrill she experienced, at age two and a half, feeling the wind on her face while flying down the ski slopes in her father's backpack. "Again! Again!", she would beg in his ear. These childhood emotions led to a dream that nurtured her ambitions and her motivation to grow.

The importance of dreaming, of being passionate and of remaining honest with oneself are recurring themes throughout Mélanie Turgeon's conference. Listening to her, one quickly understands that



success is attainable with the help of simple tools, but it requires complete dedication: you get out what you put in.

This champ's toolkit includes: observing successful people, "not to copy them, but to take what I need from them and accelerate my progress." Her role models? Skiers like Laurie Graham and Kate Pace, and astronaut Julie Payette. When reflecting on their success, she asked herself: "Why not me?"

Until the age of 14, she got a taste for victory by winning most of the competitions she entered. "For me at that time, success meant **winning** and nothing else. I hadn't yet learned to lose."

She took a hit when she joined the ranks of the Canadian junior ski team: for the first time in her life, she was not top dog. "To get to another level, I had to learn to cope with fear, frustration, and anger."

## 2. SUCCESS

She learned a lot from her failures, including the importance of keeping her eye on the prize: "During my journey to the world championship, I made a lot of mistakes, but I remained focused on my game plan."

The result: at the beginning of the 2000's, her faithful friend "victory" came back to her again and again. Then in 2003, Mélanie Turgeon experienced a major turning point. As she prepared to compete in her sixth Alpine World Ski Championship in St. Moritz, she was in what she calls her "performance zone," which she describes as follows: "It's a state of being that is the result of complete physical and mental preparation." This intense ritual allows her to focus on specific goals and to react in any situation. Fully ready, surrounded by a top team that encouraged and pushed her, she exuded confidence.

Achieving this level of focus allowed her to meet an unexpected challenge. Two days before her first competition, her back locked up and she was bent in two. Treatment relieved some of the pain, but she



could not train as planned. On the day of the event, she competed anyway and finished sixth!

This success pushed her to aim higher for the next event: "I told my trainer that I would win the run." During the following week of preparation, she remained focused. "I felt like my victory was written in the stars." When the time came, she flew down the course like never before. About one minute and 34 seconds later, she crossed the finish line as world champion.

"This victory was a consecration, the culmination of years of training," she says.

### **3. WHEN COURAGE RHYMES WITH BROKERAGE**

"As Félix Leclerc wrote, there is more courage than talent in most success stories," says Mélanie Turgeon. While her skiing successes are a source of admiration, the courage she had to muster afterwards, and which led her to her career as a broker, contains many life lessons.

What do you do once you have achieved the greatest victory of your life but your body can no longer follow and you have to hang up your skis? That's when Mélanie lost her bearings. "Every fibre of my being had been devoted to one thing; when I lost it, I lost myself," she reveals.

But the young woman who long ago had learned to dust herself off after a fall rebuilt herself bit by bit. "I reconnected with my inner athlete, and that's how I have managed to grow since. Motivation has to come from within."

After her career as an international athlete, she remained in the sport as coach. And recently, following in her brother's footsteps, she decided to get involved in another sport: real estate brokerage! "For less than a year now I have slowly been carving a place for myself with a friendly team in Mont-Tremblant." She is working under the Royal LePage banner.



Not surprisingly, her vision of real estate brokerage is greatly inspired by her past training methods:

"Brokerage is a contact sport, it's about relationships and daily challenges. You have to get up each day with a desire to get things done, and each of your actions eventually pays off."

"One of the keys to success is self-confidence, and one of the keys to self-confidence is preparation, in order to get into your performance zone," reiterates the new broker, who knows where she's headed.

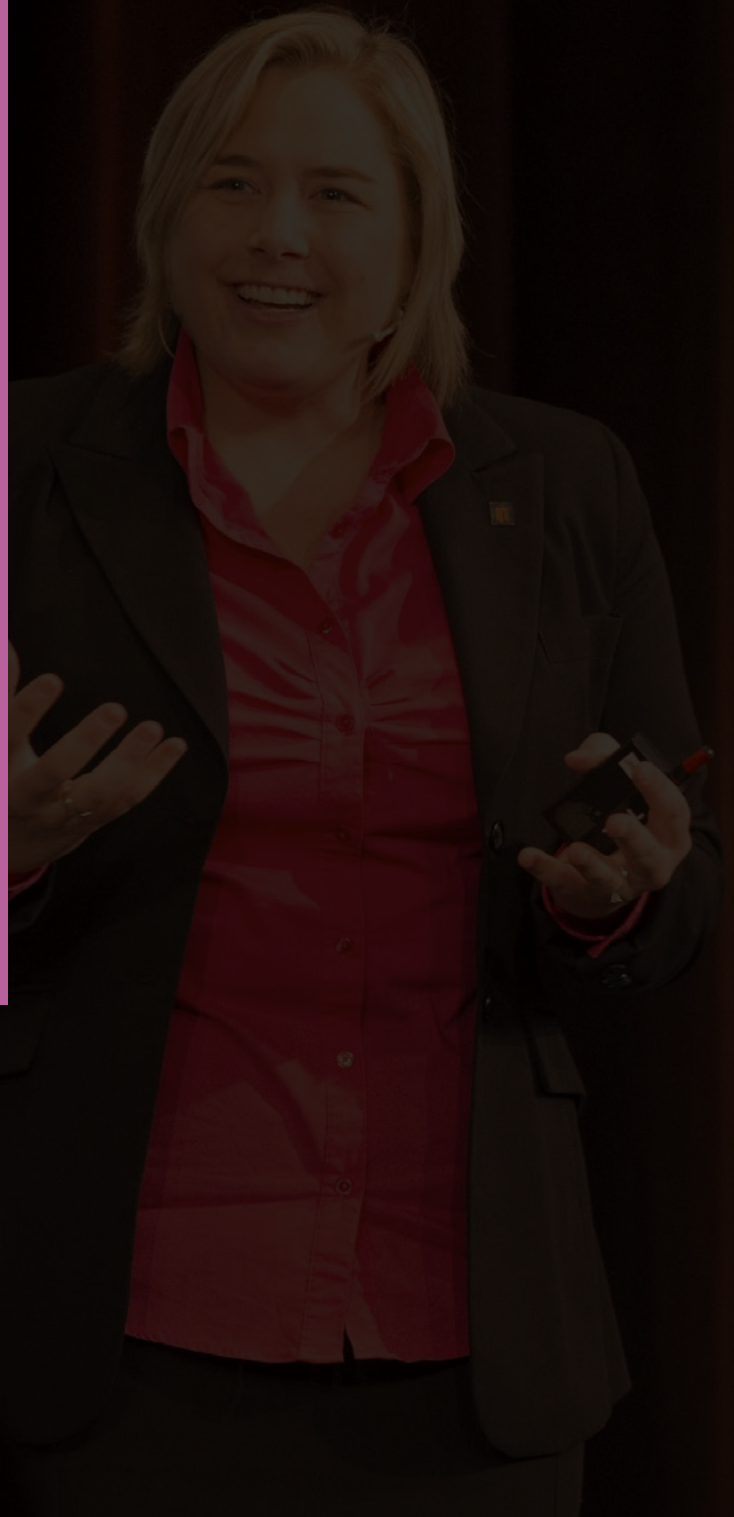
Based on the goals she has set for herself, Mélanie Turgeon has daily, weekly, monthly, and yearly game plans, and each day she looks for ways to reach her goals: "I am sowing today the seeds of where I want to be in the future."

