

E-117

RESPONSIBLE OFFICER

Mortgage Brokerage Guide



1st edition, 2021

Translation of original French version, 1st Edition, 2020

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AUTORITÉ DES MARCHÉS FINANCIERS

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Legal deposit – Bibliothèque et Archives nationales du Québec, 2021

ISBN 978-2-550-88452-1 (PDF)

FOREWORD

This guide is an exam preparation tool for future responsible officers registered in the Mortgage Brokerage Qualification Program (MBQP). Its contents will help professionals develop the competency targeted in the ethics and professional practice module of the MBQP Curriculum: *Set up an ethical professional practice in compliance with the rules governing the management of a mortgage brokerage firm.*

Chapter overview page

The first page of every chapter outlines the Curriculum module competency components and sub-components that will be covered. Highlighting which of the evaluation objectives are addressed in each of the manual's chapters serves to identify the contents that are essential to attain these objectives.

It is thus recommended that professionals regularly review the competency components and sub-components in order to contextualize and assimilate them as they read each chapter. This will help develop an understanding of the nature and scope of the evaluated competency. Professionals must have fully understood the knowledge, strategies and skills covered in each chapter in order to successfully pass the corresponding module of the MBQP licensing exam.

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List of Acronyms

Distribution Act	<i>Act respecting the distribution of financial products and services</i>	APPIPS	<i>Act respecting the protection of personal information in the private sector</i>
C.C.Q.	<i>Civil Code of Québec</i>	ARFS	<i>Act respecting the regulation of the financial sector</i>
OACIQ	<i>Organisme d'autoréglementation du courtage immobilier du Québec</i>	Tribunal	Financial Markets Administrative Tribunal
MBRCC	Mortgage Broker Regulators' Council of Canada	FNTRAC	Financial Transactions and Reports Analysis Centre of Canada
PCMLTFA	<i>Proceeds of Crime (Money Laundering) and Terrorist Financing Act</i>		

CHAPTER 1

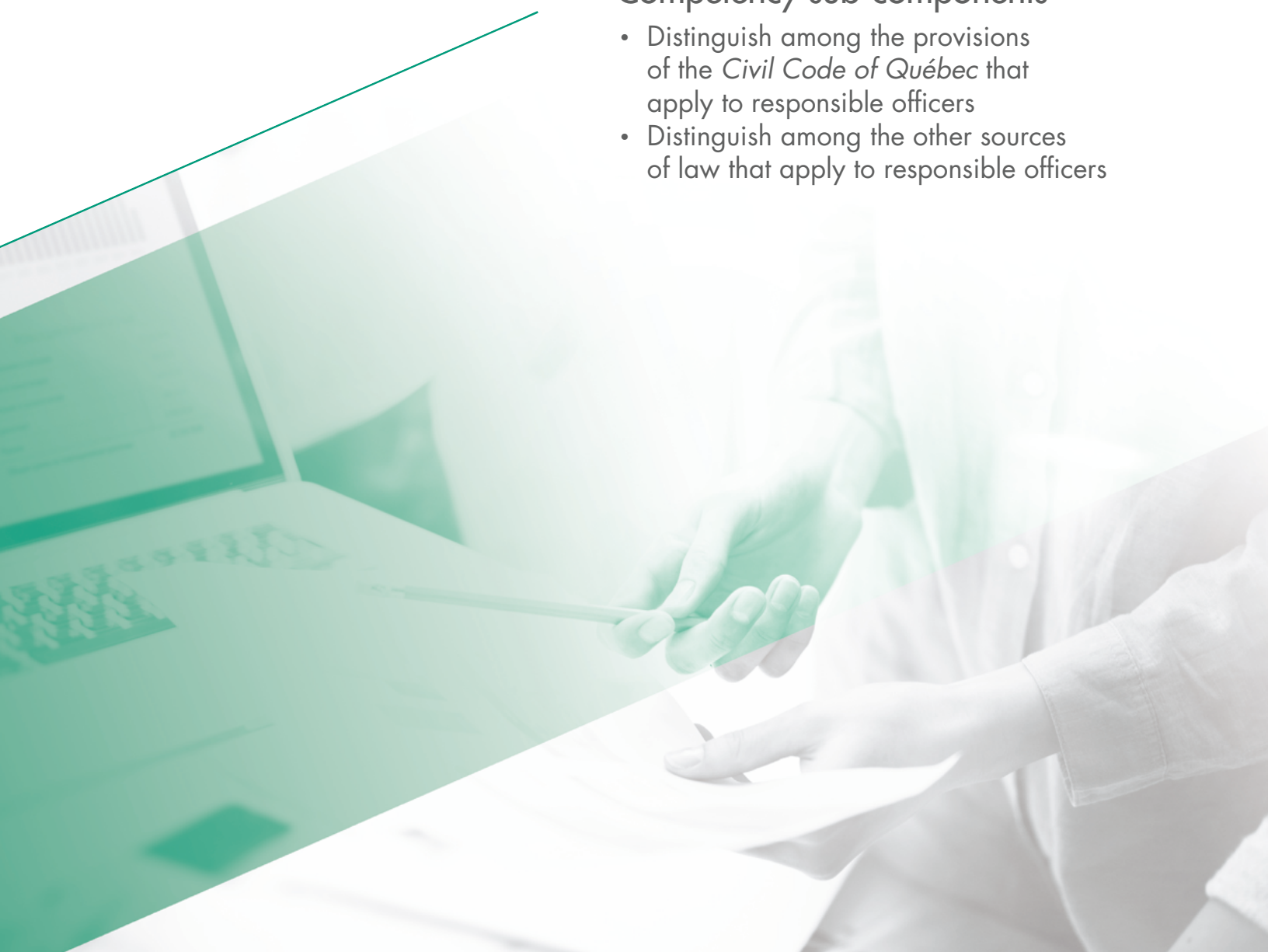
Legal framework applicable to responsible officers in mortgage brokerage

Competency component

- Understand the legal framework for mortgage brokerage

Competency sub-components

- Distinguish among the provisions of the *Civil Code of Québec* that apply to responsible officers
- Distinguish among the other sources of law that apply to responsible officers



Introduction

As a result of legislative changes in Québec, mortgage brokerage has been a sector regulated by the *Autorité des marchés financiers* (hereinafter the “AMF” or the “Authority”) since May 1, 2020. Accordingly, this sector, which was formerly subject to the *Real Estate Brokerage Act*, is now largely governed by the *Act respecting the distribution of financial products and services* (Distribution Act) and its regulations. This guide is intended for mortgage brokers who wish to pass the AMF’s examination on the competencies required of responsible officers of firms or independent partnerships. It is also intended for mortgage brokers who wish to register as independent representatives, who are also required to pass this exam. Responsible officers are in charge of ensuring that the mortgage brokers they supervise uphold their duties and obligations. In addition to being responsible officers, they are mortgage brokers who serve as role models for both their mortgage brokers and their staff.

This guide covers the responsibilities of responsible officers of firms in mortgage brokerage. Individuals in three distinct situations can serve as responsible officers:

- The officer responsible for a legal person’s principal establishment in Québec
- An independent representative
- The partner responsible for a partnership’s principal establishment.

As for firms, they must be legal persons with an establishment in Québec that has registered with the Authority and has been authorized to act as such (on this subject, see Chapter 2 of this guide).



TABLE 1.1**Types of registrations**

Firms	Firms are legal persons. This form of enterprise requires incorporation.
Independent representatives	Independent representatives are sole proprietorships. This form of enterprise does not require a registration process unless the representative wishes to use a business name (another name that does not contain the representative's surname and first name).
Independent partnerships	Independent partnerships consist of certified representatives grouped together in a partnership in which all partners are representatives.

Through their training, mortgage brokers have learned the principles of the legal framework applicable to mortgage brokerage. However, responsible officers are required to have even greater knowledge to be able to manage the firm and mortgage brokers they supervise, the independent partnership or act as independent representatives. Therefore, in keeping with their role as advisors, responsible officers in the sector of mortgage brokerage must have a more in-depth understanding of the legislative rules to be upheld by their brokers.

Future responsible officers are recommended read to this guide in conjunction with the mortgage brokerage manual *Ethics and Professional Practice* (E-116) where they have yet to acquire proficient knowledge of the concepts set out in the latter manual. Responsible officers are required to know and fully understand the concepts dealt with in manual E-116. The purpose of this guide is to supplement those concepts so that responsible officers meet the requirements of their office.

Legal framework applicable to responsible officers in mortgage brokerage

This chapter covers the legal framework applicable to responsible officers in mortgage brokerage.

1.1 Provisions of the *Civil Code of Québec* applicable to responsible officers in mortgage brokerage

As discussed in Chapter 2, “*Civil Code of Québec and mortgage brokerage*,” of the manual *Ethics and Professional Practice* (E-116), the *Civil Code of Québec* (C.C.Q.) is the foundation of Québec civil law and all legislation in the province. While other legislation is more specific to the matters dealt with, it must always be read in harmony with the *Civil Code*. For instance, there are provisions in the Distribution Act and its regulations that deal directly with the obligation of respect of privacy. However, these are complementary to the rules of the *Civil Code*. For example, where responsible officers are in a situation in which the application of a rule from the Distribution Act is difficult to interpret, it may be useful for them to go back to the general principle set out in the *Civil Code*.

The *Civil Code* is the cornerstone of Québec civil law and the primary legal source on which the requirements related to mortgage brokerage are based. Responsible officers serve as contact persons to assist mortgage brokers in the interpretation and application of the concepts of the *Civil Code*. Accordingly, responsible officers have to be familiar with these rules to properly advise brokers on legislation provisions and the manner in which they are interrelated and/or related to other provincial and federal legislation.

1.1.1 Recap of the provisions of the *Civil Code of Québec* applicable to mortgage brokerage

Responsible officers have to be apprised of the provisions of the *Civil Code of Québec* applicable to mortgage brokerage. Chapter 2 of the manual *Ethics and Professional Practice* (E-116) provides an overview of the various provisions applicable to mortgage brokerage. It deals with the concepts of persons (natural and legal), property, rights of ownership, obligations, contracts, sales and exchanges, loans, security, publication of rights, and enterprises.



Manual E-116

For a complete overview of the provisions of the *Civil Code of Québec* applicable to mortgage brokerage, the mortgage brokerage manual *Ethics and Professional Practice* (E-116), Chapter 2, *Civil Code of Québec and mortgage brokerage*, is a useful source of information. What's more, each time you see this pictogram in this guide, it suggests you review some of the concepts covered in manual E-116.

1.1.2 Concepts specific to responsible officers in mortgage brokerage

In this chapter, certain concepts relevant to the duties of responsible officers are discussed in greater detail. The sections of this chapter are set out in the order in which they appear in the *Civil Code*. They begin with a brief reminder of that which is to be thoroughly understood in the manual *Ethics and Professional Practice* (E-116), where applicable, and then deal with aspects more specific to responsible officers of firms in mortgage brokerage. The importance of this concept to responsible officers is often that they have to become more proficient at recognizing and applying it in a variety of situations related to the firm's activities.

1.1.2.1 Respect of privacy¹

The *Civil Code* deals with the respect of privacy in its very first articles. The principle of this overarching concept derives from sections 4 and 5 of the *Charter of human rights and freedoms*.



1. Articles 35 to 41 C.C.Q.

Article 35 of the *Code civil* stipulates as follows:

**Legislative or other references**

Art. 35 C.C.Q.

Every person has a right to the respect of his reputation and privacy.

The privacy of a person may not be invaded without the consent of the person or without the invasion being authorized by law.

Accordingly, the right to privacy is a personality right specific to each individual. The following articles of the *Civil Code* set out certain terms and conditions related to the right to privacy.

Article 36 of the *Civil Code* lists acts that may be considered as invasions of the privacy of a person:

**Legislative or other references**

Art. 36 C.C.Q. [...]

1. entering or taking anything in his dwelling;
 2. intentionally intercepting or using his private communications;
 3. appropriating or using his image or voice while he is in private premises;
 4. keeping his private life under observation by any means;
 5. using his name, image, likeness or voice for a purpose other than the legitimate information of the public;
 6. using his correspondence, manuscripts or other personal documents.
-

Articles 37 to 41 of the *Civil Code* may be relevant to responsible officers, as they deal with the circumstances and conditions under which a file (i.e. a record) may be established (i.e. opened) on a person.

In a small firm, it is highly likely that the responsible officer would be the person in charge of these aspects, whereas in a large firm, these tasks may be assigned to an employee. The responsible officer is required to ensure that procedures or processes are in place and being followed.

Accordingly, it is necessary to have a serious and legitimate reason to be authorized to establish a file (i.e. open a record) on a person. The information recorded must be accurate and appropriate, and collected with that person's consent or being authorized by law. Communication (i.e. disclosure) of such information to third persons is limited.

The *Civil Code* also allows any person to examine their file (i.e. record) and cause the rectification thereof (i.e. have it corrected) as necessary.

As we will see in the following chapters, responsible officers of mortgage brokerage firms are required, in particular, to be fully apprised of the legal aspects of privacy, as the activities of their sector result in mortgage brokers and independent representatives having access to personal information that may be protected by the obligation of the respect of privacy.

Mortgage brokers are required to check whether the information they collect in respect of clients is accurate and appropriate. They must also ensure such information does not fall into the hands of a third party or is not used for a purpose other than that for which it was collected.

Responsible officers must once again ensure that procedures and processes are in place and being followed.

The loss or unauthorized communication (i.e. disclosure) of personal information may also constitute an invasion of privacy.

**N.B.**

Mortgage brokers who obtain a client's credit report must be vigilant about it being consulted by third parties. They must also give the client access to their credit report if they so desire. It remains responsible officers' responsibility to ensure their mortgage brokers establish files (i.e. open records) that comply with the respect of privacy pursuant to the *Civil Code* and the Distribution Act.

Legislation and regulations specific to financial services exist that supplement the principles of the *Civil Code*, such as the Distribution Act, and are discussed in detail in Chapter 2 below.

1.1.2.2 Legal persons



Manual E-116

Chapter 2, “Civil Code of Québec and mortgage brokerage,” explains in detail the concept of persons within the meaning of the Civil Code.

The concept of legal persons is further developed here, as it directly concerns responsible officers. As officers of a legal person, their position within the firm may incur their liability. The concept of legal persons is defined in articles 298 and 299 of the *Civil Code*. It is essentially a legal fiction, i.e. it can only exist where provided by legislation. A legal person so created becomes independent in several respects from the natural persons who set it up. There are various types of legal persons, which may be established either in the public interest or for a private interest.

EXAMPLE

The *Autorité des marchés financiers* is a legal person established in the public interest, as are municipalities and government corporations, while non-profit organizations and businesses are legal persons established for a private interest.

Legal persons are governed by articles 298 to 364 of the *Civil Code*. Other legislation and regulations are also applicable.

However, although legal persons are independent to such extent that they can sue and be sued,² there are certain circumstances in which the liability of officers, directors and shareholders can be incurred.

Manual E-116 cautions mortgage brokers in their dealings with the legal persons (i.e. corporations) they deal with. This guide cautions responsible officers regarding the management of the firm, which is a legal person.

2. Expressed in French using the archaism, “*ester en justice*.”

While independent representatives act as natural persons, firms are legal persons in the eyes of the law.

**Legislative or other references**

Distribution Act, s. 72

Only a legal person that maintains an establishment in Québec may register with the Authority to act as a firm [...].

As soon as firms are registered with the AMF,³ the liability of responsible officers is incurred. Firms have to provide the names and addresses of their directors and officers, the name of the officer responsible for the legal person's principal establishment, and declarations, including that of responsible officers confirming their honesty, competence and solvency.

Accordingly, responsible officers assume a responsibility toward the AMF, even though their mortgage brokerage practice may be carried out through a legal person.

Article 312 of the *Civil Code* stipulates as follows:

**Legislative or other references**

Art. 312 C.C.Q.

A legal person is represented by its senior officers, who bind it to the extent of the powers vested in them by law, the constituting act or the by-laws.

In addition, article 316 of the *Civil Code* states as follows:

Art. 316 C.C.Q.

In case of fraud with regard to the legal person, the court may, on the application of an interested person, hold the founders, directors, other senior officers or members of the legal person who have participated in the alleged act or derived personal profit therefrom liable, to the extent it indicates, for any injury suffered by the legal person.

3. Regulation respecting the registration of firms, representatives and independent partnerships, art. 2

Accordingly, where firms in mortgage brokerage are victims of fraud, such as where a mortgage loan was granted as a result of a misrepresentation, and the responsible officer responsible was aware of the situation, the responsible officer may be held liable for and required to repay any damages suffered by the firm.

Director of legal persons are considered to be their mandataries. Articles 321 to 330 of the *Civil Code* set forth the obligations for directors. In particular, directors must act with prudence and diligence, as well as with honesty and loyalty in the sole interest of the legal person. They may not be placed in a situation of conflict of interest or use the property of the legal person for their own purposes, unless so authorized by the legal person.

As a result, responsible officers must be fully aware that their personal liability to the firm may be incurred. These principles are also reflected in legislation and regulations that are more specific to mortgage brokerage and will be covered in Chapter 2 of this manual.



Manual E-116

These concepts are explained in detail in section 2.2.2 of Chapter 2, “*Civil Code of Québec and mortgage brokerage.*”

1.1.2.3 Property

Article 899 of the *Civil Code* distinguishes between corporeal and incorporeal (i.e. tangible and intangible) property in two categories: movable and immovable property. Table 1.2 can be used as a quick reference for responsible officers of firms in mortgage brokerage.



TABLE 1.2**Movable and immovable property****Movable property**

Movable by nature (Arts. 905 and 906 C.C.Q.)	This consists of things which can be moved or that have been defined by law. <i>E.g. a chair, a car, a refrigerator, waves or energy harnessed by man.</i>
Movable by anticipation (Arts. 900 and 902 C.C.Q.)	These are immovables that will eventually become movables. <i>E.g. wheat that will be harvested, a building material permanently removed from a building.</i>
Residual movable (Art. 907 C.C.Q.)	All other property, if not qualified by law, is movable property. <i>E.g. personal rights, movable real rights, patrimonial rights.</i>

Immovable property

Immovable by nature (Art. 900 C.C.Q.)	This is the ground and any extensions from it. <i>E.g. soil, plants, minerals, constructions and works of a permanent nature that are attached to the ground.</i>
Immovable upon incorporation and as integral parts (Art. 901 C.C.Q.)	It can be a construction of a permanent nature that is attached to the ground. <i>E.g. buildings, structures, bridges.</i> It can also be an integral part of an immovable. Immovables that are integral parts have lost their individuality. <i>E.g. elevators and air vents in a building.</i>
Movables physically attached or joined to an immovable by nature (Art. 903 C.C.Q.)	These are movables that are physically joined to the immovable, but that have not lost their individuality. They are immovable for as long as they ensure the utility (i.e. usefulness) of the immovable. <i>E.g. light fixtures, a recessed cooktop.</i> N.B. There is, however, one exception to this rule where property is used to operate an enterprise (e.g. a business): movables by attachment are deemed to remain movables.
Immovable as characterized by law (Art. 907 C.C.Q.)	This category comprises movables qualified as immovables by the sole operation of law. <i>E.g. hypothecs on rents (Art. 2695 C.C.Q.), integral parts of an immovable that are temporarily detached if they are to be put back.</i>

This distinction between movable and immovable property has legal consequences, in particular as regards:

- Acquisitive prescription:⁴ The general rule is three years for movable property and ten years for immovable property.
- Execution of a seizure: Except in extraordinary cases, debtors' movable property is seized before their immovable property.
- Application of municipal and school taxation: Only in respect of immovables.
- Form of constituting security: An immovable hypothec must be granted by a notarial act (i.e. deed) *en minute*, whereas a simple written contract is sufficient for a movable hypothec. As a result, mortgage brokers and responsible officers must ensure they are familiar with the rules governing the form of immovable hypothecs in order to understand what they see on the Land Register's index of immovables and answer client questions on the subject.



Manual E-116

These concepts are explained in detail in section 2.3 of Chapter 2, "*Civil Code of Québec and mortgage brokerage.*"

1.1.2.4 Ownership

Article 947 of the *Civil Code* sets out the essential elements composing the right of ownership:

- Right to use and enjoy property.
- Right to take the fruits and revenues of property.
- Right to dispose of property.

However, the legislator limits the exercise of the right of ownership by stipulating that it must comply with rules of public order and neighbourliness.

4. Acquisitive prescription is a means of acquiring a right of ownership by the lapse (i.e. passage) of time, which is based on the peaceful, continuous, public and unequivocal possession of property. For example, you find a watch on the street and keep it; you become the owner of the watch after three years. A neighbour encroaches on your land for 10 years without opposition from you; he can claim ownership of the encroached portion after 10 years.

Ownership may also be subject to modalities (i.e. terms and conditions), namely divided co-ownership, undivided co-ownership and superficies. It can also be subject to dismemberments consisting of usufruct, rights of use, servitudes and emphyteusis.⁵

It is important for responsible officers to acquire proficient knowledge of the concept of the right of ownership, because he must be able to advise mortgage brokers when they have questions about the legal limits affecting an immovable covered by a mortgage loan. For example, mortgage brokers have to be able to discern the elements related to ownership to be disclosed to a lending institution. In other circumstances, they must have developed the reflex to advise their brokers to contact a lawyer where certain aspects of a loan may be contentious or involve risks to their clients.

**Manual E-116**

These concepts are explained in detail in section 2.4 of Chapter 2, *“Civil Code of Québec and mortgage Brokerage.”*

1.1.2.5 Obligations

A civil obligation is a legal relationship that binds a person, known as the “debtor,” to another person, referred to as the “creditor,” to do or not to do something.