In real estate, this recipe applies in thousands of ways, in her business plan for example.

"I periodically look at what I have achieved compared to my objectives. It helps me remain focused despite the unpredictable. I call that periodization: each day, one step forward, because everything I do adds up. At the end of the year, it's amazing how much ground I have covered!"

Her final message is a call to raise your own bar:

"Dare to be the best that you can be!" And when she exits from the stage, Mélanie Turgeon has achieved her goal of showing that, as long as you remain connected with what motivates you, and despite falls, obstacles and failures, success can be yours.





## Annual General Meeting


# Meeting the challenges

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The **OACIQ** Annual General Meeting is an opportunity for the Organization to inform brokers on its activities. For brokers, it's a chance to ask questions and share concerns. This year's instalment was true to form.

Thus the **OACIQ** was able to show some 664 participants (including 96 via webcast) that it has been, and still is, acting proactively in order to help them face the challenges they meet in their evolving practices. The brokers in attendance, for their part, embraced this direction and shared their own daily challenges.

### HIGHLIGHTS

- Serge Brousseau will soon step down as Chairman of the **OACIQ** Board of Directors.
  - President and Chief Executive Officer Robert Nadeau talked about the successful measures implemented to reduce file processing times and the direction that electronic forms are taking.
  - **FARCIQ** announced improved coverage and reduced insurance premiums.
  - Mortgage brokers reminded participants about best practices regarding respect for the exclusive mortgage contract.
- 



"Offering a wide variety of training options is one of our priorities. We have accredited 155 training activities so far. Our goal for 2015 is to exceed 250."

- Robert Nadeau

Robert Nadeau

## Report from the President and Chief Executive Officer

Robert Nadeau, President and Chief Executive Officer of the OACIQ, began by reporting on the status of certain issues raised by brokers at the previous General Meeting, before sharing a few highlights from 2014:

### **BROKER RETENTION RATE**

The broker retention rate has somewhat stabilized since 2010; brokers are now staying longer in the profession. As for agencies, a relative stability and an improved maintenance rate have been observed since 2010. The data is available on the page [Statistics](#) in *Synbad*.



## FORMS

Providing relevant and current forms is important for the Organization. Therefore:

- Since 2010, the **OACIQ** has invested \$1.8 million, including \$664,000 in electronic forms since 2012;
- The **OACIQ** currently has 23 paper forms and 53 electronic forms;
- The transition to electronic forms is continuing:
  - A subscription is now required to use them:
    - \$20 for the first year (July 1, 2015 to April 30, 2016);
    - \$24 a year starting May 1, 2016;
- Also, several new forms will be created between now and the end of the year.

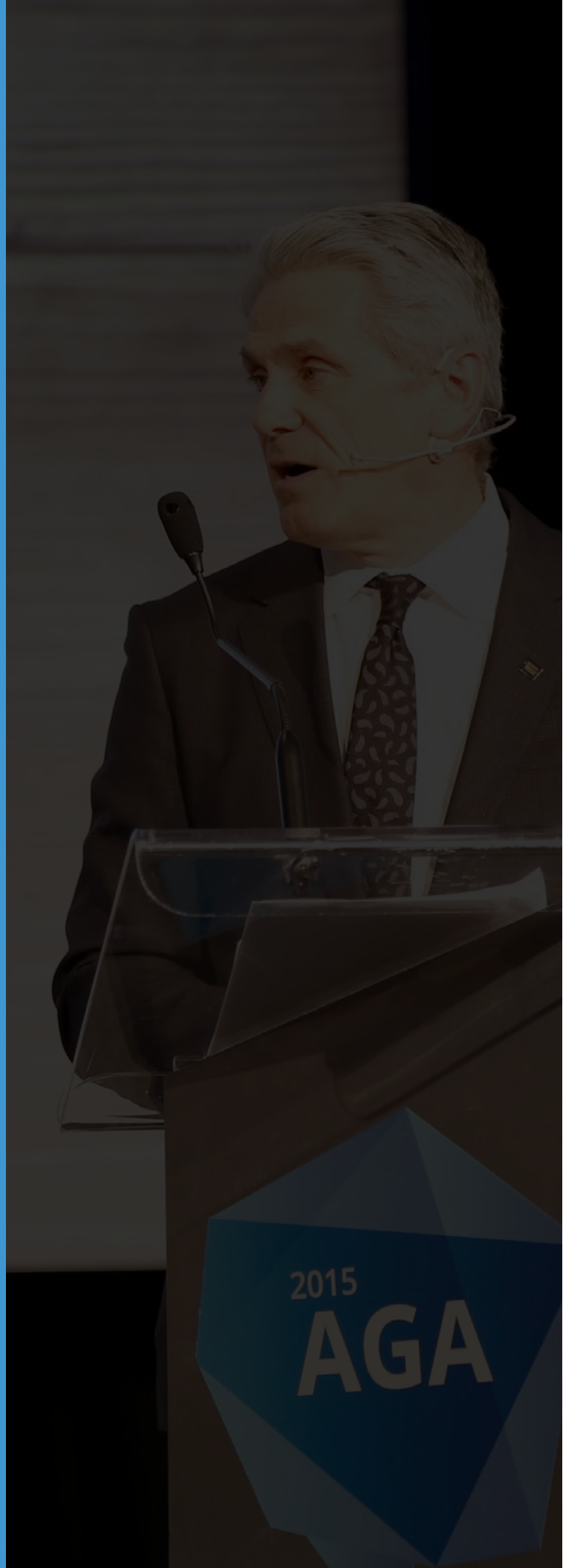
## CONTINUING EDUCATION PROGRAM

Following discussions, the real estate community came to the conclusion at the end of the year that a minimum of 18 CEUs over two years were needed to maintain and develop broker skills on an ongoing basis, and to increase the credibility of brokers in the eyes of the public. "We have accredited 155 training activities so far. Our objective for 2015 is to have more than 250," notes Mr. Nadeau. These training activities are offered by the **OACIQ**, the boards and other accredited providers. Brokers can choose from an array of options, and prices vary greatly.

## DRUG INSURANCE

Mr. Nadeau reminded participants that the Régie de l'assurance-maladie du Québec has the right to request a list of brokers and, pursuant to this right, the Régie sent letters to 3,000 brokers insured under the public system to make sure they were in fact entitled to do so.

After thanking the employees for their dedication and loyalty, and the directors for their support, Mr. Nadeau paid a heartfelt tribute to Serge Brousseau, praising his efforts to get brokers recognized and appreciated as professionals by the public.





"Collaboration is real estate brokerage's great strength."

- Serge Brousseau



## UNDER THE CHAIRMANSHIP OF SERGE BROUSSEAU

- FARCIO was created, providing brokers with professional liability insurance at an affordable cost;
- Various forms were introduced, including the *Exclusive brokerage contract - Purchase* and the *Declarations by the seller of the immovable*;
- A Real Estate Summit, bringing together the driving forces of real estate brokerage, highlighted the need to work together on the future of real estate and mortgage brokerage, which led to the creation of working groups;

Serge Brousseau

## Report and messages from the Chairman of the Board

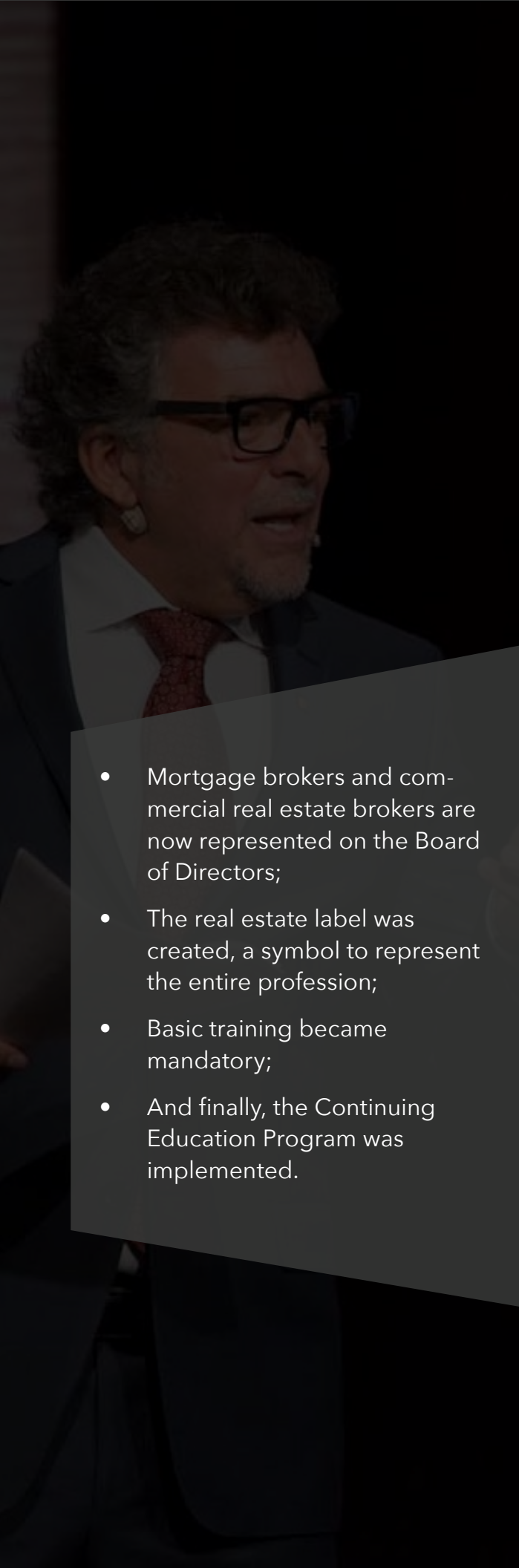
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After 17 years on the OACIQ Board of Directors, including nine as Chairman, Serge Brousseau has become a familiar face among his peers, as participants were reminded with a photo montage presented by Sofy Bourret, VP Communications. But while this face has changed only slightly over the years, the same cannot be said of the face of real estate brokerage, which has been greatly transformed.

Probably inspired by the morning's conferences, where Dragon Danièle Henkel and 2003-world-alpine-skiing-champ-turned-broker Mélanie Turgeon shared their dreams and their motivations, the Chairman told it like it is, as always, and, with his usual verve, showed that he still takes the success of our profession to heart.

Highlights of his messages to brokers:

- Every day, the OACIQ must navigate between two poles: protecting the public and providing tools to brokers. Not an easy task!
- One of the problems in our profession is inconsistent practices. We all have different realities, and the OACIQ's goal is to standardize these practices.



- Mortgage brokers and commercial real estate brokers are now represented on the Board of Directors;
- The real estate label was created, a symbol to represent the entire profession;
- Basic training became mandatory;
- And finally, the Continuing Education Program was implemented.