An obligation consists of three elements.

1. Persons having the capacity to contract between whom the obligation exists (the creditor and the debtor)
2. An object (the service of doing or not doing something)
3. A cause (the goal sought)

5. Emphyteusis is the right which, for a certain time, grants a person the full benefit and use of an immovable owned by another provided he does not endanger its existence and undertakes to make constructions, works or plantations thereon that increase its value in a lasting manner (Art. 1195 C.C.Q.).

TABLE 1.3**Obligations**

Obligations with simple modalities	Obligations with complex modalities
• Conditional obligations • Obligations with a term • Obligations with a penal clause	• Solidary obligations • Joint obligations • Indivisible obligations • Divisible obligations • Alternative obligations • Facultative obligations

Obligations with simple modalities

An obligation may be pure and simple or subject to modalities. This section covers obligations with simple modalities, set out in articles 1497 to 1517 of the *Civil Code of Québec*.

Conditional obligations

A condition obligation depends on a future and uncertain event. As a result of this event, this obligation may arise or be extinguished.

EXAMPLE

Accepting a loan is typically a conditional obligation since it is subject to conditions that the borrower must meet, such as maintaining employment, income, or not obtaining a loan from another financial institution. Accordingly, in a loan contract, the lender may require conditions for the fulfilment of its obligation, which is to lend money to a borrower. Responsible officers play an advisory role in such circumstances, as they have to guide representatives their assessment of such a document. They will have to be able to interpret what constitutes an acceptable conditional obligation in light of the offer and the circumstances.

Obligations with a term

An obligation with a term is dependent on a certain future event that delays the expiry of the obligation.



FYI

The repayment of a mortgage loan is an obligation with a term, as the hypothecary debtor (i.e. mortgagor) has a certain period of time to repay the loan. The due date of a mortgage payment or repayment is then a future and certain event. Responsible officers have to make the representatives aware of the importance of the term, since a skipped payment may result in forfeiture of benefit of the term (i.e. “accelerated payment” of the outstanding balance may be demanded). In concrete terms, this can lead to dramatic consequences for the borrower, including revocation of the mortgage loan or hypothecary remedies.

Obligations with a penal clause

Penal clauses (also known as “penalty clauses”) are a sanction set out in the contract in which the parties assess in advance the penalty to be paid by the debtor upon failure to perform the stipulated obligation in the manner provided for. A penal clause saves creditors from having to prove their actual loss.



FYI

Mortgage brokerage contracts may contain a clause determining a lump sum the client agrees to pay to the mortgage broker in the event certain situations arise. This may be a situation in which the client’s voluntary action would prevent the fulfilment of the obligation under the contract.

Obligations with complex modalities

Other obligations are said to have complex modalities (i.e. terms and conditions) and are dealt with in articles 1518 to 1552 of the *Civil Code of Québec*.

Solidary obligations

Solidary liability results from the presence of several creditors or debtors who are solidarily (i.e. jointly and severally) bound by the same obligation.

Solidarity among creditors occurs when a single debtor owes an amount of money to more than one creditor. In such situations, debtors can then pay the entire debt to one of their creditors to be released from their obligation. In order to be valid, solidarity between creditors must be stipulated in writing.

Solidarity between debtors occurs when a single creditor has several debtors for the same obligation. Creditors may then claim the entire debt from any one of the debtors. It is then incumbent on the debtor who paid the obligation in full to claim the appropriate share from the other debtors. As a rule of thumb in civil contracts, solidarity between debtors is not presumed and has to be stipulated in the contract to be enforceable. On the contrary, where an obligation is incurred in the course of operating an enterprise (e.g. a business), solidarity between debtors is presumed.

EXAMPLE

If two spouses take out a mortgage loan together, it will typically be a solidary obligation where stipulated in the contract. Accordingly, each month, the lender could demand the amounts owed from either spouse should one fail to pay his or her share.

Joint obligations

Unlike solidary obligations, joint obligations between several debtors mean they are bound under the same obligation toward a creditor, but that each is bound to perform only their share of the obligation.

Where an obligation is joint between two or more creditors, each creditor may exact only the performance of the common debtor's share of the claim.

Accordingly, where the obligation is joint, no debtor is bound to repay the creditor beyond what is owed by such debtor. As a result, the creditor has to obtain from each debtor the corresponding share of the obligation. Similarly, where the obligation is joint between two or more creditors, the creditors cannot claim more than their share of the obligation.

Indivisible obligations

Under article 1520 of the *Civil Code of Québec*, an obligation is indivisible if it proves impossible to divide it between the debtors to perform it. For example, a legal obligation of warranty for latent defects is, by its nature, indivisible.⁶

EXAMPLE

Where new buyers of a home discover mould in it and it is a latent defect, they can file a legal warranty claim for latent defects with the seller, who can then implead the previous seller in warranty. That being said, case law has established that in these situations, buyers may, at their option, demand performance from the immediate seller in an indivisible manner.

Divisible obligations

The obligation is divisible when it is possible to divide it between the debtors in order to perform it, such as for the payment of an amount of money.

Alternative obligations

An alternative obligation is one which has two or more principal prestations (i.e. that which is to be performed) as its object (i.e. subject matter), the performance of any one of which releases the debtor for the whole. As a result, it allows the parties to choose either of the prestations required. The choice is typically left to the debtor, but it may also be stipulated in favour of the creditor.

EXAMPLE

Mortgage brokerage contracts may have a clause stipulating that the borrower must submit an application for mortgage financing and that, where the borrower fails to do so within the prescribed time limit, the promisor seller reserves the right to designate a lender.

6. *D'Astous c. Bélanger*, 2012 QCCS 2120 (in French only).

Facultative obligations

A facultative obligation is an obligation which has only one principal prestation as its object but from which the debtor may be released by performing another prestation. This situation may arise where creditors agree to make a cash payment, while reserving the right to fulfil their obligation by payment in another form.

Management of the business of another

Management of the business of another is also a source of obligations. It takes place where a person (the manager) spontaneously and under no obligation to act, undertakes to manage the business of another (the principal). Such management takes place without the knowledge of the manager or, with it, where unable to appoint someone to act in the manager's stead.

EXAMPLE

Management of the business of another may take place when a flood affects the home of someone who is out of the country and a neighbour takes the initiative to contact a cleaning crew to limit the spread of mould in the affected home.

Receipt of payments not due

A payment not due is a payment made in error, or merely to avoid injury to the person making it while protesting that he owes nothing. Under art. 1491 of the *Civil Code of Québec*, any person who has received an undue payment is obliged to “make restitution” (i.e. return it).

EXAMPLE

For example, employees who receive their weekly pay twice in error are required to return the overpayment received (payment not due) to their employer.

EXAMPLE

A firm could be required to repay any remuneration it received twice from the same lender.

However, persons who receive such payments in good faith are not obliged to make restitution where, in consequence of the payment, their claim is prescribed (i.e. barred) or they have destroyed their title or relinquished a security interest. For instance, mortgage brokers who have received duplicate remuneration for a referral will not have to pay it back if the claim is prescribed and they were unaware that any overpayment was made.

Unjust enrichment

Unjust enrichment occurs when a person is enriched at the expense of another. The person must then, to the extent of the enrichment, indemnify the other if there is no justification for such enrichment.

EXAMPLE

Unjust enrichment occurs where a person performs work free of charge on his or her spouse's property during their relationship, but after their divorce, the sale of the house benefits the spouse only. To compensate for the time and labour invested, an unjust enrichment claim will allow the person to obtain a compensatory amount for the effort in question.

1.1.2.6 Contracts of enterprise or for services

Contracts of enterprise or for service are contracts whereby a person undertakes to a client to carry out physical or intellectual work or provide a service in exchange for payment.

Mortgage brokerage contracts between clients and mortgage brokers are contracts for services. However, mortgage brokerage contracts may include certain duties of representation whereby mortgage broker are obliged to speak on behalf of their clients, such as obtaining information or transferring information to the lender.

Payment may consist of an amount of money, but it may also be the actual performance of what is the object of the obligation. Accordingly, payment may constitute the handing over of property, the performance of prestation (i.e. a service), or giving in payment, i.e. a contract by which debtors transfer their property to creditors.

Note firms are not necessarily paid directly by clients for mortgage brokers' services. Even if, for example, a holding company were to pay for the services provided to the client, it would still be a contract for services with the client.

1.1.2.7 Contracts of partnership and of association

In connection with partnerships, a contract of partnership is a contract by which the parties, in a spirit of cooperation, agree to carry on an activity, including the operation of an enterprise, to contribute thereto by combining property, knowledge or activities and to share among themselves any resulting pecuniary profits. These elements must be present for a partnership to exist.

Contracts of association differ in that they are contracts by which the parties agree to pursue a common goal other than the making of pecuniary benefits to be shared among their members.

1.1.2.8 Mandates

A mandate is a contract by which a person (the mandator) confers upon another person (the mandatary) the power to represent him or her in the performance of a juridical act with another person. The written document evidencing this power is called a power of attorney. Mandates may be specific concerning one specific affair only or general covering all the mandator's affairs.



N.B.

A mortgage brokerage contract does not constitute a mandate or a power of attorney.



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On this subject, see the section on legal capacity in Chapter 2.

Administration of the property of others

As a general rule, a power of attorney confers on the mandatary only the power to carry out acts of simple administration, i.e. acts related to minimal management. In order to allow the mandatary to go beyond this simple administration, the nature of the authorization will have to be specifically expressed in the wording of the mandate.

EXAMPLE

Expenses related to the maintenance of an immovable may constitute an act of simple administration, whereas in taking out an immovable hypothec, a mandate exceeds such simple administration.

1.1.3 Liability

Liability is the consequence of any and all persons taking responsibility for the consequences of their actions and being answerable to the courts in the event of non-compliance, including non-performance of an obligation. It can take various forms depending on the fault it arises from.

- Criminal liability
- Penal liability
- Professional liability
- Civil liability

1.1.3.1 Criminal liability

This is the liability incurred when a person commits a criminal offence or act under the *Criminal Code* of Canada. These charges are then laid by the State (in the name of the Queen) against the accused.



FYI

The offence of fraud may be an indictable offence by which a person, by lying or deceit, causes the deprivation or risk of deprivation of another person's property. It requires criminal intent, i.e. the accused must have been aware of the nature of the fraudulent act and that it was likely to cause deprivation.

The offence of false pretences is the misrepresentation of a matter of fact to induce a person to act, such as those used to obtain credit or a false statement of a person's financial condition or ability to pay.

1.1.3.2 Penal liability

This is the liability incurred when a person commits a statutory offence under the *Highway Safety Code*, the *Environment Quality Act* or the *Distribution Act*, or municipal by-laws.

**N.B.**

Under the Distribution Act, any person who acts as a firm in the mortgage brokerage sector without being registered with the AMF commits an offence punishable by a fine of several thousand dollars, depending on the circumstances of the offence. Upon a subsequent offence, the fine is doubled.

1.1.3.3 Professional liability

This is the liability incurred where professionals commit any act that is inconsistent with legislation and rules to which they are subject by their profession. It may fall under their code of ethics or professional conduct, the constituting act of their order or the *Professional Code*. As we will see in Chapter 2 of this manual, sections 16.3 and 16.4 of the *Regulation respecting the pursuit of activities as a representative* stipulate that mortgage brokers must act with competence by developing and maintaining their knowledge of the financial sector, the applicable regulations and their abilities. Failure to comply with this obligation incurs the mortgage broker's professional liability and may then constitute an offence under the Distribution Act.

1.1.3.4 Civil liability

Civil liability is covered in articles 1457 to 1481 of the *Civil Code of Québec*. Accordingly, every person has a duty to conduct themselves so as not to cause injury to another. Unless an exception applies, the person, having failed in this duty, becomes liable for any injury caused by such fault and is bound to make reparation therefor. Such injury may be bodily or material in nature (i.e. personal injury or property damage). In certain cases, the person is required to make reparation (i.e. pay) for injury caused to another by the act, omission or fault of another person, or by the act of things or animals in the person's custody.

EXAMPLE

The owner of an immovable may be bound to make reparation for any bodily or material injury caused by its roof falling down as a result of poor maintenance.

Civil liability is divided into two categories: contractual and extracontractual liability.

Contractual civil liability

Contractual civil liability may be incurred where a contract exists between the parties. A person who, after giving contractual undertakings, fails to honour them will be liable for any injury caused to the other contracting party and bound to make reparation for the injury.

The following are essential elements for the application of contractual liability:

1. The existence of a contract
2. Fault, i.e. nonperformance (total, late, partial or inadequate) of the contract
3. Injury or damage for the other contracting party
4. A causal link between the nonperformance by one contracting party and the injury to the other contracting party

The requirement of a causal link means that there must be a correlation between the fault and the damage suffered.

Extracontractual civil liability

Where no contractual relationship exists between the parties, extracontractual liability applies. Apart from the existence of a contract, extracontractual liability requires the same essential elements as in the case of contractual liability.

EXAMPLE

Extracontractual civil liability may be applicable where a person fails to clear the ice from the driveway leading to the person's home and someone is injured in a fall.

Presumptions of liability

A presumption is an inference, i.e. a deduction, that the court or the law draws from one known fact to another known fact. In matters of liability, certain facts give rise to the inference that a person is liable for the fault of others or an act of a thing.

Presumption of liability of employers for faults of their employees

Employers are bound to make reparation for injury caused by the fault of their employees in the performance of their duties. This is an irrefutable presumption of liability, i.e. once the relationship of subordination, the damage caused by the employee and the fault of the employee have been proven, this presumption cannot be reversed. Nevertheless, employers retain their remedies against their employees at fault.

EXAMPLE

If a support employee of the brokerage firm commits a fault resulting in damage to the client, the firm will be deemed liable for the fault and will have to make reparation for the damage suffered.

Presumption of liability for the act of a thing

Similarly, article 1465 of the *Civil Code of Québec* states that custodians of a thing (e.g. an animal, an immovable or a movable) are bound to make reparation for injury resulting from the autonomous act of the thing, unless they prove that they are not at fault. Accordingly, this is rebuttable presumption.

Responsibilities specific to responsible officers of firms in mortgage brokerage

When managing their brokers or in their own practice, responsible officers of firms in mortgage brokerage have to keep the basic rules of civil and professional liability firmly in mind. An error can have serious consequences for the firm.

In addition, as we will see below, taking out liability insurance is a regulatory requirement for mortgage brokers and firms in mortgage brokerage.

1.2 Other legislation applicable to responsible officers in mortgage brokerage

In addition to the *Civil Code of Québec*, responsible officers in mortgage brokerage are required to acquire proficient knowledge and understanding of a number of provincial and federal enactments.

1.2.1 *Act respecting the distribution of financial products and services (Distribution Act)* and its regulations

The Distribution Act lays down the rules specific to the sectors regulated by the AMF:

- Insurance of persons (life and health)
- Group insurance of persons
- Damage insurance
- Claims adjustment
- Financial planning
- Mortgage brokerage

The mortgage brokerage sector has been regulated by the AMF and its representatives subject to the Distribution Act since May 1, 2020.

1.2.1.1 Rules

There are a number of regulations under the Distribution Act. Those concerning mortgage brokerage are as follows:

- *Regulation respecting firms, independent representatives and independent partnerships*
- *Regulation respecting the issuance and renewal of representatives' certificates*
- *Regulation respecting fees and contributions payable*
- *Regulation respecting the pursuit of activities as a representative*
- *Regulation respecting the registration of firms, representatives and independent partnerships*
- *Regulation respecting information to be provided to consumers*
- *Regulation respecting the keeping and preservation of books and registers*
- *Regulation respecting Alternative Distribution Methods*
- *Regulation respecting the compulsory professional development of mortgage brokers*

1.2.1.2 Application to responsible officers in mortgage brokerage

The Distribution Act now regulates mortgage brokerage in Québec. Since its application is recent for brokers, responsible officers have to be very vigilant and fully ascertain the distinctions it presents in relation to the *Real Estate Brokerage Act*. They will undoubtedly have to play an advisory, supervisory and coaching role with their brokers, particularly in the early years of the implementation of the reform. It will be their responsibility to ensure the firm's brokers refer to and comply with the Distribution Act.

1.2.2 Real Estate Brokerage Act

The purpose of this Act is to regulate real estate brokerage transactions and establish the *Organisme d'autoréglementation du courtage immobilier du Québec* (OACIQ).

1.2.2.1 Application to mortgage brokerage

Since the update to the *Real Estate Brokerage Act*, only real estate brokerage falls under the supervision of the OACIQ. Mortgage brokerage is now regulated under the Distribution Act. As a result, the AMF is now responsible for the supervision and monitoring of mortgage brokerage in Québec.

1.2.3 *Act respecting the protection of personal information in the private sector (APPIPS) (arts. 35 to 40 C.C.Q.)*

The purpose of the APPIPS is to set forth specific rules governing the personal information about others collected, held, used or disclosed by any person to third parties in the course of carrying on an enterprise.

1.2.3.1 *Application to mortgage brokerage*

Any enterprise that collects personal information is bound to comply with this APPIPS. Although the APPIPS does not apply directly to mortgage brokers, the rules of conduct stemming from the Distribution Act and its regulations were drafted to supplement the APPIPS and thereby allow the AMF to reprimand a mortgage broker who fails to comply with the principles of protection of personal information. Consequently, it is incumbent on the responsible officer of a firm in mortgage brokerage to ensure that its representatives uphold the rules governing the protection of personal information in the pursuit of their activities. This may entail developing policies and procedures to protect such information and implementing an internal control mechanism for representatives.

The protection of personal information is also part of the concept of care and competence expected of mortgage brokerage firms, which is elaborated on below.

It is also in line with security practices aimed at protecting the firm in connection with their IT processes subject to cybersecurity rules.

1.2.4 *Bank Act*

This federal statute serves as the articles of incorporation for Canadian banks. In particular, it determines their powers, the formalities of their incorporation, their operation and organization, and their administrative rules.

1.2.5 *Trust and Loan Companies Act*

This federal statute governs trust and loan companies incorporated or continued under its authority. In particular, it determines their powers, the manner in which they are incorporated, their organization and operation, and their administrative rules.

1.2.6 *Insurance Companies Act*

This federal statute governs insurance companies incorporated or continued under its authority. It determines their powers, the manner of their incorporation, their organization and functions, and their administrative rules.

1.2.7 *Cooperative Credit Associations Act*

This federal statute governs credit cooperatives incorporated or continued under its authority. In particular, it determines their powers, the manner in which they are incorporated, their organization and operation, and their administrative rules.

The four statutes set out above are relevant for the responsible officers of firms in mortgage brokerage as brokers have to be familiar with the role of the various lending entities, such as banks and financial services cooperatives, and understand the separate regulations that apply to each of them.

1.2.8 *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*⁷

The PCMLTFA is a federal statute whose main purpose is “to implement specific measures to detect and deter money laundering and the financing of terrorist activities [...]” (s. 3 PCMLTFA).



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For more details, see section 4.5 of Chapter 4.

1.2.8.1 *Application to responsible officers*

Responsible officers of firms in mortgage brokerage must be vigilant with respect to the transactions witnessed by them or their mortgage brokers. It is mandatory to report all suspicious financial transactions when they are carried out in the course of the firm’s activities.

1.2.9 *Competition Act*

The purpose of the *Competition Act* is to maintain and encourage competition in Canada in order to promote the efficiency and adaptability of the Canadian economy, in order to expand opportunities for Canadian participation in world markets while at the same time

7. See section 2.4.3 of this guide.

recognizing the role of foreign competition in Canada, in order to ensure that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy and in order to provide consumers with competitive prices and product choices.

1.2.9.1 Application to mortgage brokerage

In particular, the *Competition Act* contains provisions prohibiting conspiracies:



Legislative or other references

Competition Act, s. 45

Conspiracies, agreements or arrangements between competitors

45 (1) Every person commits an offence who, with a competitor of that person with respect to a product, conspires, agrees or arranges

- (a) to fix, maintain, increase or control the price for the supply of the product;
- (b) to allocate sales, territories, customers or markets for the production or supply of the product; or
- (c) to fix, maintain, control, prevent, lessen or eliminate the production or supply of the product.

Penalty

(2) Every person who commits an offence under subsection (1) is guilty of an indictable offence and liable on conviction to imprisonment for a term not exceeding 14 years or to a fine not exceeding \$25 million, or to both.

EXAMPLE

If two mortgage brokers or two responsible officers enter into an agreement to fix a type of remuneration for a given area, they will be considered to have conspired to fix prices, which is an indictable offence under the *Competition Act*, punishable by the penalties set out in section 45(2) thereof.

This completes the legal framework applicable to responsible officers in mortgage brokerage. The next chapter covers the rules governing their practice.

CHAPTER 2

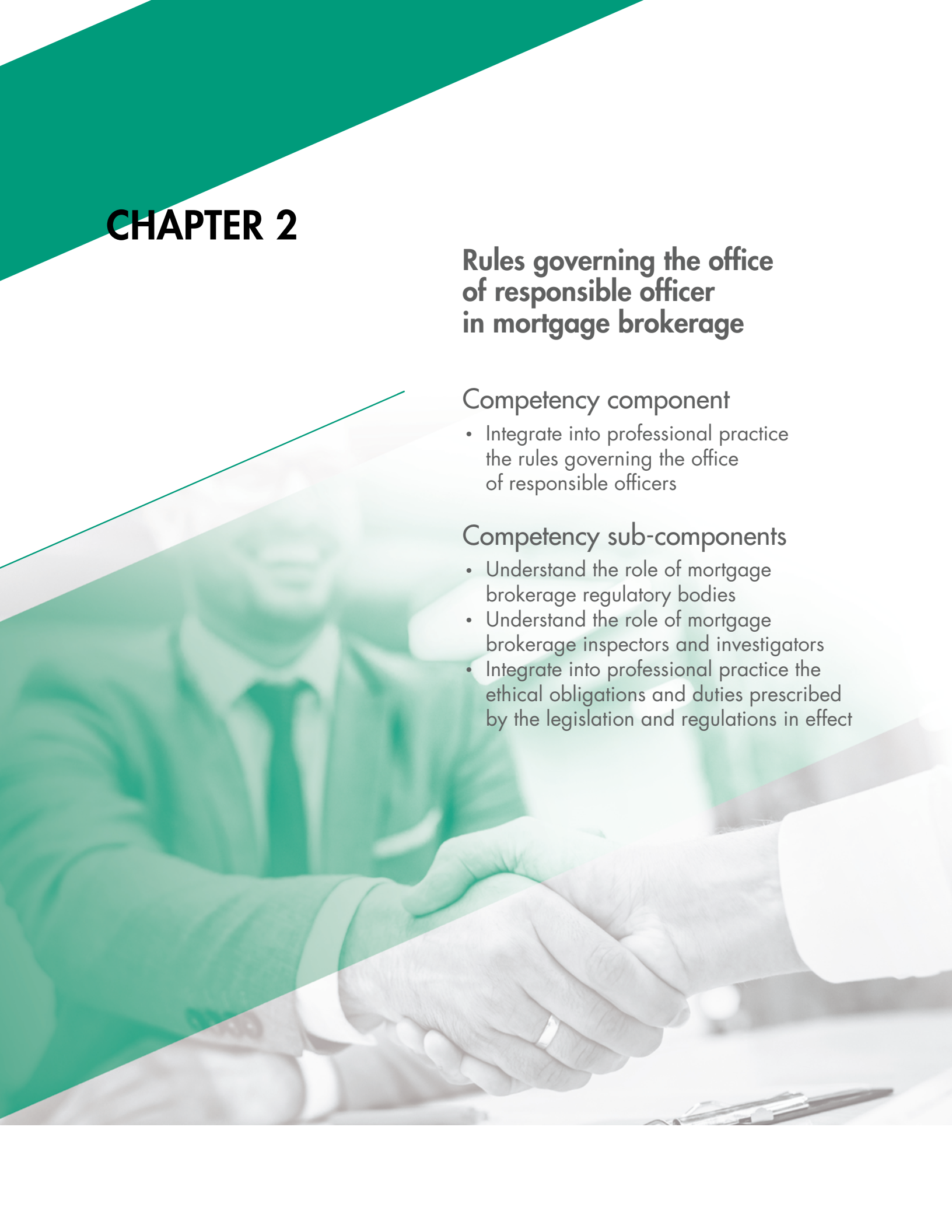
Rules governing the office of responsible officer in mortgage brokerage

Competency component

- Integrate into professional practice the rules governing the office of responsible officers

Competency sub-components

- Understand the role of mortgage brokerage regulatory bodies
- Understand the role of mortgage brokerage inspectors and investigators
- Integrate into professional practice the ethical obligations and duties prescribed by the legislation and regulations in effect



Rules governing the office of responsible officer in mortgage brokerage

This chapter covers the rules governing the office of responsible officer of firms in mortgage brokerage. As discussed earlier, responsible officers have a role in the supervision and oversight of mortgage brokers. Because their actions incur their and the firm's liability, they have to be apprised of these rules to make informed decisions in the pursuit of their professional activities. The responsible officer's compliance and oversight functions require a high level of diligence and ethics in order to ensure that the public is protected at all times.

Responsible officers must know and understand the role of mortgage brokerage regulators and their stakeholders, as they serve as their firm's authority figure in dealings with these bodies. They must be familiar with the expectations of these bodies and respond diligently to their requests. They may, for instance, have to act as a contact if the *Autorité des marchés financiers* (the Authority or the AMF) were to send an inspector to their office.

They must also acquire proficient knowledge of the professional and ethical obligations imposed on mortgage brokers by the *Act respecting the distribution of financial products and services* (Distribution Act) and its regulations. Due to of the responsibilities incumbent upon them, they are regularly required to field queries from their brokers about these rules, particularly since their application to the sector of mortgage brokerage is very recent. What is more, as they serve as role models for their brokers, their own ethical and professional conduct must be beyond reproach.

As responsible officers of firms, they are subject to certain rules. Due to their central position, they play a leading role in detecting any potential breaches of the rules imposed on mortgage brokers. For example, they may be the first to identify conflict of interest situations that may arise in their firm's dealings with other financial partners. As part of their supervisory and oversight role, they are also able to detect suspicious transactions by several mortgage brokers individually, which, when combined, may reveal a mortgage fraud scheme, for example.

In addition, they are required to ensure their mortgage brokers comply with the legislation and regulations specific to the practice of mortgage brokerage, particularly with respect to the rules governing the authorization to act in the sector, the keeping of mandatory records and registers, representation activities, remuneration and commission sharing.

Accordingly, the purpose of this chapter is to outline the knowledge and best practices that responsible officers of firms in mortgage brokerage have to integrate into their professional activities.

2.1 Explain the role of mortgage brokerage regulatory bodies

2.1.1 *Autorité des marchés financiers*



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As explained in section 6.1.1.1 of manual E-116, the *Autorité des marchés financiers* is the organization mandated by the Government of Québec to oversee Québec's financial sector and provide assistance to consumers of financial products and services. It was constituted by the *Act respecting the supervision of the financial sector* and is financially self-sufficient as a result of the contributions and fees paid by its registrants.

2.1.1.1 Mission

Section 4 of the *Act respecting the regulation of the financial sector* (ARFS) stipulates that the AMF's mission is, in particular, to:

- Provide assistance to consumers of financial products and services, in particular by setting up educational programs, processing complaints filed by consumers and giving access to dispute-resolution services.
- Ensure that the financial sector players comply with the solvency standards applicable to them as well as with the obligations imposed on them by law.

- Supervise the activities connected with the distribution of financial products and services and administer the rules governing eligibility for and the carrying on of those activities.
- See to the implementation of protection and compensation programs for consumers of financial products and services.⁸

The ARFS also states that the AMF is to act as an information and reference centre in all fields of the financial sector (section 7), including mortgage brokerage.

2.1.1.2 Functions and powers

To carry out this mission, the Authority has, in particular, the functions and powers⁹ to:

- Foster the confidence of the public with respect to practitioners in the financial sector as regards solvency and their competence
- Promote the availability of high-quality, competitively priced financial products and services
- See to the establishment of an effective and efficient regulatory framework that promotes the development of the financial sector and facilitates innovative management and commercial practices
- Grant the public access to reliable, accurate and complete information on the practitioners in the financial sector and on the financial products and services offered
- Protect consumers against unethical, abusive or fraudulent practices and give individuals and enterprises access to various dispute resolution mechanisms¹⁰

2.1.2 Mortgage Broker Regulators' Council of Canada (MBRCC)



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This topic was also discussed in Chapter 6 in section 6.1.1.2.

8. Certain passages have been omitted to focus on those elements of the ARFS that are most relevant to the sector of mortgage brokerage.

9. ARFS, s. 8.

10. Certain passages have been omitted to focus on those elements of the ARFS that are most relevant to the sector of mortgage brokerage.

The AMF is a member of the Mortgage Broker Regulators' Council of Canada (MBRCC), which is an intergovernmental association of mortgage broker regulators of Canada. The mission of the MBRCC is to improve and promote harmonization of mortgage broker regulatory practices across Canada to serve the public interest.

2.2 Inspections and investigations of mortgage brokerage activities



2.2.1 Regulator's role

As a regulator, the AMF has to ensure all registrants uphold the legislation and regulations in their practice, to which end it applies two control mechanisms: inspections and investigations.

The AMF derives its powers of inspection and investigation mainly from sections 9 to 17 of the ARFS. As a result, the AMF can carry out inspections to verify whether the Distribution Act is being applied.

Inspections are carried out before irregularities happen, i.e. they play a preventive role, whereas investigations take place with a more punitive approach, as they are launched following a trigger event. These mechanisms allow the AMF to enhance public confidence in it and in sectors it supervises.

2.2.2 Inspections

Inspections are preventive verification procedures and consist in particular in ensuring that practitioners in the financial sector comply with their legal and regulatory requirements to protect the interests of consumers of financial products and users of financial services.

The inspection process, carried out in conjunction with the individuals and entities concerned, promotes the improvement of their professional practices.

Since inspections are preventive in nature, they may be directed at any AMF registrant. As they constitute mandatory procedures, they cannot be refused by registrants. The AMF follows a risk-based approach, relying on quantitative and qualitative criteria such as the type of professional activities, financial position, existence of causes of non-compliance, number and type of complaints received, enterprise size or number of brokers attached to the enterprise.

Table 2.1 details the various forms of inspection.

TABLE 2.1

Forms of inspection

Announced on-site inspections	Advance notice is sent to the inspected registrant, usually the responsible officer. This type of inspection is generally intended to verify the compliance of the registrant's practice with the legislation and regulations administered by the AMF.
Unannounced on-site inspections	While similar to announced on-site inspections, unannounced on-site inspections differ in that registrants receive no advance notice. They therefore amount to a "surprise" visit by the inspector. This type of inspection usually consists of a follow-up inspection from a previous visit.
Remote inspections	This type of inspection can take on several forms: sending a self-assessment questionnaire, requesting access to the registrant's documents or a telephone interview. This form of inspection often takes place when the AMF wishes to validate a specific situation in the industry or when a large portion of its members are involved.

2.2.2.1 General conduct of inspections

Generally, the purpose of inspections is to verify, validate and analyze the registrant's work practice. They are typically initiated by sending a notice to the responsible officer (except for unannounced inspections). The inspector subsequently arrives on-site and explains the inspection process to the responsible officer. The inspector then visits the premises to analyze the records, books and registers deemed relevant to the inspection. The inspector may then conduct interviews with the registrant's representatives and employees.

Following the inspection, the registrant receives a report from the inspector. Depending on the report's conclusions, the registrant may be required to remedy certain situations, prepare an action plan, sign a compliance undertaking or be subject to a follow-up inspection. In some cases, the record of inspection may be transferred to other administrative sections of the AMF.

**N.B.**

The inspection report is strictly confidential and is for the firm's internal use only.

2.2.2.2 Powers and obligations of inspectors

Section 10 of the ARFS sets out the powers and duties of inspectors.

**Legislative or other references**

ARFS, s. 10

The person so authorized to carry out an inspection by the Authority or by a self-regulatory organization may

- (1) enter, at any reasonable time of day, the establishment of a person or partnership where activities governed by an Act referred to in section 7 are carried on and carry out an inspection;
- (2) require from the persons present any information related to the application of such an Act as well as the production of any book, register, account, contract, record or other relevant document;
- (3) examine and make copies of the documents containing information that is relevant to the activities of the person or partnership.

Any person who has the custody, possession or control of documents referred to in this section must, on request, communicate them to the person carrying out the inspection and facilitate their examination by such person.

**N.B.**

Section 19.0.1 of the ARFS states that hindering or attempting to hinder the action of an inspector or investigator in the exercise of inspection or investigation functions or powers, or hiding, destroying or refusing to provide information, a document or a thing the inspector or investigator is entitled to require or examine may result in a fine of \$5,000 to \$50,000 in the case of a natural person (i.e. an individual) and \$15,000 to \$150,000 in all other cases. In addition, the minimum and maximum fines are doubled for a second offence and tripled for a subsequent offence.

Inspectors are obliged to produce identification on request and show the document from the AMF attesting their authorization. No proceedings may be brought against them by reason of acts performed in good faith in the exercise of their functions.¹¹

2.2.3 Investigations

Unlike inspections, investigations are conducted by the AMF if it has reasonable grounds to believe there has been a contravention of any act or regulation it administers. They may apply to both registrants and non-registrants. Linked to the commission of an offence, their reach is punitive and deterrent. Under section 12 of the ARFS, investigations are held *in camera*.

Investigators are mandated to seek evidence relating to an offence. Often, their work consists in verifying the merits of a complaint submitted against the registrant.

2.2.3.1 Powers and obligations of investigators

Like inspectors, investigators are obliged to produce identification on request.

They have access to any of the registrant's establishments (e.g. offices). They may require copies of any documents relating to a firm's activities. They also have the power to verify who has access rights to the firm's IT system. As with the work of inspectors, it is prohibited to hinder the work of investigators or mislead them.

11. ARFS, s. 11

**N.B.**

Refusing to provide access to a document required by an investigator or obstructing the functions thereof is a criminal offence potentially resulting in a fine being imposed on the registrant.

Section 16.16 of the *Regulation respecting the pursuit of activities as a representative*¹² states as follows:

**Legislative or other references**

Regulation respecting the pursuit of activities as a representative, s. 16.16

Mortgage brokers who are informed that their conduct is the subject of a complaint filed with or an investigation conducted by the Authority must not communicate with the complainant or the person who requested the investigation.¹³

**Legislative or other references**

Distribution Act, s. 115.3

The Authority may, for the purposes or in the course of an investigation, request the Financial Markets Administrative Tribunal

- (1) to order the representative or firm or any other person or entity actually or potentially under investigation not to dispose of funds, securities or other property in their possession;
- (2) to order the representative or firm or any other person or entity actually or potentially under investigation to refrain from withdrawing funds, securities or other property on deposit with or under the control or in the safekeeping of another person; or
- (3) to order any other person or entity not to dispose of funds, securities or other property referred to in subparagraph 2.

12. The amended regulation is effective as of May 1, 2020.

13. This section refers to mortgage brokers rather than to the firms they are attached to.

**Legislative or other references (*continued*)**

An order issued under the first paragraph is effective from the time the party concerned is notified of it and, unless otherwise provided, remains binding for a 12-month period; the order may be revoked or otherwise amended during that period.

The party concerned must be given at least 15 days' notice of any hearing during which the Financial Markets Administrative Tribunal is to consider an extension. The Tribunal may order the extension if the representative, firm, other person or entity does not request to be heard or fails to establish that the reasons for the initial order have ceased to exist.

Financial Markets Administrative Tribunal

Generally speaking, the Financial Markets Administrative Tribunal (Tribunal) has three main roles:

- It hears requests from the AMF in connection with the powers conferred on it by the ARFS and the Distribution Act;
- It hears requests from any interested person under the powers set out in the various enactments under its purview;
- It hears requests for review of decisions, in particular those issued by the AMF.

Accordingly, where a registrant contravenes a provision of the Distribution Act, the Financial Markets Administrative Tribunal may, as the case may be, cancel, revoke or suspend registrant's registration or certificate or subject it to restrictions or conditions.¹⁴ The Tribunal may also impose an administrative penalty not exceeding \$2,000,000.

2.2.4 Role of responsible officers

For both inspections and investigations, the responsible officer is the firm's main contact with the AMF's representatives. As a result, responsible officers are required to cooperate with inspectors and investigators and be available to respond to their requests. They have to ensure that a responsible person is available throughout the intervention to answer their questions and fulfil their requests.

14. Distribution Act, s. 115

2.3 Integrate into professional practice the ethical obligations and duties of responsible officers of firms in mortgage brokerage

The rules of conduct proposed by the AMF apply to holders of a representative's certificate in the sector of mortgage brokerage. Responsible officers are not subject to any of these rules in their capacity as responsible officers. That being said, since they are holders of a certificate and required to demonstrate a strong sense of ethics, they must bear in mind the rules set out below.

2.3.1 Duties of mortgage brokers and responsible officers of firms in mortgage brokerage



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As explained in section 6.1.3.1, mortgage brokers are subject to rules of conduct.

By holding the office of responsible officers of firms in mortgage brokerage, responsible officers have to acquire proficient knowledge of these rules to be able to detect any potential situations of ethical violations.

Sections 16.1 to 16.16 of the *Regulation respecting the pursuit of activities as a representative* set out specific ethical rules that apply to mortgage brokerage.



2.3.1.1 Compliance with the *Act respecting the distribution of financial products and services* (Distribution Act)

First of all, responsible officers, like mortgage brokers, are required to take reasonable steps to ensure that persons authorized to act for them, such as their employees or representatives, in the pursuit of their activities as mortgage brokers comply with Distribution Act and its regulations.

It is an offence to contravene a provision of the Distribution or any of its regulations. Offenders are liable to a minimum fine of \$2,000, which may not exceed \$150,000 in the case of a natural person, or a fine of \$3,000 to \$200,000 in the case of a legal person.



N.B.

Article 488 of the Distribution Act stipulates as follows:

An executive officer, director or employee of the principal offender, including a person remunerated on commission, who authorizes or permits an offence under this Act is liable to the same penalties as the principal offender.

Accordingly, responsible officers must be particularly vigilant regarding their firm's activities.

2.3.1.2 Respect, integrity, prudence, diligence, objectivity and discretion

Section 16.2 of the *Regulation respecting the pursuit of activities as a representative* stipulates that mortgage brokers must act with respect and integrity, as well as with prudence, diligence, objectivity and discretion.

While the concepts of respect, integrity and prudence speak for themselves, the concept of diligence warrants some explanation. Diligence involves the timely performance of a task. As a result, mortgage brokers working alone must think before accepting to take on a large transaction knowing that it could prevent them from devoting the time necessary to perform their other client work. Similarly, novice mortgage brokers should not engage in transactions that are overly complex that they are unable to complete within a reasonable time. The duty of diligence also requires mortgage brokers to provide clients with any documents related to their client record within a reasonable time.

EXAMPLE

An overly ambitious mortgage broker who takes on too many clients at the same time and fails to recall them in a timely manner would not be acting with diligence.

As a result, responsible officers have to ensure that the mortgage brokers they select are able to proceed in a timely fashion. They may also implement measures to make mortgage brokers as available as possible. In addition, it is important that, at all times during business hours, clients calling the firm be able to obtain the necessary assistance in a timely manner, even if their mortgage broker is not available at that time. To do so, the firm may set up a telephone call tracking system.

2.3.1.3 Objectivity

To meet the requirement for objectivity, mortgage brokers must be able to make decisions without being influenced by their personal opinions. As a result, mortgage brokers may have to withdraw from a transaction if, for example, the relationship between them and the client is such that they would be unable to advise the client without being influenced by the relationship. In this regard, their responsible officer may act as an adviser.

Responsible officers must provide their brokers with sound guidance that cannot be perceived as undue pressure to choose a particular financial product. They must also ensure their brokers refrain from applying undue pressure.

EXAMPLE

Mortgage brokers cannot extol the benefits of a particular loan for no reason in the knowledge it is not necessarily appropriate for their client.

2.3.1.4 Discretion and confidentiality

Clients must be able to rely at all times on the discretion of their mortgage broker. Naturally, mortgage brokers must not reveal to third parties any information about their clients or proposed transactions without client or court authorization. This duty of discretion also applies to client affairs even where unrelated to the mortgage transaction in question.

EXAMPLE

A mortgage broker would not be permitted to disclose the fact that a popular singer came to her for a mortgage loan. This duty of discretion applies not only to the broker, but also to her employees and mandataries.

Section 16.10 of the *Regulation respecting the pursuit of activities as a representative* supplements this obligation by specifying that mortgage brokers must respect and ensure the confidentiality of all information obtained about their clients. The information must be used only for the purposes for which it was obtained. However, this duty does not constitute professional secrecy within the meaning of section 131 of the *Act respecting the Barreau du Québec*. Accordingly, unlike for notaries or lawyers, a court may order mortgage brokers to disclose confidential information in their possession.

2.3.1.5 Competence

Sections 16.3 and 16.4 of the *Regulation respecting the pursuit of activities as a representative* and section 16 of the Distribution Act set out the mortgage broker's duty to act with competence. This involves acquiring and maintaining knowledge of the mortgage industry and applicable regulations, and developing their abilities. Mortgage brokers must also take into account the limits of their skills and of the means at their disposal. When they do not have the necessary skills, they must not act on behalf of a client.

EXAMPLE

Mortgage brokers who carry out multi-unit residential mortgage transactions only should not engage in commercial loan transactions without upgrading their knowledge in that area.

Accordingly, even at a client's request, mortgage brokers entering a new practice or a new area of practice should not be expected to handle a complex transaction when they do not have the necessary knowledge and experience. To do so, they should obtain the appropriate assistance from a more experienced mortgage broker.

Again, when distributing work to their brokers, responsible officers must pay particular attention to each broker's skills and knowledge.

The *Regulation to amend the Regulation respecting the pursuit of activities as a representative* sets out certain rules of practice governing competence.

Before proposing a mortgage loan, a mortgage broker must collect and record in a dated document the information pertaining to the identification of the client's needs and the client's financial situation. This information includes in particular:

- The subject property of the proposed loan;
- The characteristics of the proposed loan;
- The terms and conditions of proposed loan;
- The immovable that will be charged with the hypothec;
- The client's credit history;
- Their income;
- Their ability to repay the loan;
- Their level of financial knowledge.

2.3.1.6 Independence and no conflicts of interest

Sections 16.5 and 16.6 of the *Regulation respecting the pursuit of activities as a representative* state that mortgage brokers must act with independence and in their clients' best interests, and not place themselves in a conflict of interest.

A conflict of interest, or the appearance of a conflict of interest, occurs when mortgage brokers' personal or professional interests are competing or divergent with their clients' interests. There is then a risk that the registrant may make a decision that is not necessarily to the advantage of the client.

In this regard, the AMF has imposed various prohibitions on its registrants, including the following.