- If there is one thing we did successfully, it's **FARCIQ!** We were criticized before we set it up. But in 2006 the majority of brokers paid \$1,000. In 2015, they paid under \$400. You do the math!
- The Real Estate Summit gave us a chance, among other things, to ask ourselves questions about the future of our profession.
- We must see the new competition as a challenge, get out of our comfort zone and think about the tools we need to meet consumer expectations.
- We have to become better than our clients and work together to make sure young brokers are still around ten years from now.
- 18 CEUs in two years is a minimum! The person who finds this difficult is the person who needs it most! Some of you asked us to introduce exams, but we have to start somewhere.
- Collaboration is real estate brokerage's great strength.

"It doesn't mean we always have to agree. And we don't have the answer to everything, but we try to make good decisions. We have many of those decisions still to make, both collectively and individually," he concluded.

Serge Brousseau's speech ended to warm applause.

Supported by a dynamic Board of Directors, Serge Brousseau mapped out the path that brokerage must follow if it wants a chance to grow, and this path can be summarized by these words: competence, adaptability and collaboration.

A man with brown hair, wearing a dark suit, a striped shirt, and a patterned tie, is speaking at a podium. He is holding a piece of paper in his hands. A small microphone is clipped to his lapel. In the background, a large screen displays the text "Fonds d'assurance du courtier immobilier".

Fonds d'assurance  
du courtier immobilier

FARCIO

## A very self-assured fund!

The Chairman of the Board of **FARCIO**, M<sup>e</sup> Michel Léonard, reported on the very positive results of the Fund's activities.

For the fourth consecutive year, the annual insurance premium went down on May 1. In addition, the premium is now modulated based on the risk associated with the type of licence, which is new. Thus the premium is \$345 for real estate agencies and brokers and for mortgage agencies, and \$245 for mortgage brokers. The deductible remains the same at \$2,500 in order to maintain a meaningful form of accountability.

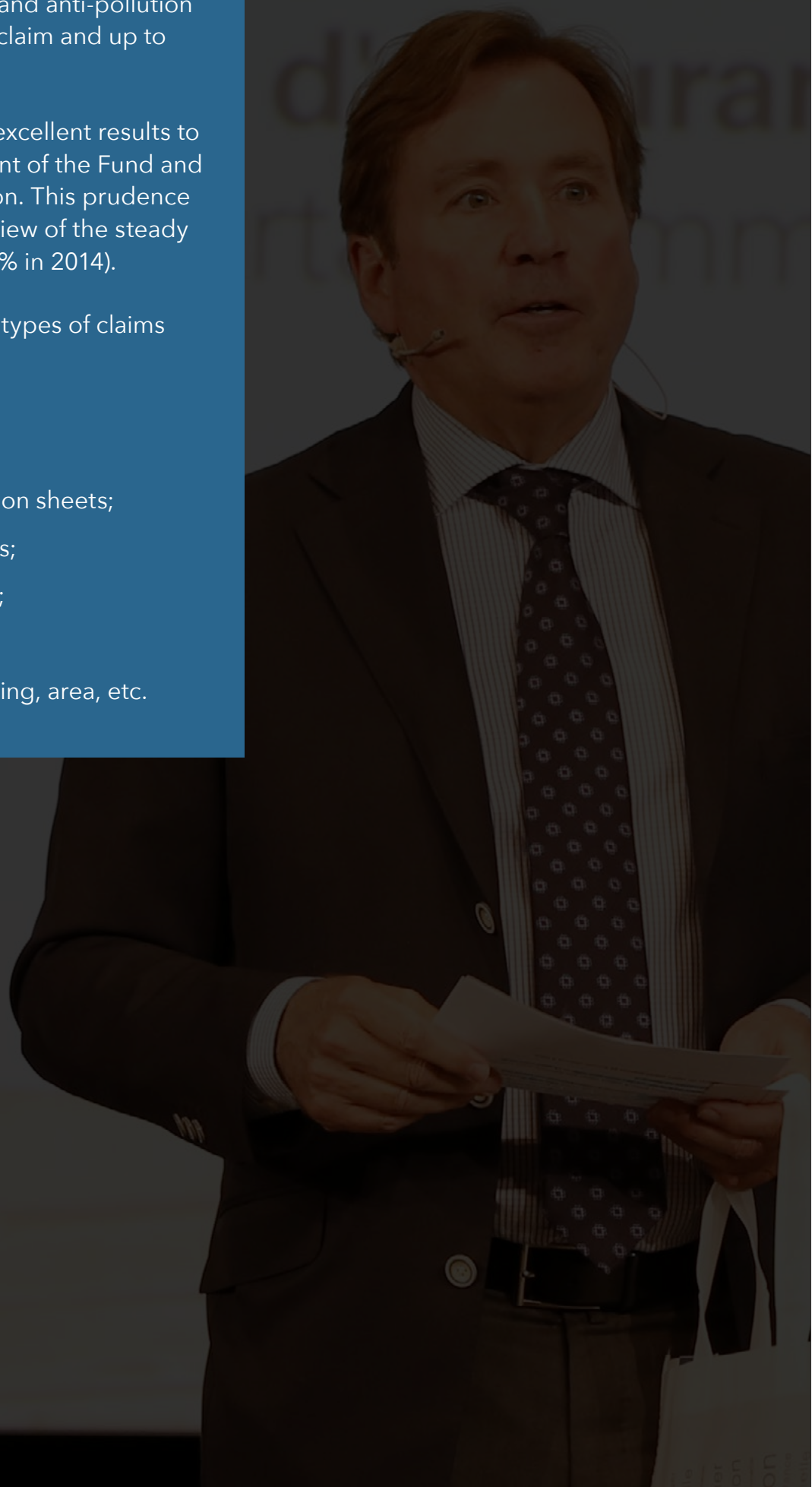
It is to be noted that the **FARCIO** actuary has examined the possibility of modulating the premium based on the number of claims, but the results were not significant as to risk.

More good news: The introduction of insurance coverage for mould, pollutants and anti-pollution measures of up to \$25,000 per claim and up to \$100,000 per coverage period.

The President attributes these excellent results to sound and prudent management of the Fund and to the efforts of the Organization. This prudence is especially important now in view of the steady rise in the number of claims (10% in 2014).

M<sup>e</sup> Léonard also listed the main types of claims received:

- Misrepresentation;
- Hidden defects;
- Errors on detailed description sheets;
- Failure to follow instructions;
- Sale without legal warranty;
- Sanitary installations;
- Errors relating to taxes, zoning, area, etc.



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Assistance Department

**For a smooth running  
of transactions**



**Looking to digitize  
your documents?**



## Zoom on professional practices

**Mortgage approval:  
the document required**

Here are a few excerpts from articles recently published by the OACIQ.



Since May 1:

**A new form to be used for selling  
properties outside Québec**

New!



**Document Digitization  
Guide**



Assistance Department

## For a smooth running of transactions

---

Here are some tips to better handle conflicts between brokers. Following the steps below will ensure optimal management of your assistance request, if applicable.

### CONFLICT SITUATIONS

#### **Brokers working for the same agency:**

Should a problem with a broker working for the same agency as you occur, the first thing to do is to inform your agency executive officer. The latter is empowered to take first steps to settle the situation. Indeed, we noted that through the growing involvement of agency executive officers, most conflicts were resolved quickly and efficiently. However, if your agency executive officer's action does not resolve the conflict, a *Request for assistance* form, completed by you and countersigned by your executive officer, can be sent to the **OACIQ**.



### **Brokers working for different agencies:**

Problems between brokers of different agencies can sometimes be more difficult to settle, even with the help of your agency executive officer.

If this is about a collaboration problem and it is urgent to take action, concerning for example an answered request for a visit or appointment to present a promise to purchase, the Assistance Department noted that the following process yielded excellent results.

For the full text:



**Synbad, article No. 200924.**

A new guide for successful document digitization

## Looking to digitize your documents?

A new guide entitled **Digitization: Go for quality and document your process** is now available online in **Synbad**. By following these step-by-step instructions, you will make sure that your documents are properly scanned. The resulting digitized documents can then replace your paper documents and retain their legal value, in accordance with the requirements of the *Act to establish a legal framework for information technology*.

For the full text:



**Synbad**, article No. 200747.



## Mortgage approval: the document required

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In accordance with clause 6.2 of all promise to purchase forms, the buyer must provide the seller with a copy of the undertaking by a hypothecary lender to grant the amount of the loan applied for. This undertaking must be real and without conditions. But exactly what document must the buyer provide to the seller to satisfy clause 6.2?

The document confirming the lender's undertaking must contain the following information as a minimum:

- The name and address of the lender;
- The name(s) of the borrower(s);
- The address of the immovable concerned by the application;
- The amount of the loan or the fact that the loan is approved for an amount equal to or higher than the amount indicated in the promise to purchase;
- The name of the loan officer and the financial institution's contact information (no signature required).

For the full text:



**Synbad**, article No. 200783.



As of May 1

## A new form to be used for selling properties outside Québec

As of May 1, 2015, the *Annex Sale - Residential immovable outside Québec* form shall be used with any mandatory brokerage contract form for the sale of a residential immovable located outside the province.

One of the objectives of the *new Annex Sale - Residential immovable outside Québec* form is to implement the important recommendations made in the article **Marketing an out-of-province property** for taking such a brokerage contract.

For the full text:

 **Synbad, article No. 200728.**

Also read

 **Synbad, article No. 200727.**

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*Mortgage brokerage*

## CAAMP Mortgage Symposium and Trade Show: the OACIQ was there!



*In the field*

## Buyer's broker: What to do when your client is interested in an FSBO property

## The OACIQ Columns



*Commercial real estate brokerage*

## Confidentiality of information and duty to collaborate



*Column on mortgage brokerage*

## **CAAMP Mortgage Symposium and Trade Show: the OACIQ was there!**

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On May 5, 2015, the Mortagne Hotel in Boucherville was the site of **CAAMP**'s (Canadian Association of Accredited Mortgage Professionals) Mortgage Symposium and Trade Show.

This event gave mortgage brokers an opportunity to update their knowledge and share best practices in the field of mortgage brokerage through a series of workshops and conferences. Claudie Tremblay, Executive Vice President of the **OACIQ**, reported on the various developments in the areas of continuing education and forms. Representatives from the Organization were also on hand at the **OACIQ** booth to answer broker questions and tell them about the resources available to them.

Attendance at this event was eligible for three specialized content CEUs.

## **CHANGES TO THE RECOMMENDED FORM EXCLUSIVE BROKERAGE CONTRACT - LOAN SECURED BY IMMOVABLE HYPOTHEC**

Following the recommendations of the Working group on mortgage brokerage, clause 5.3 of the recommended form Exclusive brokerage contract - Loan secured by immovable hypothec (BCH) was reviewed and improved. The following changes were made to this clause, which concerns the disclosure of the existence of a remuneration agreement:

- rewording so the statement now emanates from the borrower, who acknowledges having been informed of the existence of such an agreement;
- replacement of the term “financial institutions” by the broader term of “lender”;
- in addition to the lender, a list has been added of persons identified as the most likely to pay remuneration to the agency or broker following a client “referral” in order to cover all potential remuneration sharing scenarios that must be disclosed under the regulations; and
- adding of a space to allow the agency or broker to add to the existing list, if necessary, any other category of professionals or companies from which he could receive remuneration.

The amended version of the form Exclusive brokerage contract - Loan secured by immovable hypothec can be viewed using the **Interactive tool on forms** in **Synbad**. It has been available for use on the **InstanetForms™** platform since the beginning of May.

Comments, information, suggestions? Write to us at **[info@oaciq.com](mailto:info@oaciq.com)**.

**To prevent illegal mortgage brokerage and protect the parties**

### **THE OACIQ IS ASKING FOR THE COLLABORATION OF LENDING INSTITUTIONS**

Last January, the **OACIQ** sent a letter to the vast majority of financial institutions seeking their collaboration to prevent certain illegal mortgage brokerage practices.

The letter signed by Robert Nadeau, President and Chief Executive Officer, aims at reiterating the scope of application of the *Real Estate Brokerage Act* (REBA). The latter provides that anyone who, in return for compensation, engages in a brokerage transaction relating to a mortgage loan must have a real estate or mortgage broker or agency licence issued by the **OACIQ**, on pain of a penalty. However, although financial institutions, their employees and exclusive representatives benefit from an exception under the REBA, building contractors or real estate developers, among others, do not enjoy an exception in this regard.