Financial and non-financial incentives management

Under section 11.1 of the *Regulation respecting firms, independent representatives and independent partnerships*, a registrant may not introduce any incentives that could have an influence on the performance of the obligations of a mortgage broker.

EXAMPLE

A contest or promotion based on the sale of specific products risks creating a conflict of interest. Responsible officers risk encouraging mortgage brokers to advise their clients to take out a particular loan when another would better meet the needs they expressed, which is prohibited.

However, firms may offer non-monetary incentives of modest value, if they are not significant enough to influence the work and products advised by mortgage brokers.

In all cases, where an incentive is offered, it must be recorded by the registrant in the *Register of incentives*. This topic is covered in Chapter 4 of this manual.

EXAMPLE

The following are two examples of financial and non-financial incentives that are prohibited for the mortgage brokers:

- A product whose higher commission leads the registrant to recommend its sale rather than one that best suits the client's needs;
- A bonus contest or program that influences a registrant in the choice of products to propose to clients.



N.B.

Responsible officers must pay special attention to their dealings with industry stakeholders. For example, lenders that require a certain volume of business placed with them in exchange for service could constitute a conflict of interest for the firm. Registrants may be tempted to offer this service in cases where it is not appropriate for their clients in order to meet supplier-imposed quotas.

Personal financial transactions with clients

Mortgage brokers may not engage in personal financial transactions with clients if such transactions place them in a conflict of interest.

Transactions typically consist of borrowings, loans, private placement projects, investments in a business in which the broker or client has an interest, or a joint investments.

As part of their office, responsible officers are expected to act and implement measures to prevent conflicts of interest. To this end, the AMF recommends that responsible officers:

- Determine which of its activities have the potential to generate conflicts of interest;

- Establish clear guidelines or standards for these at-risk activities;
- Ensure brokers and representatives comply with these standards and guidelines in the pursuit of their activities.

For example, responsible officers may set a cap on the amount of financial incentives that can be offered.

Responsible officers should also implement policies and procedures that include the following:

- Definition of a conflict of interest with examples;
- Process for mortgage brokers to inform their superiors of an actual or potential conflict of interest;
- Procedure for dealing with any potential conflicts of interest;
- Duty to document conflicts of interest that have occurred in the firm;
- Periodic conflict of interest reporting to senior management;
- Training program offered to the firm's employees, representatives and partners;
- Internal control mechanisms to ensure compliance with the policies and procedures implemented.

2.3.1.7 Appropriate advice and transparency

Sections 16.7 to 16.9 of the *Regulation respecting the pursuit of activities as a representative* address the quality of advice mortgage brokers must provide to clients. Mortgage brokers must be transparent, in particular by explaining the nature and scope of their services and the services provided by the firm to enable clients to fully understand them. They must ensure that the loan secured by immovable hypothec that they propose is suited to the client's situation and needs.

Mortgage brokers must appropriately advise their clients and give them all such information as may be necessary or useful in their decision-making. For example, they must explain to their clients the nature and characteristics, as well as the advantages and disadvantages (i.e. pros and cons), of the loans secured by immovable hypothec that they propose to their clients. This also includes the penalties applicable in the event of failure to comply with the terms of the loan agreement.

Duty not to advise the commission of an illegal act

In addition, mortgage brokers must be careful not to advise clients in the commission of any potentially illegal act. More specifically, section 16.14 of the *Regulation respecting the pursuit of activities as a representative* states that mortgage brokers must not advise or encourage the commission of an illegal or fraudulent act, such as the illegal pursuit of activities as a mortgage broker or mortgage fraud.

In addition, if a client asks them to commit an illegal act, mortgage brokers must cease to act on behalf of the client.

EXAMPLE

If a client asks their mortgage broker to obtain a loan based on misleading representations, the broker must cease to represent the client in their endeavours.

2.3.1.8 Cooperation

The concept of cooperation is essential and constitutes an ethical duty for mortgage brokers. Responsible officers are also bound by this obligation as part of their office. Mortgage brokers and responsible officers must both cooperate with the AMF in a transparent and diligent manner and must not mislead it. They must also not encourage a person to not cooperate with or to mislead the AMF. Responsible officers must also respond in a timely manner to communications from the AMF and provide it with all such documents as it may request.

EXAMPLE

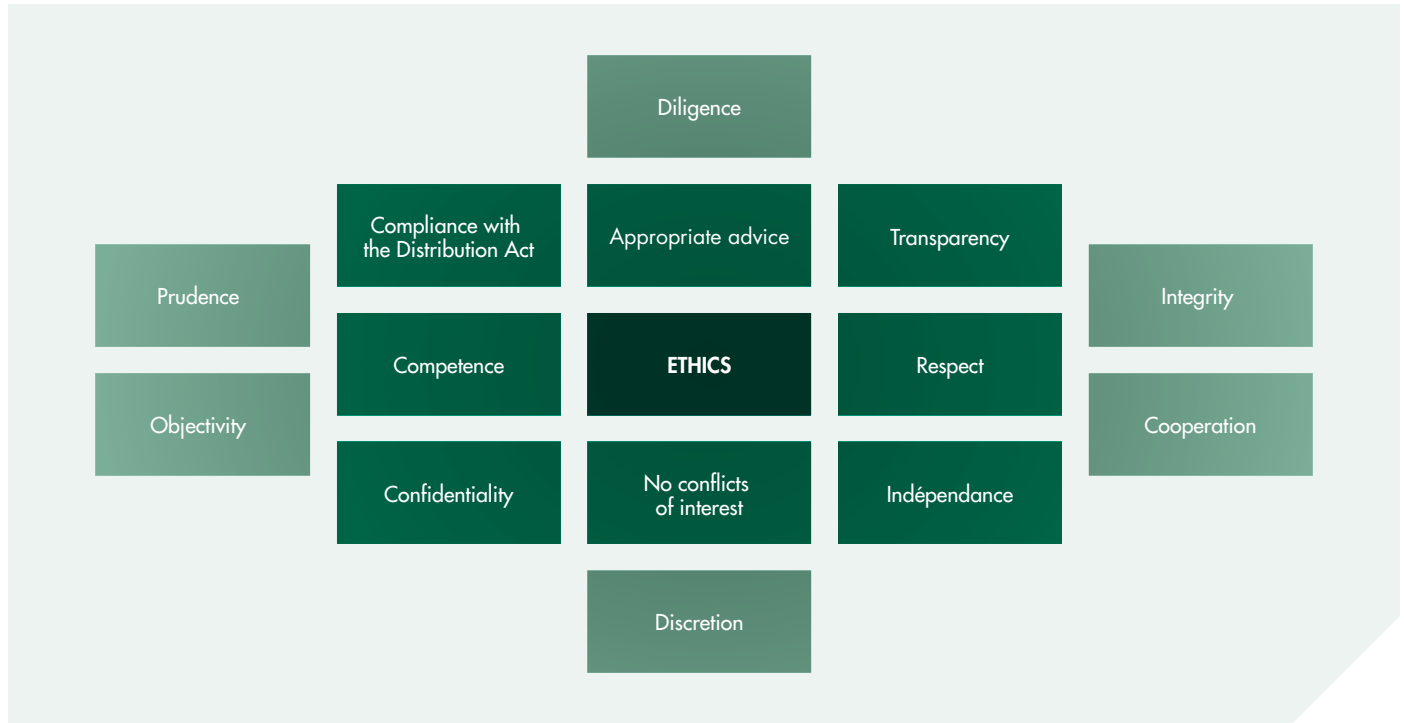
When AMF inspectors are sent to a firm to inspect practices, the responsible officer or mortgage brokers must not attempt to conceal certain documents from them.

Division V.1 of the *Regulation respecting the pursuit of activities as a representative* also addresses the concepts of remuneration, disclosure and representations, which we will discuss in more detail in the next few pages.

Diagram 2.1 highlights the key words related to the ethical conduct of mortgage brokers.

DIAGRAM 2.1

Conduct compliant with the rules of conduct



2.3.2 Rights and obligations of firms and responsible officers

2.3.2.1 Duty of honesty and loyalty of firms and responsible officers to clients

Under Section 84 of the Distribution Act, all firms and their executive officers are bound to act with honesty and loyalty, and care and competence in dealings with clients.

The obligations of honesty and loyalty mean, in particular, that responsible officers are to:

- Avoid situations of conflicts of interest;
- Provide clients with all the required information, the notices prescribed by regulation and any other useful and relevant information;
- Avoid any practice that is prohibited or unacceptable.

The obligations of care and competence mean, in particular, that responsible officers are to:

- Ensure compliance of the activities of the firm's mortgage brokers;
- Keep up to date with the latest legal and regulatory developments, and AMF notices and recommendations;
- Consider all communications sent by the AMF;
- Demonstrate availability and diligence in the pursuit of their activities.

2.3.2.2 Duty of honesty, competence and solvency of responsible officers

Section 79 of the Distribution Act imposes a duty of honesty, competence and solvency on executive officers.

The duties of honesty and diligence were discussed earlier, but the duty of solvency warrants being clarified. Registrants must have adequate financial resources to ensure the viability of their business. Accordingly, they must be able to pay their debts when they become due.

To be registered with the AMF, firms must show that their directors and executive officers meet the solvency criterion.

2.3.2.3 Responsibility of responsible officers regarding the obligations of mortgage brokers

As part of their office, responsible officers must ensure their mortgage brokers and independent representatives meet their obligations. They must be able to properly guide and advise them in their activities. Responsible officers must always bear in mind that the firm may be held liable for the fault of its employees, mortgage brokers and mandataries.

2.3.3 Record and register keeping

The Distribution Act and its regulations require firms and mortgage brokers to maintain various records and registers, including the register of commissions, accounting books and records, register pertaining to the separate account, register of incentives, client records and the responsible officer's record. These items are covered in detail and in Chapter 4 of this manual.

2.3.4 Obligations under the *Act respecting the distribution of financial products and services (Distribution Act)* and its regulations

2.3.4.1 Concepts specific to responsible officers

Responsible officers must ensure all representatives associated with their firm have and maintain the right to practise. This requires responsible officers to maintain their knowledge through professional development. These concepts are further developed in Chapter 4 of this manual.

Responsible officers must also ensure that each registrant has liability insurance in good standing and that the registrant's representation activities and remuneration are in compliance with the Distribution Act and its regulations.



Legislative or other references

Section 16.1 of the *Regulation respecting the pursuit of activities as a representative* states as follows:

Mortgage brokers must take reasonable measures to ensure that the persons authorized to act on their behalf in the pursuit of their activities as a mortgage broker comply with the provisions of the *Act respecting the distribution of financial products and services* (chapter D-9.2) and its regulations, including those of this subdivision.

These items are covered in detail and in Chapter 4 of this manual.

2.3.4.2 Advertising, representations and client solicitation

Recap of definitions



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As discussed in section 6.2.2, the Distribution Act and its regulations govern the registrant's advertising activity.

Sections 1 to 11 of the *Regulation respecting firms, independent representatives and independent partnerships* regulate permitted advertising practices and impose specific rules.

Use of name

In all its representations, advertising or client solicitation, a firm must use its name or the other names it uses in Québec. It may not use a trademark, slogan or symbol or any other thing that is likely to cause confusion. The title of the authorized representative must also be indicated.



FYI

The title that must be used by the representative authorized to act in the sector of mortgage brokerage is “mortgage broker.”

False, misleading or deceptive representations

No registrant may purport in its representations that the AMF recognizes or approves the actions performed by it in the pursuit of its activities.

Mortgage brokers are also prohibited from misleading or deceiving the public in their advertising or representations.

Furthermore, no mortgage broker may falsely claim that a particular service or product is recognized by a particular organization or appear to promise results that they are unable to provide.



Mortgage brokers may not make any solicitation that is likely to cause confusion. They also prohibited from disclosing their income or financial performance at the time of solicitation.

EXAMPLE

In an advertisement, a registrant cannot indicate that it made loans of more than \$10,000,000 in the previous year.

Obligation of consistency

The product offered must be consistent with the advertising and representations made about it.

EXAMPLE

Mortgage brokers cannot mislead clients by only describing a product's advantages without describing its disadvantages.

EXAMPLE

Mortgage brokers cannot tout the advantages of a mortgage loan with very accessible eligibility criteria without mentioning that, as a result, the interest rate is particularly high.

Obligations regarding the competition

When advertising, firms may not criticize the products, services or work methods of their competitors.

Acknowledgement of sources and authorization of the person marketing the product

If mortgage brokers wish to advertise a financial product, they must first obtain the authorization of the person marketing it.

When using a statistic in their advertising or representations, firms must provide the source of the statistic.

Section 9.6 of *Regulation respecting the pursuit of activities as a representative* states that when a client engages a mortgage broker, the mortgage broker must also make a written disclosure of the following information to the client:



Legislative or other references

Regulation respecting the pursuit of activities as a representative,
s. 9.6

- (1) separately, the number of lenders that made loans secured by immovable hypothec for which:
 - a) he engaged in a brokerage transaction in the previous 12 months; and
 - b) the firm or independent partnership on behalf of which he acts, if applicable, engaged in a brokerage transaction in the previous 12 months;
- (2) the name of the lender that, if applicable, made more than 50% of the total number of loans secured by immovable hypothec or loan renewals for which the mortgage broker, or the firm or independent partnership on behalf of which the mortgage broker acts, engaged in a brokerage transaction in the previous 12 months.

Representation at the first meeting with the client

Upon first meeting a client, a representative must give the client a document which indicates the following:

- (1) The representative's name;
- (2) The representative's main business address, business telephone number and electronic mail address, if any;
- (3) The name of the firm or independent partnership on whose behalf the representative is acting or the description "independent representative", as the case may be;
- (4) The titles under the Distribution Act which the representative is authorized to use in respect of the firm or independent partnership on whose behalf he is acting or the titles under Distribution Act which he is authorized to use as an independent representative, as the case may be.

This document may contain other information, provided such information is not likely to cause confusion, is related to the pursuit of activities as a representative and is not incompatible with those activities.

**FYI**

The representative's education and qualifications or years of experience, or a description of the products and services offered may be set out in the document given to the client.

**N.B.**

Where clients are contacted remotely, representatives must provide their name, the name of the firm or independent partnership on whose behalf they are acting, as the case may be, and the titles they are authorized to use under the Distribution Act.

**N.B.**

Where, in respect of an activity not governed by the Distribution Act, such as a symposium, a firm engages in advertising or client solicitation for the purpose of selling a financial product or providing a financial service, the firm must state its title or the fact that it is a distributor of financial products and services.

2.3.4.3 Remuneration and sharing of commissions

Remuneration¹⁵ and sharing of commission are significant aspects of the practice of mortgage brokers. However, a distinction must be made between the payment of remuneration and the sharing of commissions, as the Distribution Act sets different rules for each.

15. The term "remuneration" is used in the Distribution Act and its regulations to refer to what a representative or registrant receives in consideration for the sale of a product or the provision of a service, regardless of the form it takes. It may consist of salary, a commission or compensation, i.e. remuneration paid by the client, or another benefit, such as a bonus.

Remuneration

Remuneration is the amount to which a mortgage broker or registrant (firm, independent partnership or independent representative) is entitled in consideration of the sale of a financial product or the provision of a financial service, regardless of how this is paid. Possible types of remuneration include salaries, commissions, fees, charges, compensation, a percentage, lump sums, hourly rates, etc.

Sharing of commissions

Sharing of commissions takes place when a registrant (a firm, an independent partnership or an independent representative) splits the remuneration and gives part of it to another person authorized under the Distribution Act. Accordingly, splitting of commissions always takes place after the remuneration has been paid.

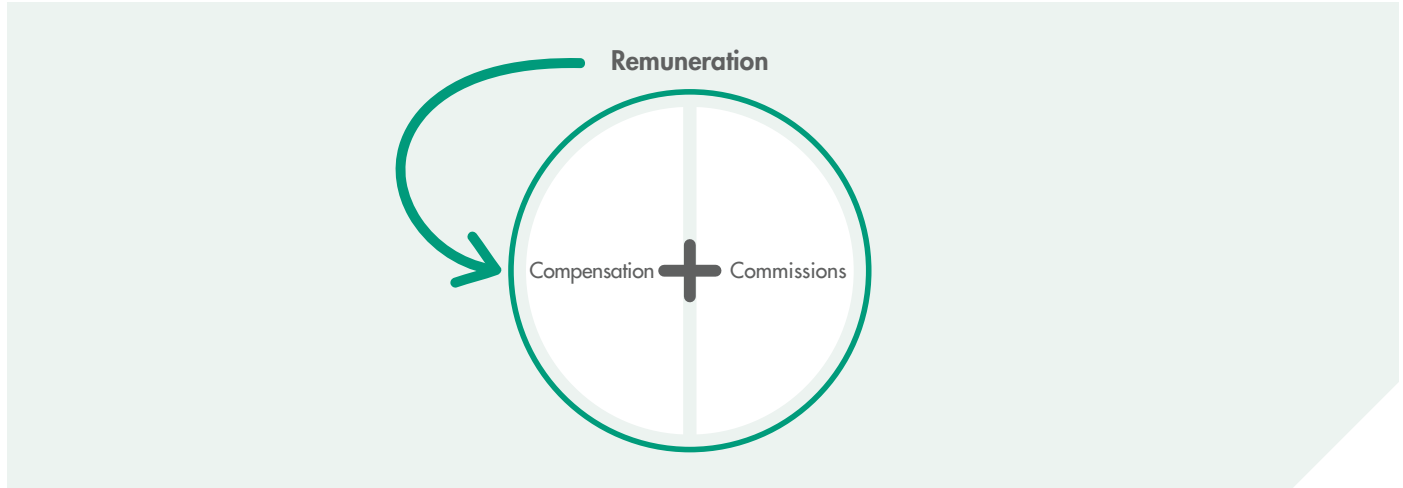
Remuneration

Sections 16.11 and 16.12 of the *Regulation respecting the pursuit of activities as a representative* states that compensation claimed by the mortgage broker must be fair and reasonable given the services rendered. Mortgage brokers must also provide their clients with the explanations that they need to understand their remuneration.

Before services are rendered, they must make a written disclosure of their method of remuneration to clients, indicating:

- The compensation¹⁶ claimed for the services they render to the client, if applicable, and the conditions on which the compensation may be claimed;
- The fact that they receive remuneration or any other benefit from the mortgage lender or any person for the services they render thereto, if applicable.

16. Compensation is the remuneration paid by the client.

DIAGRAM 2.2**Remuneration**

If a change is made to their remuneration, mortgage brokers must notify clients immediately and a new brokerage contract will then be signed.

Mortgage brokers must be transparent in respect of their clients. When they propose a loan to a client, they must therefore make a written disclosure of the following information to the client:

- (1) The nature of the remuneration or any other benefit that he will receive if the loan is made, if applicable.
- (2) The nature of any other remuneration or any other benefit that he may receive with respect to the proposed loan.
- (3) The fact that he intends to share his commission, if applicable, and the name of the person sharing the commission.

Sharing of commissions

Registrants may remit part of their commission to another person. Section 100 of the Distribution Act authorizes firms to share a commission with the following persons:

- An independent representative;
- An independent partnership;
- Another firm;
- A broker or an agency governed by the *Real Estate Brokerage Act*;
- A securities dealer or securities adviser governed by the *Derivatives Act* or the *Securities Act*;

- An authorized deposit institution;
- A bank or an authorized foreign bank;
- An authorized trust company;
- An insurer;
- A federation within the meaning of the *Act respecting financial services cooperatives*.

EXAMPLE

Mortgage brokers cannot remit a commission to the builder who referred a client to him.

EXAMPLE

Mortgage brokers wishing to share their commission with a real estate broker must do so through their firm.

**N.B.**

The sharing of a commission cannot be paid in cash to those sharing it.

Commissions register

As soon as a commission is received, it must be entered without delay in the register of commissions, which must contain the following information:

1. The contract number or client name, as the case may be;
2. The name of the client, the insurer, the mortgage lender or any other person who has paid a commission;
3. The statement pertaining to each commission or other remuneration received by the firm, the independent representative or the independent partnership.

However, in the event the statement provided for in point 3 includes the information prescribed in points 1 and 2, the filing of the statement in the commissions register is regarded as sufficient.

If the commission is shared, the register must also contain the following information:

1. The name and business address of each person sharing the commission and the sectors, if applicable, for which they are registered with the AMF;
2. The names of the parties to the transaction and the object and date of the transaction;
3. The percentage of the commission or the fixed amount resulting therefrom and the manner in which the commission is allocated between the persons sharing it.

Referrals

A referral occurs when a person refers a client to another representative or registrant. The person may then receive remuneration for the referral. If they are a registrant or representative, they may also receive a commission. If they are neither a registrant, nor a representative or nor a person authorized to share commissions, their remuneration cannot depend on the outcome of the referral.



N.B.

Where a registrant receives a fixed remuneration for a referral to another registrant, this does not pertain to the sharing of a commission, but rather to the sale of the name of a potential client.

Similarly, when mortgage brokers refer a client to another person or entity, they must disclose in writing to the client that they may receive a share of a commission, if applicable.

Mortgage brokers must be aware that they are prohibited from limiting the pursuit of their activities solely to making referrals. As soon as they are involved in a mortgage transaction, they are required to carry out all the actions that comprise it.

2.3.5 **Obligation to comply with the provisions of the *Act respecting the protection of personal information in the private sector* (APPIPS)**

2.3.5.1 **Reminder of obligation**

The *Commission d'accès à l'information du Québec* (i.e. Québec's access-to-information commission) is responsible for enforcement of the *Act respecting the protection of personal information in the private sector* (APPIPS).

2.3.5.2 Definition of personal information

Personal information is any information which relates to a natural person and allows that person to be identified, such as a name, an address or a telephone number.