For this reason and for the protection of all the parties engaged in a mortgage transaction, the **OACIQ** recommends that lending institutions consult the register of brokers and agencies to make sure they are doing business with an **OACIQ** licence holder.

**[Click here](#)** to read the letter.



(Article No. 200617 published on **Synbad.**)




*In the field*

**BY THE OACIQ INFO CENTRE**

*This column presents situations that come from actual cases referred to the OACIQ Info Centre, as well as concrete examples of things one should and should not do.*

## **Buyer's broker: What to do when your client is interested in an FSBO property**

Mrs. Desjardins has entrusted the sale of her property to Mr. Archambault, an experienced broker who comes highly recommended. He has undertaken to find a new property for her that is better suited to her needs as a young retiree.



Mr. Archambault shows Mrs. Desjardins several properties. So far she has not been wowed by any of the properties she has seen. She secretly wishes for a property with a flower garden where she could devote all her time to her passion for gardening.

At a horticultural workshop, she meets Mr. Larose. His wife and he are getting ready to move to Florida permanently and have put their house up for sale on their own. Their only regret is leaving behind their beautiful garden in which they have invested so much. That's all it takes for the stars to line up. The three agree on a visit the next day. Mrs. Desjardins immediately contacts her broker, who agrees to accompany her.

As usual, Mr. Archambault starts by checking if the property is also listed by a broker. Although it is not, there is a prior listing, which he reviews. He also selects comparables in the neighbourhood. He then checks the Québec Land Register, where he notes that the property has an easement in favour of Hydro-Québec.

Mr. Archambault realizes that he is doing all this work without having an agreement with either party concerning the payment of his remuneration. How can he make sure he will get paid? Can he sign a brokerage contract with the sellers to guarantee his entitlement to remuneration? Or can he include a statement in the promise to purchase to the effect that the remuneration due to the buyer's broker is payable by the seller?



## THE BROKER DECIDES TO CONSULT AN AGENT FROM THE OACIQ INFO CENTRE.

The information agent explains that first, since it is a sale by the owner of a chiefly residential immovable containing less than 5 dwellings, the buyer's broker, in order to secure his remuneration, must sign an exclusive brokerage contract to purchase (BCP) with the buyer he represents. Thus the buyer will be bound to the broker regarding remuneration and service exclusivity.

He also reminds him that since July 1, 2012, a buyer's broker, whether or not bound by a brokerage contract to purchase, cannot sign a brokerage contract to sell, even a short-term one, with the seller. The broker must avoid placing himself in a conflict of interest at all times. Consequently, he cannot enter into a contract with the seller while representing the interests of the buyer.<sup>1</sup>

Mr. Archambault cannot sign a simple remuneration agreement with the seller without a brokerage contract, nor is he authorized to negotiate or demand remuneration via a promise to purchase binding a seller and a buyer whose object is the sale of an immovable.<sup>2</sup>

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<sup>1</sup> Sections 2, 14 and 15 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising*.

<sup>2</sup> Section 6 of the *Regulation respecting contracts and forms* stipulates that "Any amendment made to a contract, transaction proposal or form by a licence holder must pertain only to the object of the terms and conditions of that contract, transaction proposal or form." Therefore the sharing of remuneration between brokers cannot be added to the form.



## **SIGNING OF THE BROKERAGE CONTRACT TO PURCHASE**

Mrs. Desjardins is hesitating to sign the brokerage contract to purchase presented by Mr. Archambault. The broker explains that he will make all necessary verifications and put them in writing, draft all transaction documents in her best interest, negotiate the price for her, advise her, and give her assistance through all the steps of the transaction.

Mrs. Desjardins accepts to sign a brokerage contract to purchase with her broker after the broker reads the clauses of the contract and they agree on his remuneration together. He then gives his client a duplicate of the contract bearing original signatures. Mr. Archambault vows in future to always begin any business relationship with a buyer by signing a proper brokerage contract.




## VISIT AND IDENTIFICATION OF THE PARTIES

As soon as he arrives on the premises and greets the sellers, Mr. Archambault informs them that he represents Mrs. Desjardins as broker and will also provide fair treatment to them.<sup>3</sup> He explains that he can inform them with objectivity regarding any element pertaining to the transaction and put their wishes in writing, but that he represents Mrs. Desjardins' interests.

The visit of Mr. Larose's property is a success. Mrs. Desjardins falls in love with this charming property, which features a beautiful garden. Before going back to his agency, where Mrs. Desjardins will join him to draft a promise to purchase, Mr. Archambault proceeds, as instructed by the information agent, with the mandatory identity verification<sup>4</sup> of the sellers using the **Identity verification** form. Using the **Quick reference guide - Residential brokerage - brokerage contract / Listing record missing documents**, the broker obtains the documents in the seller's possession for his file, after which they complete the **Declarations by the seller of the immovable** form together.

Mr. Archambault explains to the sellers that since July 1, 2012, the mandatory form *Declarations by the seller of the immovable* must be used for the sale by a natural person of a chiefly residential immovable containing less than 5 dwellings. The seller must provide the information to the best of his knowledge and in good faith. It is a question of transparency and protection for the parties to the transaction. It minimizes the risks of lawsuits against the seller, and allows the buyer to gain a better understanding of the immovable



and to offer an appropriate price. Mr. Archambault tells the sellers that if they do not accept to complete this form before they get the promise to purchase, the buyer will have to include a condition requiring the seller to provide it within a given period (clause 9.1 of the *Promise to purchase* form).

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<sup>3</sup> Section 16 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising* stipulates that “A licence holder representing a party must as soon as possible inform all unrepresented parties that the holder has an obligation to protect and promote the interests of the party represented and to act towards all other parties in a fair and equitable manner.”

<sup>4</sup> Section 29 of the *Regulation respecting brokerage requirements, professional conduct of brokers and advertising* stipulates that a broker must verify the identity of any party to a transaction, except that of the other party if the latter is represented by a licence holder.

## **DRAFTING OF THE PROMISE TO PURCHASE AND CLAUSE R2.5**

Back at his agency, Mr. Archambault contacts the **OACIQ** Info Centre again, as his client wishes to finance the remuneration indicated in the brokerage contract to purchase. Since the property is being sold by its owner, an information agent confirms that the broker may receive his remuneration at the notary's from the proceeds of the sale.

He also reminds the broker to make sure that the seller has enough equity in his property, since the amount due to the broker will be paid “[...] *from the available sums payable to the SELLER after payment of any prior or hypothecary claim and any disbursements or fees incurred by the notary to cancel these claims.*”



The information agent then summarizes in a few points what must be taken into consideration when drafting the promise to purchase, and informs the broker that he can use the **Interactive tool on forms** available in **Synbad** at any time.

1. The price indicated in **clause 4.1** of the *Promise to purchase* will be the offering price including the remuneration due to the agency (or the broker acting on his own account) of the buyer under the *Brokerage contract - Purchase*, including taxes thereon;

2. Under **clause 13.1** of the *Promise to purchase*, it will be important to identify the number of the *Annex R - Residential immovable* so that it will become an integral part of the *Promise to purchase*, as well as the form *Declarations by the seller of the immovable* and any other related document, if applicable;

3. Since the seller is not bound by a brokerage contract to sell, it is not necessary to complete **clause 11.4** of the *Promise to purchase*. The name of the agency or the broker representing the buyer must never appear under this clause;

4. Under **clause R 2.5** of *Annex R - Residential immovable*, you must enter the same remuneration percentage or the same lump sum amount than what appears in the *Brokerage Contract - Purchase*;

5. You will need to explain to the seller and to your client that the price offered includes your share of remuneration, and specify the portion that will be payable to the seller once these sums are deducted, exactly as you would have if you had been the seller's broker in a situation where there is no brokerage contract to purchase. To make sure the seller understands this clearly, you must put this detailed information in writing under **clause 12.1** of the *Promise to purchase* or under **clause R 3.1** of the *Annex R - Residential immovable*.



## CAN THE BUYER'S BROKER PUT A "SOLD" SIGN IN FRONT OF THE PROPERTY?

Mr. Archambault has one last question regarding what he is allowed to advertise. Can he put his sign marked "Sold" in front of the sellers' property? The information agent tells Mr. Archambault that in the case of an immovable sold by the owner, he must have a written agreement (separate from the promise to purchase) with the seller to publicize the sale of the property.

The broker may negotiate such an agreement only after being authorized to do so by the buyer under the brokerage contract. The broker can then put up his sign until the signing of the deed of sale, as in the case where the buyer's broker gets permission from the broker who has the brokerage contract to sell.

The information agent concludes by informing Mr. Archambault that in any case he cannot simply put a "Sold" sign. What he can say is "Purchased through \_\_\_\_\_, real estate broker with the \_\_\_\_\_ agency."

The broker thanks the **OACIQ** Info Centre agent for all this relevant information, which will be useful to him not only in this case but also for the future.



*Column on commercial real estate brokerage*

## Confidentiality of information and duty to collaborate

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The commercial real estate broker often faces a dilemma when it comes to respecting his duty to collaborate with other brokers, while ensuring that sensitive information regarding the sale of a business is not disclosed to a competitor, for instance. Since all brokers are subject to the duty to collaborate, the broker who engages in commercial transactions will not evade his duty to share information and to agree in advance to share remuneration with a buyer's broker. So how to reconcile everything?

The compromise often lies in the signing of a confidentiality agreement by the buyer for the non-dissemination of information. Obviously, such an agreement should be used under special circumstances required by the seller, but should not be used systematically. When such circumstances exist, the handling of this document is the seller's broker's responsibility. In addition, various problems may arise from a misuse of this document.




## COLLABORATION

For example, a clause included in the confidentiality agreement requiring the buyer to pay the remuneration of his own broker himself goes against collaboration duties set out in the *Regulation brokerage requirements, professional conduct of brokers and advertising*. The same applies to the refusal to agree in advance on remuneration sharing by invoking the non-receipt of the signed agreement.

## TRANSMISSION OF INFORMATION OR BUYERS' NAMES

Regarding information transmission, the classic scenario is to refuse to disclose information before signing the confidentiality agreement and obtaining the buyer's name. Sometimes following receipt of the signed document, the seller's broker refuses to exchange information by claiming to represent that buyer. In some other cases, it's the seller who requires obtaining the buyer's identity before sharing information. Unveiling the buyer's identity often lies at the core of the issue.

The parameters of a sound practice dictate that the requirement stem from a seller's formal request that should be confirmed as a condition required in a brokerage contract or agreement with the retained broker. The aim is to know the identity of prospective buyers to reassure the seller about the possible use of information transmitted. In this case, the seller's broker will submit such an agreement to the buyer's broker who will have it signed by his prospective buyer and keep it on record before submitting information. In most cases, this will meet sellers' requirements.



Furthermore, in exceptional circumstances where the seller is keen to obtain the names of prospective buyers before sending documents to them, it would be normal for a buyer's broker to require a written undertaking from the seller's broker indicating that the latter will not represent any of the buyers whose information is disclosed to him for this transaction. In the rare event where the seller refuses to send information to a specific buyer because he definitely does not wish to sell to this person, the seller's broker shall keep written evidence of the refusal on record and notify the buyer's broker.

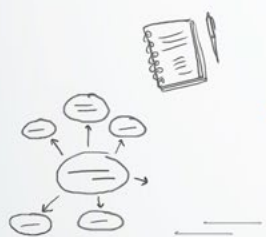
Keep in mind that a broker acting in good faith, in a spirit of collaboration, helps facilitate communication and the smooth completion of transactions. This will strongly encourage clients to enlist his or her professional services.

**Comments, information, suggestions?**  
Write to us at [info@oaciq.com](mailto:info@oaciq.com).



(Article 200950 published on *Synbad* on May 19, 2015.)

CONTINUING EDUCATION PROGRAM > 2015-2017



# THE POWER TO DO MORE

*"Training makes us feel more secure in our business and with our clients. It also makes us perform better and even more prepared for that special question our client may ask!"*



> **JOSIE GAMMIERO**  
President, Royal LePage Cité, Laval



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## THE LABEL ADOPT IT

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## AGM Recap

On May 13, as part of the **OACIQ** 2015 Annual General Meeting event, many of you visited our booth and entered our contest to win one of three prizes. More than 200 participants filled out our survey. Thank you! Your comments and suggestions help us better adapt to your profession and your professional liability needs.