2.3.5.3 Obligations related to the collection of personal information

The APPIPS imposes various obligations on anyone carrying on an enterprise (e.g. a business) who collects personal information about someone, such as when mortgage brokers open a client file (i.e. a client record).

Accordingly, the APPIPS requires a person carrying on an enterprise to record only the information necessary for the object (i.e. purpose) of the file. The person must also give the reason for the collection of information when establishing a file on another person.

EXAMPLE

Mortgage brokers may not record information in a client's loan file that is unrelated to obtaining the loan.

Section 8 of APPIPS states that if the registrant collects information, the registrant must inform the person concerned:



Legislative or other references

APPIPS, s. 8

- (1) of the object of the file;
- (2) of the use which will be made of the information and the categories of persons who will have access to it within the enterprise;
- (3) of the place where the file will be kept and of the rights of access and rectification.

In addition, mortgage brokers who collect personal information must do so from the person concerned, unless the latter has authorized the collection from a third person or the APPIPS so permits.

**N.B.**

Personal information may be collected from a third person if there is a serious and legitimate reason for doing so and, pursuant to section 6 of the APPIPS,

- (1) The information is collected in the interest of the person concerned and cannot be collected from him in due time;

Or that:

- (2) Collection from a third person is necessary to ensure the accuracy of the information.

When information is collected from a third person, an entry indicating the source of such information must be made in the file.

EXAMPLE

A credit report may be collected from a third person (i.e. third party). Similarly, such information may be communicated (i.e. disclosed) to third persons only with the consent of the person concerned or if the APPIPS so authorizes.

EXAMPLE

The client's consent is required to transfer a loan application to the lender. Once the file (i.e. record) has been closed, the firm may not use the information in the record unless the client or the APPIPS so authorizes.

EXAMPLE

Without prior authorization, a firm may not contact its former clients to offer them a financial product intended for a clientele with a specific income.

Where the client consents to the collection, communication (i.e. disclosure) or use of personal information, it must be given in a manifest, free and enlightened manner.

Section 18 of the APPIPS sets out various situations where a person carrying on an enterprise may, without the consent of the person concerned, communicate personal information contained in their client file.

EXAMPLE

Client authorization is not required when the AMF requests access to the mortgage broker's files (i.e. records) in the course of an inspection or investigation.

Access to personal information

Article 27 of the APPIPS states as follows:

**Legislative or other references**

APPIPS, s.27

Every person carrying on an enterprise who holds a file on another person must, at the request of the person concerned, confirm the existence of the file and communicate to the person any personal information concerning him.

If the person concerned is handicapped, reasonable accommodation must be provided on request to enable the person to exercise the right of access provided for in this division.

At the request of a client, the firm must communicate to the client any personal information concerning them. Such access must be free of charge; however, a reasonable charge may be required for the transcription, reproduction or transmission of such information.

Where such information is inaccurate, incomplete or equivocal (i.e. ambiguous), the client may cause it to be deleted or rectified. The firm must take the necessary steps to allow the client to make these rectifications (i.e. corrections).

**N.B.**

Any person who contravenes the APPIPS is liable to a penal penalty in the form of a fine ranging from \$1,000 to \$100,000.

Access to client files by representatives, mandataries and employees

Responsible officers must pay particular attention to access to client information. They must ensure that their representatives, employees not subject to the Distribution Act, mandataries and service providers have access only to the information they need in the pursuit of their activities. Representatives may access such information only where duly authorized to do so by the firm.

If the firm wishes to give a representative access to personal information that is not relevant to the object (i.e. purpose) of a client file, it must obtain the client's authorization. This consent must be obtained using a notice drawn up in the manner prescribed by regulation.

2.3.5.4 Best practices for responsible officers

The firm must take the necessary security measures to ensure the protection of the personal information it collects.

It must also ensure that the information is up to date and accurate when used to make a decision.

Accordingly, best practices for responsible officers include implementing the following security measures:

- A policy or procedure based on the firm's legal obligations;
- Best practices for the protection of information transferred to representatives;
- A professional development activity covering the policies and procedures for the firm's employees and representatives;
- A confidentiality undertaking signed by non-certified employees and service providers with access to confidential information;
- An internal control mechanism to verify compliance with established policies;
- The adoption of sound cybersecurity practices.

2.3.5.5 Transfer of information collected by representatives to firms

Under Section 23 of the Distribution Act, when representatives acting for a registrant gather information about clients, they are required to disclose it to the establishment to which they are attached. Representatives acting for several firms must disclose such information to the establishment (e.g. office) of the firm for which they are acting at the time. Accordingly, responsible officers have to ensure such information is appropriately and confidentially disclosed by their representatives.

2.3.6 *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*

2.3.6.1 Recap of the PCMLTFA

The rules of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) require registrants to report certain transactions to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). They also require the implementation of a compliance program to ensure compliance with reporting, record keeping and client identification requirements.

2.3.6.2 Reporting obligation

If registrants have reasonable grounds to suspect that a dubious transaction by the client or an employee is related to the commission or attempted commission of a money laundering or terrorist activity financing offence, they must submit a report to FINTRAC. The transaction does not have to have been carried out; the fact that it has been attempted is sufficient to give rise to a reporting obligation.

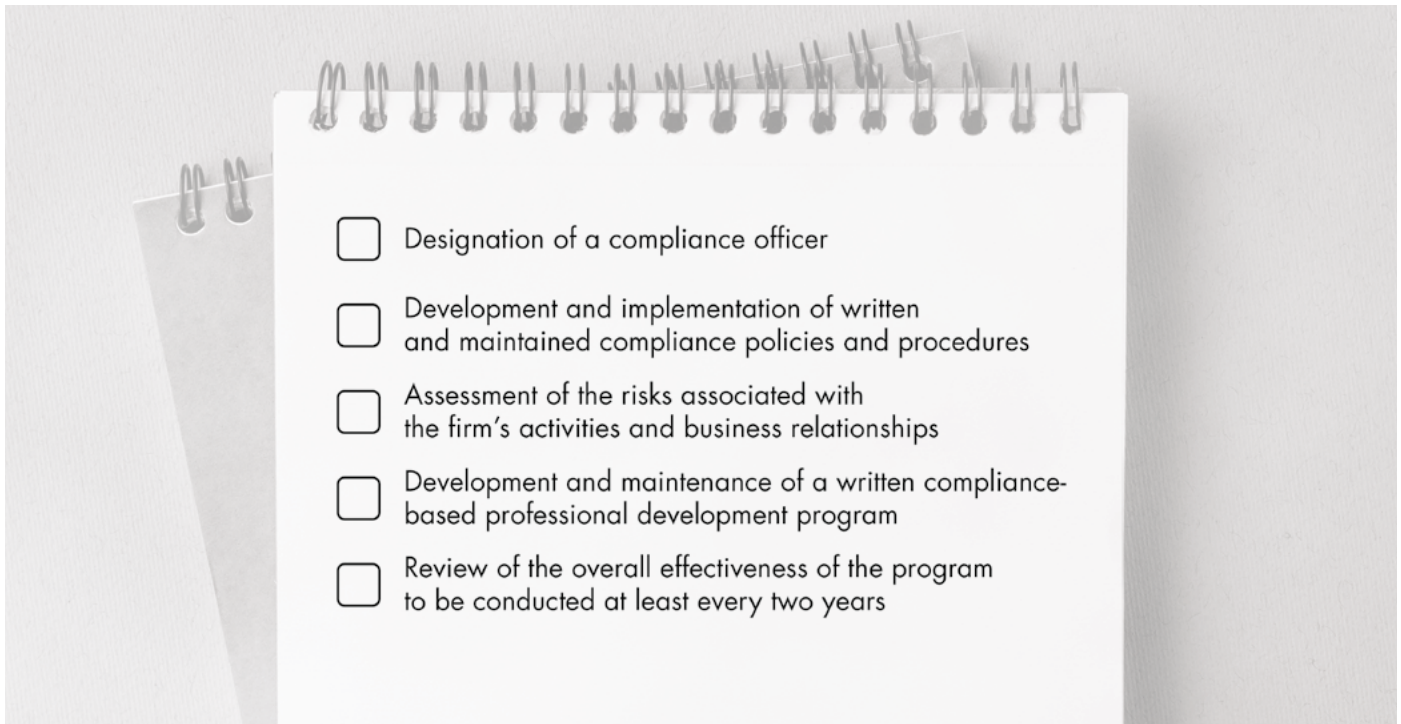
EXAMPLE

Mortgage brokers may have to report a client who splits amounts into multiple transactions to avoid identity verification and reporting thresholds. They must also report large cash transactions at all times.

2.3.6.3 Establishment of a compliance program

To properly implement a system for detecting suspicious transactions, the PCMLTFA requires a compliance program to be implemented.

The compliance program is based on five main elements.



1. Designation of a compliance officer (a person in charge of implementing the program)

This officer must have the necessary authority, resources and knowledge to implement the program. Depending on the size of the firm, the compliance officer may be the responsible officer or an individual with the ability to report compliance issues to senior management and the board of directors.

2. Development and implementation of written and maintained compliance policies and procedures

These policies and procedures include enhanced measures to mitigate high risks. They must be established in writing and accessible to the target audience, maintained and approved by a senior executive, where applicable. As a result, responsible officers of firms will need to be well versed in these elements.

At a minimum, these policies and procedures should set out all of the firm's applicable requirements and the related existing processes and controls. In particular, this includes situations where a particular obligation must be met, the information to be reported and the associated procedures and timelines.

3. Assessment of the risks associated with the firm's activities and business relationships

Special measures are then implemented based on the risks and vulnerability that the firm in particular represents. Accordingly, responsible officers will be able to take into consideration the type of clientele, types of products offered, geographic locations of the firm, turnover rate of employees, etc.

4. Development and maintenance of a written compliance-based professional development program

This program must be designed for the firm's employees, mandataries and independent representatives. It should aim to ensure that these individuals are aware of the firm's legal and regulatory obligations, the firm's vulnerability, and its existing policies and procedures and their role in detecting suspicious transactions.

5. Review of the overall effectiveness of the program to be conducted at least every two years

This review is intended to identify gaps in the compliance program and encourage improvement.

2.3.6.4 Best practices suggested by the AMF

It is in responsible officers' best interest to remain vigilant and proactive while striving to anticipate related risks.

There are specific standards for real estate brokers and securities dealers.

2.3.7 Fraud prevention

2.3.7.1 Recap of the definition



Manual E-116

Re-read section 6.2.5, *Fraud prevention*, for the complete definition.

Mortgage brokers must diligently verify the information provided by clients and protect their confidential information to prevent fraud and embezzlement. They must also properly manage the financial crime risks.

2.3.7.2 More comprehensive guidance

FINTRAC's suspicious transaction reporting process is part of the measures implemented to prevent fraud. The AMF has issued guidance regarding financial crime risk management.

2.3.7.3 Financial crime risks

Financial crime can take on various forms such as:

- Internal and external fraud;
- Laundering the proceeds of crime (money laundering);
- Illegal transfer of funds to financial or tax havens;
- Tax evasion;
- Terrorist financing.

2.3.7.4 Financial crime risk management

Responsible officers have to keep a close eye out for mortgage fraud.

Effective governance by responsible officers is expected to implement strategies, policies and procedures aimed at preventing financial crime. These strategies should be documented and closely monitored. Within the firm, the AMF recommends employees be educated on financial crime risk management to promote a culture of integrity. In dealings with clients, registrants are expected to exercise continuous vigilance with respect to clues that could lead to the discovery of this type of fraud, such as the existence of false documents, difficulty in obtaining information from the client, cash payments, undue pressure, etc.



Article 316 of the *Civil Code of Québec* (C.C.Q.) states the following with respect to fraud:



Legislative or other references

Art. 316 C.C.Q.

In case of fraud with regard to the legal person, the court may, on the application of an interested person, hold the founders, directors, other senior officers or members of the legal person who have participated in the alleged act or derived personal profit therefrom liable, to the extent it indicates, for any injury suffered by the legal person.

This completes the rules governing the office of responsible officer in mortgage brokerage. The next chapter will cover the supervision of the professional activities of mortgage firms.

CHAPTER 3

Supervision of the professional activities of a mortgage brokerage firm

Competency component

- Supervise the professional activities of a mortgage brokerage firm

Competency sub-components

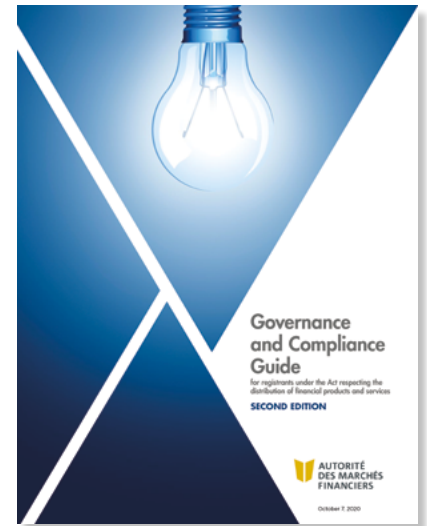
- Oversee the work of clerical and support staff
- Oversee the professional activities of mortgage brokers
- Monitor the complaint examination process



Supervision of the professional activities of a firm in mortgage brokerage

The office of the responsible officer is to ensure that the activities of the firm or independent partnership are carried out in accordance with the *Act respecting the distribution of financial products and services* (Distribution Act) and its regulations. In this capacity, responsible officers are required to supervise the activities of firms in mortgage brokerage. They must not only supervise the work of mortgage brokers, but also serve as a contact person for administrative and support staff. Responsible officers must supervise mortgage brokers' work and pay particular attention to ensuring that the acts brokers perform adhere to the standards recognized and required by the *Autorité des marchés financiers* (Authority or AMF).

They are also required to implement controls, based on their business model, to ensure that the firm's activities comply with the Distribution Act and its regulations. They may also draw on the best practices suggested by the AMF in the *Registrant Governance and Compliance Guide*,¹⁷ particularly with a view to promoting cybersecurity and the protection of personal data. They also have to supervise the professional activities of mortgage brokers, particularly with regard to the validity of their certification. Moreover, because of their experience in the sector of mortgage brokerage, responsible officers often have a mentoring role to play with mortgage broker trainees, whether as supervisors or simply in directing the representative acting in that capacity.



Responsible officers also have to ensure mortgage brokerage transactions run smoothly and that representatives uphold the rules of conduct imposed on them. They are occasionally required to implement recommendations arising from the AMF's inspection work.

In addition, responsible officers have to implement the examination process for the complaints submitted to them and cooperate with the AMF in a transparent manner.

This chapter details these elements, which are intended to ensure that responsible officers, in a manner akin to orchestra conductors, effectively coordinate the activities of the various players that have dealings with the firm in mortgage brokerage.

17. See: https://lautorite.qc.ca/fileadmin/lautorite/professionnels/distribution/guide-gouvernance-conformite-inscrits_an.pdf

3.1 **Oversee the work of clerical and support staff**

Responsible officers are obliged to oversee the work of administrative and support staff, which involves a number of aspects to be discussed in this section.

3.1.1 **Verification of work performed**

As noted above, mortgage brokers are subject to numerous rules in the pursuit of their activities. However, responsible officers also warrant their actions and must ensure that employees act in accordance with section 86 of the Distribution Act and its regulations to the extent applicable.

Accordingly, responsible officers must ensure work is appropriately performed by administrative and support staff and reflects the registrant's professional obligations.

3.1.2 **Regulated acts**

Certain acts are reserved for representatives holding a certificate issued by the AMF. In the sector of mortgage brokerage, they include:

- Suggesting mortgage products to clients.
- Submitting mortgage financing applications to lenders.

Accordingly, responsible officers must ensure administrative and support staff do not perform the duties reserved for certified representatives or act or hold themselves out as such. Failure to do so could result in penalties for the registrant.

3.1.3 Controls

In order to better supervise the work of administrative and support staff, various controls are recommended, particularly in relation to cybersecurity, protection of personal information and outsourcing of activities. Controls and monitoring measures are intended to ensure compliance of the registrant's activities. These controls and measures apply to all items covered by the Distribution Act and its regulations.

3.1.3.1 Cybersecurity controls

Cyber attacks are increasingly common and can have multiple purposes, from obstruction of access to data and services to theft of client data and corporate fraud. This may include the spread of a computer virus in the firm's computers, ransom software to encrypt data unless a ransom is paid, theft of client or employee personal information, or a variety of fraudulent acts.

It is recommended that appropriate security measures, proportionate to the risks involved, be implemented to avoid cyber attack scenarios that could harm both mortgage brokers and their clients. Responsible officers must therefore ensure the firm's mortgage brokers and support staff are aware of real IT risks. Their vigilance is required in all aspects of their work, particularly in the information the firm exposes to potential attackers, electronic transmission of documents containing confidential information or transactions via online service platforms.

Registrants are expected to implement cybersecurity mechanisms to be developed and adapted to mitigate the information security risks specific to the firm's environment. The requirements are determined by several factors, such as the size of the firm, the client base, the technology environment, the level of risk, and the nature of the registrant's operations.



TABLE 3.1**Cybersecurity measures**

1. Identify risks, review existing measures and determine the means of protection.

Identify risks

- Implement a process to regularly identify and assess cyber risks related in, among other things, to the use of technology, electronic devices and equipment, communications, systems and networks.

Review existing measures

- Ascertain the data and data storage media on hand by conducting a periodic inventory of information by storage location.
- Classify the information held by the firm by sensitivity level based on the impact on its confidentiality, integrity and availability.
- Ascertain and define the employee storage systems and the terms governing their access, as well as the ecosystem in which this information circulates digitally and physically to determine any risk vectors.
- Define the risks to which information and data are exposed in the firm's technology environments.

Determine the means of protection

- Use the appropriate security solutions for the firm's specific needs.
- Protect the integrity of the IT perimeter.
- Check network activity in real time.
- Oversee the transmission of electronic communications.
- Regulate the use of mobile devices.

Cybersecurity measures (cont'd)



2. Determine measures required to protect against cyber risk and manage vulnerabilities identified

For the firm

Implement the protective measures set out above

Implement a business continuity plan.

- Develop up an IT security incident response plan including processes and procedures to mitigate and manage the impacts of a cyber incident. This may include an incident disclosure plan targeting persons likely to be affected by a data breach.

For employees

Create an awareness and training program

The implementation of information and information technology (IT) system governance and guidelines to govern in particular the transmission of confidential information.

- Create a compliance monitoring program for the policies and procedures.

In concrete terms, registrants must limit access to sensitive data only to those who need it, such as by securing the firm's servers with a password specific to each employee. In addition, to strengthen security practices, they may provide training to assist in recognizing fraudulent transactions, in particular through phishing identification exercises.

**FYI**

In light of rapidly expanding cyber threats and the potential for new risks to arise at any time, responsible officers have to keep abreast of publications on this subject, particularly from the AMF, which issues information bulletins, guides and guidelines related to cybersecurity, as well as the tools and services offered by the Canadian Centre for Cyber Security.¹⁸

3.1.3.2 Protection of personal information controls

As discussed earlier in Chapter 2, section 2.3.5, registrants are obliged to comply with the *Act respecting the protection of personal information in the private sector* (APPIPS). This obligation requires all the firm's employees to be appropriately trained to exercise vigilance in this regard.

All employees, including both mortgage brokers, and administrative or support staff, must pay particular attention to the protection of and access to clients' personal information. Responsible officers are well advised to ensure everyone is aware of the concept of clients' right to privacy and applies the firm's existing measures.

**FYI**

For more information on this subject, see the following sections:

- *Ethics and Professional Practice* (E-116) in Mortgage Brokerage, Chapter 6, section 6.2.5.1
 - *Guide for Responsible Officers – Mortgage Brokerage*
 - Chapter 1, section 1.1.2.1
Respect of privacy
 - Chapter 1, section 1.2.3.1
Application of APPIPS to mortgage brokerage
 - Chapter 2, section 2.3.5
Obligation to comply with the provisions of the APPIPS
-

18. See: [https:// www.cyber.gc.ca/en/](https://www.cyber.gc.ca/en/)

3.1.3.3 Outsourcing of certain registrant activities

The AMF has also issued recommendations regarding outsourcing by registrants, including cloud computing. The performance of an obligation or activity may be delegated to a service provider, provided such delegation is set out in a contract and covers a defined period of time.

EXAMPLE

The firm may delegate the keeping of its books and registers, cyber security measures or probity checks prior to hiring a representative to an external service provider.

Particularly with outsourcing, subcontracting and the use of cloud computing, the AMF reiterates that responsible officers must act with prudence, which requires paying attention to the guarantees, conditions of use, risks and liabilities between the provider and the registrant in the service contract, but also to the conditions of use and guarantees relating to privacy. In addition, contracts are expected to include a requirement for the service provider to disclose any incidents, including actual or potential data breaches. Registrants should be aware of the geographic location of the servers used by the service provider, as the legal framework for the protection of personal information differs depending on the country and nationality of the hosting service.



N.B.

Registrants cannot delegate acts reserved for its representatives, such as advising clients on mortgage products or submitting mortgage applications.

Certain activities may be delegated to a service provider under outsourcing arrangements, but responsible officers remain obliged to comply with all obligations under the Distribution Act and its regulations.

3.2 Supervising the professional activities of mortgage brokers

Responsible officers are obliged to supervise the professional activities of mortgage brokers, which involves a number of aspects to be discussed in this section.

3.2.1 Conduct compliant with the *Act respecting the distribution of financial products and services (Distribution Act)* and its regulations

It is incumbent on responsible officers of firms in mortgage brokerage firm to ensure their representatives and administrative and support staff comply with the Distribution Act and its regulations. The Distribution Act also states that registrants are responsible for the discipline of the representatives attached to them (Distribution Act, ss. 85–88). Responsible officers must bear in mind that a firm is responsible for any injury caused to a client by the fault of one of its representatives in the performance of the representative's functions (i.e. duties).

3.2.2 Validity and restrictions of certificates

A key obligation for mortgage brokers is to keep their AMF certification up to date, as their certificate is what entitles them to practise in the sector of mortgage brokerage.



Manual E-116

As explained in Chapter 6 of E-116 and in Chapter 2 of this guide, the Distribution Act and its regulations impose various conditions and restrictions related to the certification of representatives.



The *Regulation respecting the issuance and renewal of representatives' certificates* sets out the conditions to be met by candidates seeking to obtain a representative's certificate in mortgage brokerage issued by the AMF:

Minimum qualifications

- (1) They must hold the **minimum qualifications** established by the AMF and hold a document confirming that such training has been completed (ss. 13(1) and 16.1).



Examinations

- (2) They must have passed the **examinations** prescribed by the AMF (s. 13(2)).



Probationary period

- (3) They must have successfully completed the prescribed **probationary period** (s. 13(3)).



Application for a certificate

- (4) They must have submitted an **application for a certificate** within the prescribed **period** (s. 13(4)).

- (5) They must have complied with the **requirements and conditions** for issuance of a certificate determined by regulation (s. 13(5)).

- *(6) If they are foreign nationals, they must hold a **valid work permit valid for employment in Québec** (s. 13(6)).



Representative's certificate in mortgage brokerage

3.2.2.1 Minimum qualifications

To be eligible for the examinations in the sector of mortgage brokerage, candidates must successfully complete specialized training with a training body recognized by the AMF. This training is based on the Mortgage Brokerage Qualification Program (MBQP) Training Curriculum and Evaluation Curriculum and is valid for two years.

3.2.2.2 Examinations

Upon completion of the training to hold the minimum qualifications, candidates must successfully complete the AMF's examinations to obtain their representative's certificate. To apply for registration for the examinations, candidates must submit a document confirming that the training under the minimum qualifications has been completed and have paid the required fees.

In addition, they must not be in any situation where:

- Their certificate or right to transact business (i.e. practise) has previously been cancelled or suspended or where restrictions or conditions have previously been imposed on their certificate;
- They have been previously convicted of an indictable offence or criminal act linked to the pursuit of the activity of representative;
- They have been assigned a tutor, curator or adviser;
- They have made an assignment of property or have been placed under a receiving order pursuant to the *Bankruptcy and Insolvency Act*;
- They do not possess the degree of honesty necessary to pursue activities in mortgage brokerage;
- The AMF considers such situation incompatible with the pursuit of activities in mortgage brokerage.

For each examination, the pass mark is 60%. Where not achieved, candidates are entitled to three retest examinations provided that they continue to hold the minimum qualifications. In addition, upon successful completion of the examinations, candidates have two years to begin their probationary period.

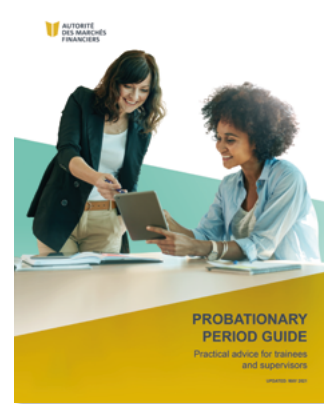
3.2.2.3 Probationary period

Probationary period objectives

The probationary period is intended to be an opportunity for candidates to acquire and put into practice the knowledge and expertise required to hold office as a representative in mortgage brokerage. It allows future professionals to become acquainted with the various facets of the pursuit of activities as a mortgage broker and gradually begin performing the acts of a mortgage broker under supervision. In this manner, trainees learn in a real work environment with a mortgage broker supervising their work (i.e. as supervisor of their probationary period). Responsible officers have these supervisors under their responsibility and must always ensure that supervision is carried out properly.

**FYI**

For more information, it is advisable to read the *Probationary Period Guide* available on the AMF website.¹⁹ This guide includes information to assist the trainee in applying for a probationary certificate, clarifies the obligations and responsibilities of trainees and supervisors, and provides information on what to do after the probationary period.



Candidates undertaking a probationary period must present themselves publicly as trainees at all times. The candidate's supervisor, who may also be the responsible officer, must ensure that the candidate presents themselves to clients as a mortgage brokerage trainee. It is important to note, however, that the supervisor does not have to be a responsible officer to supervise trainees, as discussed below.

Eligibility for probationary period

Where they have passed the examinations prescribed by the AMF, have complied with the requirements and conditions of the AMF, are entitled to hold employment in Québec and have paid the necessary fees, candidates become eligible for the probationary period.

If their probationary period is not successfully completed and they wish to complete it again, candidates must provide a written document to the AMF explaining what actions they intend to take to address the deficiencies noted in the probationary period recommendation. If their probationary period is not successfully completed a second time, they must complete it again under the responsibility of a different supervisor.

Probationary certificate

Once the candidate's probationary period is authorized, they are issued a probationary certificate by the AMF, including the information necessary to identify the candidate and its period of validity. It is essential for trainees to wait to obtain their certificate before beginning their activities as trainees to avoid a situation of illegal practice.

19. See: https://lautorite.qc.ca/fileadmin/lautorite/devenir-professionnel/dq_guidepp-a.pdf

**N.B.**

If any of the information provided to the AMF changes, candidates must notify the AMF within five days of the change. If these changes result in the trainee no longer being eligible for the probationary period, the AMF will withdraw the trainee's probationary certificate.

Authorized acts by trainees

During their probationary period, trainees are permitted to perform the following acts under the responsibility of their supervisor at all times:

- Collect information about clients' financial condition;
- Suggest to their supervisor mortgage products that can be tailored to clients' needs before proposing them to clients;
- Forward the mortgage loan application to the lender after it has been approved by the supervisor.

**N.B.**

During the probationary period, supervisors and their firms remain responsible for all professional acts performed by trainees. As a result, supervisors must closely monitor trainees to avoid any errors.

When meeting with new clients, trainees must provide a document that includes the following information:

- The trainee's name;
- Their business address, business telephone number and electronic mail address, if any;
- The sectors or sector classes in which they are authorized to act;
- The name of the firm, independent partnership or independent representative on whose behalf they act;
- Their title of trainee.

This document is often a simple business card.

Sabrina Untel

Trainee in mortgage brokerage
Cabinet ABC

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However, if the trainee communicates remotely with the client, the trainee must provide the client with the following information:

- The trainee's name;
- The name of the firm, independent partnership or independent representative on whose behalf they act;
- Their title of trainee.

However, at the client's request, they will have to send the client the other information at the time other documents are first sent.

Duration and interruptions of probationary periods

During the probationary period in the sector of mortgage brokerage, trainees must complete a minimum of 28 hours of work per week during 12 weeks over a maximum of 14 weeks.

The probationary period must be interrupted if trainees are in any of the following situations:

- They are no longer under the supervision of an authorized person;
- They are on disability status, in particular as the result of a preventive withdrawal, because they are on parental leave or where warranted by exceptional circumstances.

In all other situations, trainees are deemed to have discontinued their probationary period.

Where the probationary period is interrupted, trainees must immediately cease to perform all authorized acts. This interruption may not last more than four weeks. Where the probationary period is discontinued or interrupted, supervisors must inform the AMF within five days.

It is possible to resume a probationary period following its interruption. In order to do so, an application for extension must be submitted to the AMF by the trainee and their supervisor. The application must contain documentation of the reason for the interruption.

**FYI**

Trainees may change supervisors, provided they notify the AMF at least 10 days prior to the change and the new supervisor acts on behalf of the same firm or the same independent partnership. To do so, a change application must be completed by all participants: the firm, the trainee and the new supervisor.

Obligations, duties and responsibilities of supervisors

During the probationary period, supervisors are responsible for providing trainees with the necessary supervision to allow them to appropriately pursue the activities of a representative in the sector of mortgage brokerage. It is incumbent on responsible officers to ensure their supervisors provide such supervision.

Supervisors must ensure that trainees comply with the legislation, rules of ethics and rules of professional conduct and that they have the knowledge, competencies, behaviours and attitudes necessary to pursue activities as a representative.

Supervisors must also provide trainees with a working environment conducive to learning and developing their competencies and help them to gradually pursue the activities reserved for representatives.

They must have been authorized to supervise the trainee by the AMF. The application for supervision is submitted to the AMF by the supervisor, the firm or the independent partnership.

Supervisors must be representatives authorized to act at the time of the probationary period. In addition, they must have held a certificate and have acted as a representative in the same sector as the trainee during at least 24 of the 36 months preceding the probationary period. Supervisors may not have more than five trainees under their responsibility at any time. Where a supervisor is absent, they must be replaced by a replacement supervisor approved

by the AMF in writing. The replacement supervisor must have the same qualifications and fulfil the same obligations as those imposed on the supervisor.

Supervisors must also meet the following conditions, or else they must cease to act as supervisors:

- Have not been the subject of a disciplinary sanction in connection with the distribution of financial services in the five years preceding the candidate's application;
- Have not been struck off the roll by the disciplinary council of a professional order in the five years preceding the candidate's application;
- Do not hold a certificate carrying restrictions or conditions.

At the beginning of the probationary period, supervisors must first present objectives of such a period and the tasks to be carried out to meet its requirements.

They must then enter these acts in the trainee's file. More specifically, supervisors must open a file for each trainee and enter the tasks carried out by the trainee in connection with the activities of a representative. A summary of the supervisor's meetings with the trainee and their notes concerning the trainee's progress during the probationary period must also be entered in the trainee's file. This file is to be maintained by registrants for a period of five years as of date the probationary period is successfully completed or discontinued.

The duties of the supervisor are to:

- (1) Determine the tasks the trainee must carry out, specifying the time limits in which they must be completed, and ensure that these tasks include all the activities that a representative carries out in the sector of mortgage brokerage.
- (2) At least once a week, evaluate and review the tasks carried out by the trainee;
- (3) Make a recommendation as to whether or not the probationary period has been successfully completed.

**N.B.**

Supervisors must perform these tasks personally; they may not delegate them.

Remuneration of trainees

Trainees may receive any form of remuneration (salary or commission) when they hold a valid probationary certificate. Accordingly, trainees are considered to be representatives holding a certificate for the application of the rules relating to remuneration.

End of probationary period: report and recommendation

Within 10 days following the end of the probationary period, supervisors must submit a report and a recommendation to the AMF. This report must cover, among other things, whether the tasks to be carried out by the trainee met with their expectations and what shortfalls were noted. The report and recommendation must be approved by management of the supervisor's firm or independent partnership.

Training period with a training body

Although much less frequent, a training period established in accordance with an agreement between a training body and the AMF can be completed by candidates. The obligations of supervisors and trainees are the same. The duration varies according to the agreement and is accounted for as part of the trainee's education. To obtain a training attestation in this manner, candidates must:

- Be enrolled in a recognized training program under a valid agreement between the AMF and a training body;
- Be accepted as a trainee with a registrant;
- Complete the necessary forms.

The AMF will then analyze the application; if it is compliant, the AMF will issue a training attestation to the candidate.

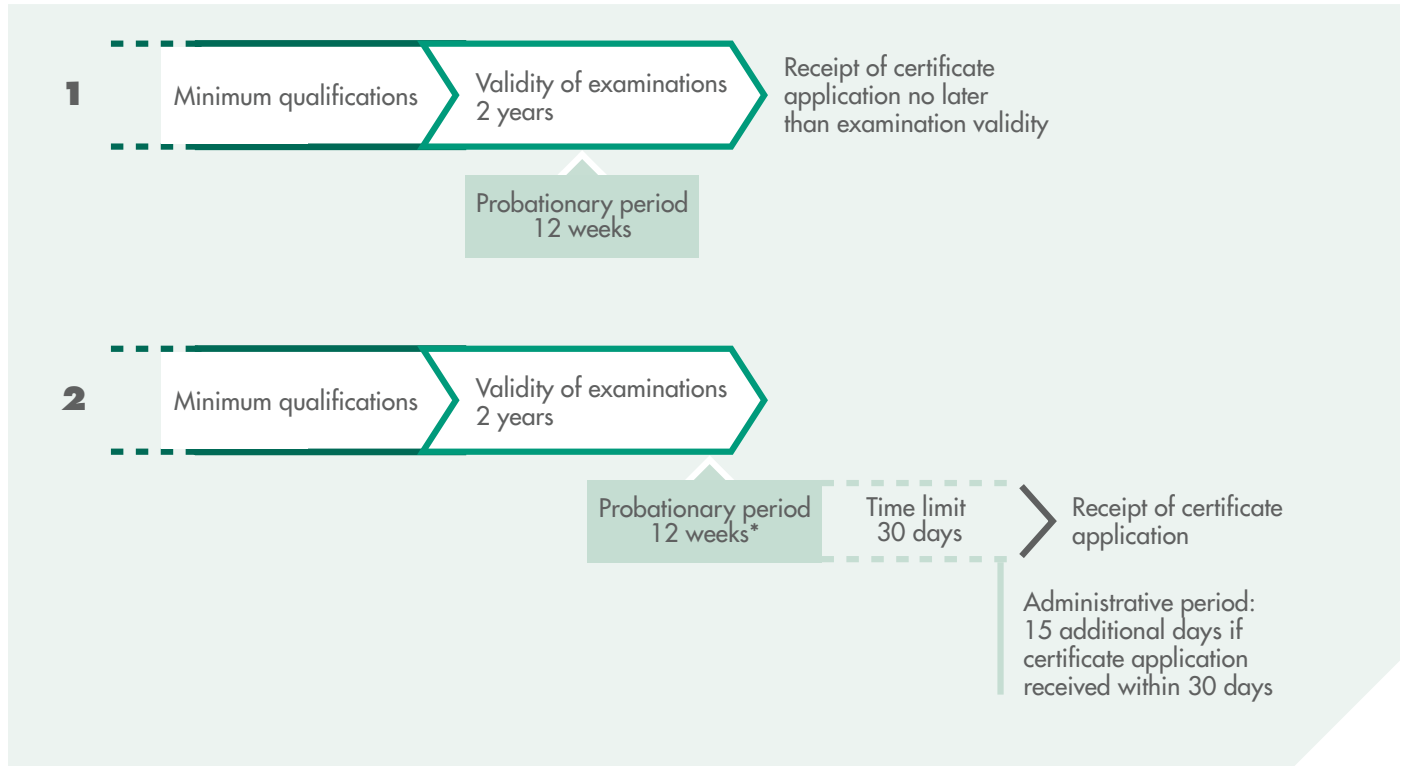
3.2.2.4 Applications for certificates

The *Regulation respecting the issuance and renewal of representatives' certificates* also establishes the time limits for candidates seeking their certificates. Accordingly, a candidate's application must be received by the AMF prior to the expiry of the validity period of their examinations. Where the validity period of the examinations expires during the probationary period, the certificate application must be received by the AMF within 30 days following the end of the period.

Here are two timelines that explain the two potential cases.

TIMELINES 3.1

Time limits to meet for obtaining a certificate



* The probationary period must be started while the examinations are still valid.

3.2.2.5 Other conditions of issuance

There are additional conditions limiting the issuance of representative's certificates. Candidates cannot obtain their certification if they:

- Have been the subject of a disciplinary sanction by a disciplinary council related to financial services;
- Are in default of paying any outstanding fines, administrative penalties or costs;
- Have not repaid any amount they were ordered to pay by final judgment owing to their liability in any matter related to financial services;
- Are in default of paying the fees and annual fees payable in connection with their certification.

**N.B.**

Trainees cannot take part in a probationary period if they are in one of the above situations even if they intend to remedy the situation before the end of the probationary period.

3.2.2.6 Exemptions

The AMF has set out various exemptions from the conditions of section 13 of the *Regulation* respecting *the issuance and renewal of representatives' certificates*.

Reinstatement: more than one year and less than three years

Where candidates apply for a certificate within three years of the surrender or non-renewal of a certificate they held and have acted as a representative for at least 12 months in the sector of mortgage brokerage, they may be exempted from the minimum qualifications, certain AMF examinations and the probationary period. However, candidates will have to retake the examination on the legislation governing the pursuit of the activities of a representative in mortgage brokerage.

Reinstatement: one year or less

Similarly, they may be exempted from the minimum qualifications, probationary period and AMF examinations if they apply within one year following the surrender or non-renewal of a certificate they held in the sector of mortgage brokerage.

EXAMPLE

Let's assume that Marie-Ève Haché obtained her representative's certificate in mortgage brokerage in January 2021. She acted in this capacity for one year, from January 2021 to January 2022. She did not subsequently renew her certificate because she went on a trip around the world. She has until May 2023 to apply for a certificate without having to meet the minimum qualifications, pass the examinations (except the examination on the legislation governing mortgage brokerage) and complete a probationary period.

EXAMPLE

Bedros obtained his representative's certificate in mortgage brokerage in May 2021. However, he did not renew his certificate in June 2022 in order to return to school. Within one year of surrendering his certificate, he may apply without having to take the compulsory training, pass the exams and complete a probationary period.

Exemption for candidates from another province

The AMF has provided exemptions for candidates from another province or territory in Canada. As a result, such candidates may be exempted from the minimum qualifications and certain AMF examinations if they meet the following conditions:

- (1) they have furnished the AMF with a document issued by a competent authority of a Canadian province or territory while they lived outside Québec that is equivalent to a representative's certificate whereby they were authorized to act in a corresponding sector or sector class in accordance with the system of reference established by the AMF and available on its website;
- (2) they have successfully completed the probationary period in accordance with sections 30 to 40 and 44 to 50 of the *Regulation respecting the issuance and renewal of representatives' certificates*;
- (3) they have submitted an application for a certificate to the AMF.

Candidates who are from another country may be exempted from the minimum qualifications, certain examinations and the probationary period if they are from a country that is party to an agreement entered into with the AMF.



3.2.2.7 Certificate

Once all the conditions of section 13 of the *Regulation respecting the issuance and renewal of representatives' certificates* have been met, the AMF issues a certificate **(in French only)**, which states in particular:

- Information about its holder
- The sector in which they pursue activities, in this case, mortgage brokerage
- The titles they are entitled to use, i.e. "mortgage broker"
- Any conditions and restrictions imposed by the AMF



Le 1^{er} mai 2020

MADAME ÉLOÏSE GAUTHIER
1314, RUE DE LUCERNE
LONGUEUIL (QC) H3L 3B8

N° de certificat : 000000
N° de décision : 2019-CI-0000000
N° de client : 3001000000
N° d'inscription de représentant autonome : Non applicable

Objet : Certificat de représentant

Madame,

Par la présente, l'Autorité des marchés financiers certifie que vous êtes autorisé à exercer en tant que représentant du 1^{er} mai 2020 au 30 avril 2021 dans la ou les disciplines/catégories de discipline suivantes :

- Courtage hypothécaire

Mentions au certificat :

• Non applicable
...

Renewal

Certificates must be renewed annually. Representatives are responsible for renewing their certificates; however, responsible officers must ensure all representatives acting for the firm or the independent partnership hold a valid certificate.

To renew a certificate, representatives must apply to the AMF. They must meet the criteria for the original certificate and be entitled to work in Québec.

A certificate renewal application must be received by the AMF prior to the expiry of the certificate. The expiry date is established as the day preceding the first day of the month corresponding to the first letter of the certificate holder's surname. In rare cases, holders may file their application within 30 days of the expiry of their certificate if they demonstrate that they were unable to act before. In such cases, the certificate is deemed to be effective until the AMF's decision authorizing or refusing renewal.

Modifications

The holder of a certificate must notify the AMF within five days of any change to the information or document that they have furnished to the AMF.

3.2.2.8 Certificates carrying conditions



The AMF may impose restrictions or conditions on a certificate. This measure is intended to protect the public and may occur, for example, following a guilty verdict against a representative rendered by the Financial Markets Administrative Tribunal (Tribunal) of the AMF. The firm must then appoint a person responsible for the supervision of this representative. Accordingly, where they agree to have a representative with a certificate carrying conditions working for the firm, responsible officers must be aware of the responsibility that this decision entails. Increased supervision of this representative's activities is required, thereby imposing an additional workload on the designated supervisor. Even if the task of supervision is delegated to someone else in the firm, responsible officers are always required to ensure such supervision is carried out appropriately.

Close supervision condition

Each transaction made by the representative must be reviewed once a week by the firm.

The supervisor must complete a written statement of the representative's transactions on a monthly basis. This statement must be submitted to the AMF upon demand or if compliance- or complaint-related issues are identified in connection with the transactions in question.

Strict supervision condition

Each transaction made by the representative must be pre-approved by the firm. Each month, the responsible officer has to complete and submit to the AMF a statement of the transactions carried out by this representative.

Once again, the responsible officer has to be vigilant so as not to be held liable for a misrepresentation or misstatement in connection with the supervision of a representative with a certificate carrying conditions. They must bear in mind that they could be held accountable for any breaches or irregularities committed by this representative.

3.2.3 Conducting of mortgage brokerage transactions

Responsible officers have obligations regarding the mortgage brokerage transactions of their representatives.

As explained in Chapter 5 of manual E-116, *Ethics and Professional Practice*, once a borrower has indicated to the mortgage brokers that they wish to borrow money, there are a few things that the mortgage broker must do. To obtain a financial product that meets the client's needs, the mortgage broker will have to determine the type of mortgage the client needs. They will then contact various lenders, mostly financial institutions, to find the best possible offer for the client. They will also have to inform the client of the various mortgage loan insurance products available. Before the loan is granted, a credit check will have to be performed. To do so, the mortgage broker will have to obtain the client's authorization to access their credit report. Lastly, once the terms and conditions of the agreement have been determined, the written contract formalizing the loan is duly signed by the parties.