Congratulations to the contest's three winners:

- No. 1: Mr. Guy Cayer  
(winner of an iPad mini);
- No. 2: Mrs. Sylvie Picard  
(winner of a laser measuring tape);
- No. 3: Mrs. Martine Bissonnette  
(winner of a laser measuring tape).
- At your request, for those who were unable to be present at the event, we are pleased to provide downloadable versions of the documents handed out at the AGM.



A first video capsule  
for FARCIQ



See the documentation



Fonds d'assurance responsabilité professionnelle  
du courtage immobilier du Québec

We are happy to present our very first capsule, which was introduced at the AGM.

Several videos will be available in the course of the year to provide more information on your professional liability insurance, as well as prevention tips to help you avoid professional liability claims. Look for our columns in your *Pro@ctive* newsletter!

For questions or comments concerning your professional liability insurance, write to us at [assurance@farcIQ.com](mailto:assurance@farcIQ.com) or visit our website at [farcIQ.com](http://farcIQ.com).



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the guide

# Prevention Guide



# MY PROFESSIONAL LIABILITY...

## MY PREVENTION ACTIONS!



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the booklet



# Summary

## Professional liability insurance policy 2015-2016



Download  
the summary

### Insured members

All brokerage licence holders and real estate and mortgage agencies

### Policy period

**May 1, 2015 to May 1, 2016**

at 00:01 Eastern time at the address of the Insurer

### Limits of coverage

**\$1,000,000** per loss

**\$2,000,000** per policy period

Sub-limit for mould, pollutants and antipollution measures

**\$25,000** per loss

**\$100,000** per policy period

### Premium per policy period

**\$345** for mortgage agencies  
for real estate agencies  
for real estate brokers

**\$245** for mortgage brokers

(established in accordance with subsection 5.09 of the policy)

### Deductible

**\$2,500** per loss

Coming soon

## Forms and standard clauses

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### RECAP OF RECENT DEVELOPMENTS

The OACIQ continually updates your tools to make sure they follow the evolution of your practices. Here is a list of recent changes or additions made to forms and standard clauses.

The following forms are available for use on the ***InstanetForms™***, or for viewing only in the ***Interactive tool on forms***.

The clauses are viewable in ***Synbad***, in the ***standard clauses index***.



Click for more information

### QUESTIONS?

Don't hesitate to contact the OACIQ Info Centre at [\*\*\*info@oaciq.com\*\*\*](mailto:info@oaciq.com).

You can also reach us by phone at 450-462-9800 or 1-800-440-7170.

## FORMS

## CHANGES OR ADDITIONS

### EXCLUSIVE BROKERAGE CONTRACT – COMMERCIAL LEASE (BCC; recommended form)

Available on [InstanetForms™](#)  
since March 4, 2015

Clause 4.3 amended: the clause now specifies that the lessee must remit to the lessor any tax to be collected by the lessor that may be imposed as a result of the leasing of the premises.

### PROMISE TO LEASE – COMMERCIAL (PLC; recommended form)

Available on [InstanetForms™](#)  
since March 4, 2015

Clause 4.3 amended: the clause now specifies that the lessee must remit to the lessor any tax to be collected by the lessor that may be imposed as a result of the leasing of the premises.

### COUNTER-PROPOSAL – COMMERCIAL LEASE (CPC; recommended form)

Available on [InstanetForms™](#)  
since March 4, 2015

**New form:** may be used to reply to recommended form Promise to lease – Commercial.

### ANNEX SALE – RESIDENTIAL IMMOVABLE OUTSIDE QUÉBEC (ASQ; mandatory form)

Available on [InstanetForms™](#)  
since May 1, 2015

**New form:** must be used with any mandatory brokerage contract form for the sale of a residential immovable located outside the province.

### EXCLUSIVE BROKERAGE CONTRACT – LOAN SECURED BY IMMOVABLE HYPOTHEC (BCH; recommended form)

Available on [InstanetForms™](#)  
since May 1, 2015

#### Clause 5.3 amended:

- reworded so the statement now emanates from the borrower, who acknowledges having been informed of the existence of a remuneration agreement to which the agency or broker representing him is party;
- the term “financial institution” has been replaced by the broader term of “lender”;
- in addition to the lender, a list has been added of persons identified as the most likely to pay remuneration to the agency or broker following a client “referral” in order to cover all potential remuneration sharing scenarios that must be disclosed under the regulations; and
- a space has been added to allow the agency or broker to add to the existing list, if applicable, any category of professionals or companies from which he could receive remuneration.

## STANDARD CLAUSE

## ADDITIONS

### SENDING OF A NOTICE (Standard clause 3.22)

Available on **InstanetForms™**  
since March 25, 2015

**New standard clause:** New standard clause: allows the parties to a transaction to choose a specific method of transmission for a notice required under clauses R2.2 (72-hour notice), R2.4, P2.4 or L2.6 (notice from the seller to the effect that an already accepted promise to purchase has been cancelled). This notice makes it so the period in which to fulfill the condition starts from the time of sending (the date and time indicated on the document evidencing the transmission serving as proof) rather than from the time it is received.  
**Viewable here.**

### PLACE WHERE A POSSIBLE RECOURSE SHALL BE EXERCISED (Standard clause 1.9)

Available on **InstanetForms™**  
since March 25, 2015

**New standard clause:** it is suggested to insert this **standard clause** in the brokerage contract:

- if the transaction concerns an immovable or a right located outside Québec, but the use of the form Annex Sale - Residential immovable outside Québec is not mandatory (a purchase, lease or sublease or a commercial or mortgage transaction);
- if the transaction concerns an immovable or a right located in Québec and one of the parties to the brokerage contract signs it while temporarily outside Canada or while residing abroad.



DO YOU HAVE ANY COMMENTS ON  
*PROFESSION BROKER?*

WRITE TO US!

[info@oaciq.com](mailto:info@oaciq.com)