Manual E-116

Reread Chapter 5 if necessary.

3.2.3.1 Responsible officers' supervisory role

Responsible officers have to ensure their representatives conduct their mortgage brokerage operations in accordance with accepted professional practice.

3.2.4 Mortgage brokers' rules of conduct

Responsible officers have obligations to ensure their representatives uphold the rules of conduct. This entails a duty to supervise and oversee the conduct of representatives.

As explained in Chapter 2 of this manual, mortgage brokers are subject to various rules of conduct, including in relation to respect, integrity, prudence, diligence, objectivity, discretion, confidentiality, independence, avoiding conflicts of interest and transparency.

3.2.4.1 Firm's responsibility for the discipline and supervision of its representatives

Selection

Section 85 of the Distribution Act requires a firm and its executive officers to oversee the conduct of the firm's representatives. In particular, they have to ensure the representatives comply with Distribution Act and its regulations.

The AMF suggests implementing a selection process for representatives, which should include background checks to validate the information they provide. Accordingly, the AMF recommends that registrants check:

- Competence
- References and employment history
- The reasons for contract termination or dismissal, where applicable
- Criminal and disciplinary history
- Bankruptcy history

Following these checks, responsible officers should be able to make a more informed decision on the selection of a representative.

Supervision of representatives

After recruitment, responsible officers remain responsible for the supervision of their representatives. Accordingly, they should ensure:

- Representatives comply with certification requirements, such professional development and liability insurance
- The representative's integrity and honesty, i.e. upholding moral or legal rules, as well as their duties and obligations; for example, by periodically checking for any unresolved criminal or disciplinary charges
- Compliance of the representative's conduct in the pursuit of their activities

The AMF recommends conducting constant supervision with representatives who are relatively inexperienced in the sector of mortgage brokerage.

3.2.5 Incompatible activities

Section 2 of the *Regulation respecting the pursuit of activities as a representative* stipulates certain activities and duties that are incompatible with the practice of the profession of mortgage brokerage representative, such as:

- Performing the duties of a judge, a police officer, a minister of religion, a funeral director (or any other similar duties in the funeral services industry)
- Pursuing activities as a bankruptcy trustee
- The exercise of a health-care profession governed by the *Professional Code*
- The exercise of the profession of lawyer or notary
- The exercise of the professional activity of public accountancy
- The management of a union, other than a union formed of representatives, or the management of a professional association, or employment by any such organization

In addition, section 9.10 of the Regulation states that mortgage brokers may engage in a brokerage transaction relating to loan secured by reverse immovable hypothec. This is authorized and does not constitute an incompatible activity. However, mortgage brokers have a duty to inform the borrower of the importance of obtaining the opinion of a lawyer or a notary concerning the proposed loan.

3.3 Complaint examination process

In the course of their work, mortgage brokers may unfortunately be the subject of complaints, which is a significant aspect the firm must handle seriously. Complaints may be in writing. Where lodged verbally by complainants, the person receiving a complaint must put it in writing. The initial expression of dissatisfaction by a consumer, whether in writing or otherwise, will not be considered a complaint where the issue is settled in the registrant's regular course of business.

For example, a person who has called to complain about the attitude of a mortgage broker, but whose dissatisfaction is resolved as a result of an apology offered by the representative is not a complaint. However, it becomes one when the consumer remains dissatisfied and this situation must be handled by the person responsible.

The Distribution Act requires firms to process complaints the complaints filed with it in a fair manner. To that end, firms must:

- Follow a policy for processing complaints filed by its clients and resolving disputes with them
- Keep a complaints register

3.3.1 Complaint examination and dispute resolution policy

The complaint examination policy, which firms have to adopt, is intended to govern the receipt of complaints, delivery of acknowledgments of receipt (notice) to complainants, creation of complaint records (a.k.a. complaint files), transfer of complaint records to the AMF where necessary and complaint reporting to the AMF. This policy must be written and available on the firm's website, and publicly accessible.



Legislative or other references

Distribution Act. ss. 103 *et seq.*

The complaint examination and dispute resolution policy is addressed in sections 103.1 to 103.7 of the Distribution Act.

The *Complaint Examination and Dispute Resolution Policy*,²⁰ which can serve as a model for registrants; in particular, it may include:

- The **purpose** of the policy
- The contact information of the **person in charge**
- **Definition** of a complaint
- The contents of a **complaint record**, i.e. the complaint, the outcome, the final response to the complainant with supporting arguments and its analysis, as well as all documents used to respond to it
- The **process for examining** complaints
- The transfer of complaints and required reporting to the **AMF**

20. See: <https://www.lautorite.qc.ca/files/pdf/professionnels/obligations/Complaint-examination-policy.pdf>

3.3.1.1 Person in charge

The person in charge of complaint examination administers the policy and acts as a representative with the complainant and the AMF. This person is also responsible for carrying out the steps to be taken when a complaint is received and reporting to the AMF twice a year. Within the firm, all employees and representatives must bear in mind that if they receive a complaint, they are required to forward it to the person in charge.

TABLE 3.2

Steps to follow upon receipt of a complaint

1	Upon receipt of a complaint, a complaint record must be opened in which: • The complaint • The acknowledgment of receipt • The final response with supporting arguments • The analysis of the complaint and all documents used to respond to it
2	Within 10 days of the complaint being recorded in the complaint register, an acknowledgment of receipt (notice) must be sent to the complainant containing: • The name and contact information of the person in charge of examining complaints • The time required for examining the complaint • A description of the complaint, specifying the real or potential harm, the reproach against the registrant and the requested remedial action • The following statements: – That the complainant may request that their file be transferred to the AMF if they are dissatisfied with the firm's examination of their complaint or with the final response – That, where appropriate, the AMF will analyze their complaint record and may offer dispute resolutions services – That the filing of a complaint with the AMF does not interrupt the prescriptive period for civil remedies
3	Within a reasonable time, a final response must be provided to the complainant
4	At the complainant's request, the firm must transfer the complaint record to the AMF without delay.

**FYI**

The AMF has made an example of an acknowledgment of receipt available online.²¹

The AMF recommends that the complaint be examined within a reasonable time, not exceeding 90 days following receipt, and that complaint records be transferred within a maximum of 30 days.

3.3.2 Role of the AMF

Firms are required to report to the AMF twice a year on their complaint examination and dispute resolution policy. Reporting is computerized using the Complaint Reporting System. The report must include the number and nature of complaints the firm has recorded in the complaints register.

Two reporting periods and deadlines have been established by the AMF:

- From July 1 to December 31: Report no later than January 30
- From January 1 to June 30: Report no later than July 30

3.3.3 Solutions and resolution

When a complaint record (a.k.a. complaint file) is transferred to it, the AMF examines it and may, if the parties agree, act as a conciliator. It may also offer a mediation session with an external mediator. However, both conciliation and mediation may not extend beyond 60 days after the first session without the parties' agreement.

**N.B.**

Unless otherwise agreed by the parties, nothing said or written during any of its sessions is admissible in evidence before a court of law or any person carrying on adjudicative functions. In this regard, the mediator cannot be compelled to disclose the content of these sessions, and no one may request access to the documents resulting from them.

21. See: [https:// www.lautorite.qc.ca/files pdf/professionnels/obligations/Accuse-de-reception-A.pdf](https://www.lautorite.qc.ca/files/pdf/professionnels/obligations/Accuse-de-reception-A.pdf)

3.3.4 Concept of natural justice

Natural justice, also known as “procedural fairness” (in Latin, *audi alteram partem*), is a concept of law that encompasses all the procedural guarantees that a person may enjoy in an administrative process.

In particular, this guarantees the complainant the right to be heard, i.e. to be given the opportunity to assert their views and arguments before a decision is made. Accordingly, as part of a complaint process, the client is entitled to explain why they are dissatisfied.



FYI

An in-person hearing is not mandatory. It can be handled by simple review of the documentation.

The principle of natural justice also allows complainants to be treated in an impartial and unbiased manner. The firm and its representatives are obliged to examine the complaint, even if, in their opinion, it is unfounded.

The decision-maker must be impartial and independent. Their decision must be written and reasoned. It must also set out the terms and options for contesting it.

This concludes Chapter 3 on the supervision of the professional activities of mortgage firms. The next and final chapter will be devoted to the compliance obligation regarding a mortgage brokerage firm’s brokerage transactions.

CHAPTER 4

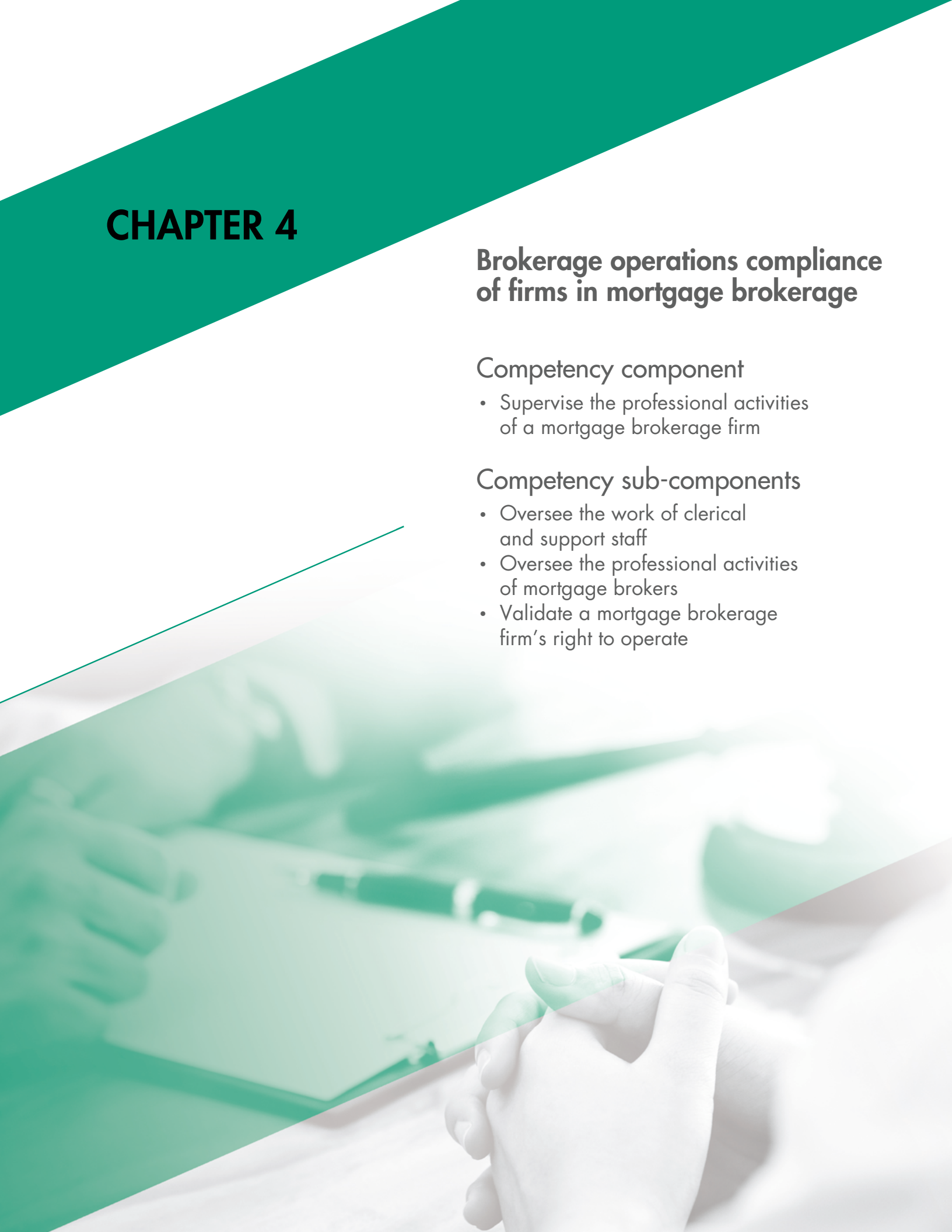
Brokerage operations compliance of firms in mortgage brokerage

Competency component

- Supervise the professional activities of a mortgage brokerage firm

Competency sub-components

- Oversee the work of clerical and support staff
- Oversee the professional activities of mortgage brokers
- Validate a mortgage brokerage firm's right to operate



Brokerage operations compliance of firms in mortgage brokerage

This chapter covers brokerage operations compliance of firms in mortgage brokerage.

Responsible officers must validate their firm's right to operate. As a result, they must ensure its registration with the *Autorité des marchés financiers* (AMF or Authority) is valid and maintained in effect. To do so, they ensure, in particular, that the relevant documents are sent to the AMF in a timely manner, representatives meet the necessary qualification requirements, fees are paid, liability insurance coverage is in good standing and all mortgage brokers have completed the required number of professional development activity hours.

In addition, firms must keep mandatory client records and registers in accordance with the *Act respecting the distribution of financial products and services* (Distribution Act) and its regulations, and responsible officers must ensure such requirements are met.

Accordingly, this last chapter sets out the compliance standards expected of firms in mortgage brokerage.

4.1 Validate a firm in mortgage brokerage's right to operate

To be able to practise in the sector of mortgage brokerage...

- firms;
- independent representatives; and
- independent partnerships

must all be registered with the AMF.

This registration is subject to various requirements with certain specific requirements depending on the type of registrant. As a result, responsible officers (and independent representatives) have to ensure compliance with the requirements specific to firms, independent representatives or independent partnerships.

4.1.1 Validity of registration

4.1.1.1 Firms

To register as a firm, the legal person must designate a person to act as a correspondent with the AMF.²² Where the nature of its activities so warrants, the legal person may designate persons to assist the person charged to act as a correspondent with the AMF. To carry on business in the sector of mortgage brokerage, it must also provide the AMF with the following documents and information:



Legislative or other references

Regulation respecting the registration of firms, representatives and independent partnerships, s. 2

2. Such legal person shall, in addition, transmit to the Authority, or authorize the Government, a body, a professional order or any other person in Québec to transmit to the Authority on its behalf, the following documents and information:

- (1) its name and, where applicable, any other name which it intends to use in Québec in carrying on its activities and the address of its head office, the address of its principal establishment in Québec and the address of all its other establishments in Québec, the telephone and facsimile numbers concerned, as well as its mailing address and electronic-mail address, where applicable;

[...]



FIRM CHECKLIST

To be transmitted to the AMF to register as a firm:



Name or any other name used in Québec, address of its head office and its other establishments in Québec, telephone and facsimile numbers, mailing address and electronic-mail address

22. *Regulation respecting the registration of firms, representatives and independent partnerships, art. 1*

Legislative or other references (*continued*)

- (2.1) [...] the names of the mortgage lenders that hold, directly or indirectly, interests in its ownership or in whose ownership the legal person holds direct or indirect interests;
[...]
- (4) the names and residential addresses of its directors and officers;
- (5) the sectors in respect of which the legal person intends to register with the Authority as well as the names and residential addresses of the representatives, in each sector and class, through whom it intends to pursue its activities, specifying those who are employed by it and those who act on its behalf without being employed by it;
[...]
- (7) the name of its responsible officer, and of the person designated to act as a correspondent with the Authority and, as the case may be, any persons designated to assist the person designated to act as a correspondent with the Authority;
- (8) a copy of the most recent declaration of registration made in accordance with the *Act respecting the legal publicity of enterprises* (chapter P-44.1) and, as the case may be, any amending declarations thereto;
[...]
- > ☐ Names of mortgage lenders
- > ☐ Names and residential (i.e. home) addresses of its directors and officers
- > ☐ Sectors for registration, names and addresses of representatives, by sector, specifying those who are employed and those who act on its behalf without being employed.
- > ☐ Name of the responsible officer, and persons correspondent designated to assist the correspondent
- > ☐ Copy of most recent declaration of registration

Legislative or other references (*continued*)

- | | |
|---|--|
| <p>(10) except in respect of an insurer intending to act through a claims adjuster in its employ, a copy of the insurance contract indicating that the legal person is covered by liability insurance in accordance with the requirements of the Regulation respecting firms, independent representatives and independent partnerships (chapter D-9.2, r. 2);</p> | <p>> ☐ Copy of legal person's liability insurance contract</p> |
| <p>(11) a copy of the insurance contract indicating that any representative acting on behalf of the legal person, but not employed by it, is covered by liability insurance in accordance with the requirements of the Regulation respecting the pursuit of activities as a representative (chapter D-9.2, r. 10);</p> | <p>> ☐ Copies of liability insurance contracts for representatives acting on behalf of the legal person but not employed by it</p> |
| <p>[...]</p> | |
| <p>(14) a document issued by the legal person attesting to the appointment of the persons referred to in paragraph 7 to act as the officer responsible and of the person designated to act as a correspondent with the Authority and authorizing any of these persons to sign the application for registration;</p> | <p>> ☐ Document attesting to appointment of responsible officer and correspondent</p> |

Legislative or other references (*continued*)

(15) a declaration signed by the person generally or specially authorized by resolution of the board of directors of the legal person to sign the application for registration, confirming whether the legal person:

- (a) has ever been convicted by final judgment of a Canadian or foreign court of a criminal act or an indictable offence;
- (b) has been placed under a liquidation order or a dissolution order or whether it has adopted a resolution or taken any measure in order to liquidate or dissolve;
- (c) has made an assignment of its property in favour of its creditors or has been petitioned in bankruptcy or placed under a receiving order pursuant to the Bankruptcy and Insolvency Act (R.S.C. 1985, c. B-3) or has ever availed itself of any legislative provisions pertaining to insolvency;

[...]

(d.1) has ever had a certificate issued by the Association des courtiers et agents immobiliers du Québec that has been cancelled or suspended, or has ever had his licence revoked or suspended by the Organisme d'autoréglementation du courtage immobilier du Québec;

(e) has ever had its registration for one or more sectors cancelled or suspended by the Authority;

[...]

> ☐ Declaration for special cases

Legislative or other references (*continued*)

- (i) is in default of paying any fine pertaining to the commission of an offence pursuant to the Act, the *Act respecting market intermediaries*, the *Securities Act* (chapter V-1.1) or the *Real Estate Brokerage Act* (chapter C-73.2);
 - (15.1) [...] a declaration signed by the person generally or specially authorized, by resolution of the board of directors of the legal person, to sign the application for registration, confirming that its responsible officer satisfies the conditions prescribed in section 2.1;
 - (16) a declaration signed by each of the directors and officers of the legal person confirming whether the director or the officer:
 - (a) has ever had his registration cancelled for any of the sectors referred to in section 13 of the Act or has ever been a partner of an independent partnership or a director or officer of a firm the registration of which has been cancelled;
 - [...]
 - (b.1) has ever had a certificate issued by the *Association des courtiers et agents immobiliers du Québec* that has been cancelled or suspended, or has ever had his licence revoked or suspended by the *Organisme d'autoréglementation du courtage immobilier du Québec*;
-



Legislative or other references (*continued*)

- (c) has ever been convicted by final judgment of a Canadian or foreign court of an offence with respect to the Act;
 - (d) has ever been convicted by final judgment of a Canadian or foreign court of a an [*sic.*] offence or criminal act other than those referred to in subparagraph c, within the past 10 years;
 - (e) has, during the past 10 years, made an assignment of his property in favour of his creditors, has been petitioned in bankruptcy or placed under a receiving order pursuant to the *Bankruptcy and Insolvency Act* or has ever availed himself of any legislative provisions pertaining to insolvency;
 - (f) has been assigned a tutor, curator or adviser;
- (17) [...] a copy of the declaration of which the content is set out in Schedule 1 or, in the case of a firm that is a financial institution, in Schedule 1-A, respecting the opening and maintaining of a separate account and, in the case of a legal person not intending to receive or collect any amount on behalf of others in connection with its activities governed by the Act, a copy of the declaration the content of which is set out in Schedule 2;

> ☐ Copy of declaration re: opening and maintaining of a separate account

[...]

The firm must also demonstrate that its responsible officer meets certain requirements:²³



Legislative or other references

Regulation respecting the registration of firms, representatives and independent partnerships, s. 2.1

2.1. In order for a legal person to register as a firm in the sector of mortgage brokerage, its responsible officer must satisfy the following conditions:

- (1) he holds a representative's certificate in the sector of mortgage brokerage;
- (2) in the 2 years preceding the application for registration, he passed the Authority's examinations pertaining to the skills that must be possessed by the responsible officer of a firm or independent partnership registered in the sector of mortgage brokerage or by an independent representative registered in the sector, or he acted as the responsible officer of a firm or independent partnership registered in the sector of mortgage brokerage or was registered as an independent representative in the sector;
- (3) he is not in default of complying with the compulsory professional development requirements set out in section 5 of the *Regulation respecting the compulsory professional development of mortgage brokers* (chapter D-9.2, r. 13.2).



FIRM CHECKLIST

Conditions for being responsible officer of a firm:

- > ☐ Hold a representative's certificate in the sector of mortgage brokerage
- > ☐ Have passed the responsible officer's examination in the two years preceding the application for registration
- > ☐ PDUs completed and up to date

23. *Regulation respecting the registration of firms, representatives and independent partnerships, s 2.1*

4.1.1.2 Independent representatives

To register with the AMF, independent representatives are also subject to conditions. They must apply in writing to the AMF and have a location which serves as an establishment in Québec.²⁴

Independent representatives must also transmit the following documents and information to the AMF:



Legislative or other references

Regulation respecting the registration of firms, representatives and independent partnerships, s. 4

4. The representative must also transmit to the Authority, or authorize the Government, its government bodies, a professional order or any other person in Québec to transmit to the Authority on its behalf, the following documents and information:

(1) his name and, where applicable, any other name which the representative intends to use in Québec in carrying on his activities, the address of the location which serves as an establishment in Québec, the telephone and facsimile numbers concerned, as well as his mailing address and his electronic-mail address, where applicable;

(2) his residential address;
[...]

(4) as the case may be, a copy of the declaration of registration made in accordance with the *Act respecting the legal publicity of enterprises* (chapter P-44.1) and any amending declarations thereto;



CHECKLIST

INDEPENDENT REPRESENTATIVES

To be transmitted to the AMF to register as an independent representative:



Name or any other name used in Québec, address of establishment in Québec, telephone and facsimile numbers, mailing address and electronic-mail address



Residential (i.e. home) address



Copy of declaration of registration

24. *Regulation respecting the registration of firms, representatives and independent partnerships*, s 3.

Legislative or other references (*continued*)

- (5) a copy of the insurance contract purchased by the representative indicating that he is covered by liability insurance in accordance with the requirements of the *Regulation respecting firms, independent representatives and independent partnerships* (chapter D-9.2, r. 2); > ☐ Copy of liability insurance contract

 - (5.1) in the case of a representative intending to register in the sector of mortgage brokerage, a signed declaration confirming that he satisfies the conditions prescribed in section 4.1. > ☐ Declaration signed by representative

 - (6) a declaration signed by the representative confirming whether the representative: > ☐ Declaration for special cases
 - [...]
 - (a.1) has ever had a certificate issued by the *Association des courtiers et agents immobiliers du Québec* that has been cancelled or suspended, or has ever had his licence revoked or suspended by the *Organisme d'autoréglementation du courtage immobilier du Québec*;
 - (b) has ever had a certificate for one or more sectors or classes of sectors or his registration cancelled or suspended by the Authority;
 - (c) has ever had his registration cancelled or suspended by the Authority;
-

Legislative or other references (*continued*)

- (d) is the holder of a certificate issued by the Authority or a registration with the Authority which has rights that are subject to conditions or restrictions;
 - (e) is in default of paying any fines, administrative penalties and legal costs imposed in a disciplinary decision rendered for a failure to comply with the *Act respecting the distribution of financial products and services* (chapter D-9.2) or the *Act respecting market intermediaries*, including the accrued interest at the rate established in accordance with section 28 of the *Tax Administration Act* (chapter A-6.002), as the case may be;
 - (f) is in default of paying any fine pertaining to the commission of an offence pursuant to the *Act*, the *Act respecting market intermediaries*, the *Securities Act* (chapter V-1.1) or the *Real Estate Brokerage Act* (chapter C-73.2);
- (7) a copy of the declaration the content of which is set out in Schedule 3 respecting the opening and maintaining of a separate account and, in the case of an independent representative not intending to receive or collect any amount on behalf of others in connection with his activities governed by the *Act*, a copy of the declaration the content of which is set out in Schedule 4.

> ☐ Copy of declaration re: opening and maintaining a separate account

Independent representatives must also comply with the requirements imposed on responsible officers with respect to passing the AMF's examinations and completing compulsory professional development (on this subject, see section 4.2.5 of this Chapter).



Legislative or other references

Regulation respecting the registration of firms, representatives and independent partnerships, s. 4.1

4.1. In order for a mortgage broker to register as an independent representative in the sector of mortgage brokerage, he must satisfy the following conditions:

- (1) in the 2 years preceding the application for registration, he passed the Authority's examinations pertaining to the skills that must be possessed by the responsible officer of a firm or an independent partnership registered in the sector of mortgage brokerage or by an independent representative registered in the sector, or he acted as the responsible officer of a firm or an independent partnership registered in the sector of mortgage brokerage or was registered as an independent representative in the sector;
- (3) he is not in default of complying with the compulsory professional development requirements set out in section 5 of the *Regulation respecting the compulsory professional development of mortgage brokers* (chapter D-9.2, r. 13.2).



CHECKLIST

INDEPENDENT REPRESENTATIVES

Conditions for being an independent representative in the sector of mortgage brokerage



Successful completion of responsible officer's examination within two years preceding the application for registration



PDU's completed and up to date

4.1.1.3 Independent partnerships

Lastly, independent partnerships must also apply in writing to the AMF and designate one or more partners as correspondents. They are also subject to conditions similar to those applicable to firms, including the requirement to transmit the following information:



Legislative or other references

Regulation respecting the registration of firms, representatives and independent partnerships, s. 6

6. Such partnership shall [...] transmit to the Authority, or authorize the Government, a government body, a professional order or any other person in Québec to transmit to the Authority on its behalf, the following documents and information:

(1) its name and, where applicable, any other name which it intends to use in Québec in carrying on its activities, the address of the location which serves as its principal establishment in Québec and the address of all its other locations which serve as establishments in Québec, the telephone and facsimile numbers concerned, as well as its mailing address and its electronic-mail address, where applicable;

(2) the sectors in respect of which the partnership intends to register with the Authority as well as the names and residential addresses, per sector and class of sector, of the representatives through whom it intends to pursue its activities, specifying those who are partners of the partnership and those who are employed by it;

[...]

(4) a copy of the partnership agreement and, as the case may be, any amendments thereto;



CHECKLIST

INDEPENDENT PARTNERSHIPS

To be transmitted to the AMF to register as an independent partnership:

> ☐ Name or any other name used in Québec, address of principal establishment and all other establishments in Québec, telephone and facsimile numbers, mailing address and electronic-mail address

> ☐ Sectors for registration, names and addresses of representatives, by sector, specifying those who are partners and those who are employed by it

> ☐ Copy of partnership agreement

Legislative or other references (*continued*)

- | | |
|--|--|
| <p>(5) the name of its responsible officer and of the partner designated to act as a correspondent with the Authority and, as the case may be, any persons designated to assist the partner designated to act as a correspondent with the Authority;</p> | <p>> ☐ Name of responsible officer, correspondent and persons designated to assist the correspondent</p> |
| <p>(6) a copy of the most recent declaration of registration made in accordance with the <i>Act respecting the legal publicity of enterprises</i> (chapter P-44.1) and, as the case may be, any amending declarations thereto;</p> | <p>> ☐ Copy of most recent declaration of registration</p> |
| <p>(7) a copy of the insurance contract purchased by the partnership to cover the liability of its partners and the representatives employed by it, in accordance with the <i>Regulation respecting firms, independent representatives and independent partnerships</i> (chapter D-9.2. r. 2);</p> | <p>> ☐ Liability insurance contract</p> |
| <p>(8) a document issued by the partnership attesting to the appointment of partners referred to in paragraph 5 to act as the responsible officer and of the partner designated to act as a correspondent with the Authority and authorizing the signature of the application for registration by one of them;</p> | <p>> ☐ Document attesting to appointment of responsible officer and correspondent</p> |
| <p>(9) a declaration signed by a partner generally or specially authorized, by resolution of the partnership, to sign the application for registration, confirming whether the partnership:</p> <p style="margin-left: 20px;">(a) has been convicted by final judgment of a Canadian or foreign court of a an [<i>sic.</i>] offence or a criminal act;</p> <p style="margin-left: 20px;">(b) has been placed under a liquidation order or a dissolution order or whether it has adopted a resolution or taken any measure in order to liquidate or dissolve;</p> | <p>> ☐ Declaration for special cases</p> |

Legislative or other references (*continued*)

- (c) has made an assignment of its property in favour of its creditors or has been petitioned in bankruptcy or placed under a receiving order pursuant to the *Bankruptcy and Insolvency Act* (R.S.C. 1985, c. B-3) or has ever availed itself of any legislative provisions pertaining to insolvency;

[...]

- (d.1) has ever had a certificate issued by the *Association des courtiers et agents immobiliers du Québec* that has been cancelled or suspended, or has ever had his licence revoked or suspended by the *Organisme d'autoréglementation du courtage immobilier du Québec*;

- (e) has ever had its registration for one or more sectors cancelled or suspended by the Authority;

- (f) has ever had its registration as a securities broker or adviser cancelled or suspended by the Authority;

- (g) has ever had conditions or restrictions attached to its registration for one or more sectors with the Authority or to its registration as a securities broker or adviser with the Authority;

[...]

- (i) is in default of paying any fine pertaining to the commission of an offence pursuant to the Act, the *Securities Act* (chapter V-1.1), the *Real Estate Brokerage Act* (chapter C-73.2);
-

Legislative or other references (*continued*)

- (9.1) in the case of a partnership intending to register in the sector of mortgage brokerage, a declaration signed by the partner generally or specially authorized, by resolution of the partnership, to sign the application for registration, confirming that its responsible officer satisfies the conditions prescribed in section 6.1.
- (10) a declaration signed by each of the partners of the partnership confirming whether the partner:
- (a) has ever had his registration for one or more sectors referred to in section 13 of the Act cancelled or has ever been a partner of an independent partnership or a director or an officer of a firm the registration of which has been cancelled;
 - (b) has ever had a certificate issued by the *Conseil des assurances de dommages*, the *Conseil des assurances de personnes* or the Inspector General of Financial Institutions pursuant to the *Act respecting market intermediaries*, that has been cancelled or suspended, or has ever had a registration cancelled or suspended by the *Commission des valeurs mobilières du Québec*;
 - (b.1) has ever had a certificate issued by the *Association des courtiers et agents immobiliers du Québec* that has been cancelled or suspended, or has ever had his licence revoked or suspended by the *Organisme d'autoréglementation du courtage immobilier du Québec*;
-

Legislative or other references (*continued*)

- (c) has ever been convicted by final judgment of a Canadian or foreign court of an offence with respect to the distribution of financial products and services;
 - (d) has ever been convicted by final judgment of a Canadian or foreign court of an offence or criminal act other than those referred to in subparagraph c, within the past 10 years;
 - (e) has, during the past 10 years, made an assignment of his property in favour of his creditors, has been petitioned in bankruptcy or placed under a receiving order pursuant to the *Bankruptcy and Insolvency Act*, or has ever availed himself of any legislative provisions pertaining to insolvency;
 - (f) has been assigned a tutor, curator or adviser;
- (11) a copy of the declaration of which the content is set out in Schedule 5 pertaining to the opening and maintaining of a separate account and in the case of a partnership not intending to receive or collect any amount on behalf of others in connection with its activities governed by the Act, a copy of the declaration the content of which is set out in Schedule 6.

> ☐ Copy of declaration re: opening and maintaining a separate account

Responsible officers of independent partnerships must also satisfy the following special conditions:



Legislative or other references

Regulation respecting the registration of firms, representatives and independent partnerships, s. 6.1



CHECKLIST

INDEPENDENT PARTNERSHIPS

Conditions for being a responsible officer of an independent partnership

(1) he holds a representative's certificate in the sector of mortgage brokerage;



Hold a representative's certificate in the sector of mortgage brokerage

(2) in the 2 years preceding the application for registration, he passed the Authority's examinations pertaining to the skills that must be possessed by the responsible officer of a firm or independent partnership registered in the sector of mortgage brokerage or by an independent representative registered in the sector, or he acted as the responsible officer of a firm or independent partnership registered in the sector of mortgage brokerage or was registered as an independent representative in the sector;



Have passed the responsible officer's examination in the two years preceding the application for registration

(3) he is not in default of complying with the compulsory professional development requirements set out in section 5 of the *Regulation respecting the compulsory professional development of mortgage brokers* (chapter D-9.2, r. 13.2).



PDU's completed and up to date

4.1.2 Maintenance of registration

The registration is valid until it is cancelled.²⁵ However, if, during the term of a registration, a change arises in the circumstances which affects the accuracy of the information and documents provided, the registrant is required to notify the AMF in writing within 30 days.²⁶

In addition, section 10 of the *Regulation respecting the registration of firms, representatives and independent partnership* sets out certain conditions registrants are to meet to maintain their registration, including complying with the requirements for maintaining a separate account and annually transmitting the following to the AMF within 45 days of the request:

- Proof of maintenance of liability insurance in respect of all representatives.
- An updated list of the names and residential (i.e. home) addresses of the representatives.
- A declaration signed by each of the directors and officers confirming that they still comply with the AMF's requirements.
- As the case may be, a signed declaration confirming that no change in circumstances has occurred affecting the accuracy of the information provided to the AMF.

A firm must also provide the names of the mortgage lenders holding, directly or indirectly, interests in its ownership.

In addition, as regards more specifically its activities in mortgage brokerage, the sub-subparagraphs of sub-paragraph 10(2)(j) of the *Regulation respecting the registration of firms, representatives and independent partnerships* set out what registrants must provide:

- The names of the lenders whose loans secured by immovable hypothec were proposed to a client during the most recent year ending December 31.
- For each lender, the number of loans secured by immovable hypothec as a proportion of the aggregate of the loans of that type proposed to clients during the most recent year ending December 31.
- The number of brokerage transactions engaged in relation to loans secured by immovable hypothec during the most recent year ending December 31.

25. *Regulation respecting the registration of firms, representatives and independent partnerships*, s. 8.

26. *Regulation respecting the registration of firms, representatives and independent partnerships*, s. 9.

- A declaration signed by the independent representative or, in the case of a firm or independent partnership, by the person authorized to sign the application for registration, confirming that the responsible officer satisfied, as the case may be, the regulatory conditions.
- Paragraph (2) of section 10.2 of the *Regulation respecting the registration of firms, representatives and independent partnerships* also requires the filing of copies of the certificates of participation and other supporting documents regarding each recognized professional development activity in which the responsible officer has taken part, including copies of the certificates of exam or test results and transcripts demonstrating that the responsible officer is not in default of the compulsory professional development obligations.

In addition, sections 10.1 and 10.2 of the *Regulation respecting the registration of firms, representatives and independent partnerships* set out additional obligations with regard to maintaining registration:



Legislative or other references

Regulation respecting the registration of firms, representatives and independent partnerships, ss. 10.1 and 10.2

10.1. In order for a firm, independent representative or independent partnership registered in the sector of mortgage brokerage to maintain its registration, its responsible officer must satisfy the conditions prescribed in section 2.1, 4.1 or 6.1, as applicable, with the necessary modifications.

10.2. In order to maintain its registration, a firm, independent representative or independent partnership registered in the sector of mortgage brokerage must, in accordance with sections 13 to 15 of the *Regulation respecting firms, independent representatives and independent partnerships* (chapter D-9.2, r. 2) and sections 15, 16 and 18 of the *Regulation respecting the keeping and preservation of books and registers* (chapter D-9.2, r. 19), with the necessary modifications, preserve and keep current in Québec a record relating to its responsible officer in which the following documents are to be filed and made accessible to the Authority:

Legislative or other references (*continued*)

- (1) the document confirming that the responsible officer passed the Authority's examinations pertaining to the skills that must be possessed by the responsible officer of a firm or an independent partnership registered in the sector of mortgage brokerage or by an independent representative registered in the sector;
 - (2) copies of the certificates of participation and other supporting documents regarding each recognized professional development activity in which the responsible officer has taken part, including copies of the certificates of exam or test results and transcripts.
-

4.1.3 Requirements specific to responsible officers

Responsible officers have to ensure their representatives comply with the requirements related to the right to practise. They are also responsible for registering their firm with the AMF.

In addition, the AMF has issued conditions for the registration of firms relating to responsible officers. Under section 2.1 of the *Regulation respecting the registration of firms, representatives and independent partnerships*, they are required, in particular, to satisfy a series of conditions discussed earlier in section 4.1.1.

4.1.4 Payment of fees and contributions

To complete their registration with the AMF, registrants must also pay the applicable fees. For firms and independent partnerships, the annual fees to maintain registration are \$96 per sector for each representative through which the registrant pursues activities.²⁷ Independent representatives are also required to pay annual fees of \$96 for each sector in which they are authorized to act.²⁸ These amounts are indexed annually.

Each representative must pay these fees for each sector in which they are authorized to act.

Each representative must also pay an annual contribution to the *Fonds d'indemnisation des services financiers* (financial services compensation fund).²⁹

27. *Regulation respecting fees and contributions payable*, s. 2.

28. *Regulation respecting fees and contributions payable*, s. 3.

29. *Regulation respecting fees and contributions payable*, s. 3.1.

4.1.5 Insurance

The Distribution Act and its regulations require mortgage brokers to carry liability insurance, which is also a requirement for registration with the AMF³⁰. Liability insurance requirements are essentially the same for all registrants; however, to help readers better understand them, this section has a greater focus on the requirements for firms and independent partnerships. This obligation for firms and independent partnerships applies to all employees and partners, as well as to all representatives attached to them, even where not directly in their employ. A copy of the insurance contract (i.e. policy) is to be transmitted to the AMF.

Liability insurance covers registrants against such potential errors, faults or negligence as they, their employees or their trainees may commit in the pursuit of their activities. This insurance is intended to compensate the client for any injury caused.



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For more information on this subject, see Chapter 6, *Professional practice of and legal framework governing mortgage brokerage*, section 6.1.2.

4.1.5.4 Liability of firms and independent partnerships for faults of their representatives

Firms and responsible officers have every interest in ensuring their employees and brokers comply with the applicable legislation and regulations. Under section 80 of the Distribution, a firm is responsible for any injury caused to a client by the fault of one of its representatives in the performance of the representative's functions (i.e. duties). However, the firm retains the remedies available to it against them, i.e. it may launch proceedings against its broker if the latter causes it a loss by their fault, except where the responsible officer was negligent in the supervision and oversight of mortgage brokers.

4.1.5.5 Requirements

This insurance must be effective at all times for firms to maintain their registration.

Moreover, each year, firms must provide the AMF with proof that they and their brokers are covered by liability insurance that complies with regulatory requirements.

30. Distribution Act, s. 76.

Section 29 of the *Regulation respecting firms, independent representatives and independent partnerships* sets out the minimum conditions to be satisfied by the liability insurance of a firm, an independent partnership or an independent representative.



Legislative or other references

Regulation respecting firms, independent representatives and independent partnerships, s. 29

[...] the insurance contract covering the liability of an independent representative, firm or independent partnership must satisfy the following conditions:

- (1) The coverage amount must not be less than \$500,000 per claim and, for each 12-month period, not less than
 - (a) \$1,000,000 for an independent representative;
 - (b) \$1,000,000 for a firm or an independent partnership having 3 representatives or fewer acting on behalf of the firm or the independent partnership; and
 - (c) \$2,000,000 for a firm or an independent partnership having more than 3 representatives acting on behalf of the firm or the independent partnership;
 - (2) The insurance contract may stipulate a deductible not exceeding;
 - (a) \$10,000 for an independent representative;
 - (b) \$10,000 for a firm or an independent partnership having 3 representatives or fewer acting on behalf of the firm or the independent partnership; or
 - (c) \$25,000 for a firm or an independent partnership having more than 3 representatives acting on behalf of the firm or the independent partnership;
-

Legislative or other references (*continued*)

- (3) The insurance contract must also contain provisions to the following effect:
- (a) in the case of a firm, that the coverage shall extend to the liability arising from the fault, errors, negligence, or omissions committed in the pursuit of the firm's activities and from those committed by its mandataries, its employees or the trainees of its representatives, in the performance of their duties, regardless of whether or not such persons are still so engaged on the date of the claim;
 - (b) in the case of an independent representative, that the coverage shall extend to the liability arising from the fault, errors, negligence, or omissions committed in the performance of his duties and those committed by his mandataries, his employees or his trainees in the performance of their duties, regardless of whether or not such persons are still so engaged on the date of the claim;
 - (c) in the case of an independent partnership, that the coverage shall extend to the liability arising from the fault, errors, negligence, or omissions committed in the pursuit of activities of his partners and the representatives in his employ and from those committed by their mandataries, their employees or the trainees of the partners and representatives in his employ, currently or in the past, in the performance of their duties, regardless of whether or not such persons are still so engaged on the date of the claim;
 - (d) that the coverage provided in respect of the activities of a firm, an independent representative or the partners or representatives employed by an independent partnership for the period during which the contract is in effect will continue to apply beyond the insurance period provided for in the contract in respect of the activities contemplated by such coverage for a further term of 5 years from the time the firm, independent representative or independent partnership was struck off or suspended from the Authority's roll;
-

-
- (e) that the time within which an insurer must notify the Authority of its intention not to renew or its intention to cancel the contract is 30 days prior to the date of non-renewal or cancellation;
 - (f) that the insurer must notify the Authority upon receiving notice of cancellation of an insurance contract from a firm, an independent representative or an independent partnership;
 - (g) that the insurer must give notice to the Authority of the receipt of any claim, irrespective of whether or not the insurer decides to honour the claim.

The amount of the deductible stipulated in the insurance contract may nevertheless be greater than the amount set out in subparagraphs *a* to *c* of subparagraph 2 of the first paragraph, provided that the insured maintains at all times liquid assets at least equal to the amount stipulated in the contract. “Liquid assets” means the total of cash and securities immediately convertible into cash.



N.B.

Even where firms delegate some of their activities to a third party, such as the keeping of books and registers, cyber security or honesty and integrity checks prior to hiring representatives, they remain fully responsible to clients for such activities.

4.2 Validating the compliance of mortgage brokers' qualifications

Responsible officers must ensure the compliance of the qualifications of the mortgage brokers working for them. In the past, firms have been sanctioned for allowing a broker whose licence had been suspended to pursue their activities, for example, for failing to pay the fees payable or comply with professional development requirements.

4.2.2 Validity of mortgage brokers' certification

To practise in the sector mortgage brokerage, each mortgage broker must hold a certificate issued by the AMF. As we saw earlier in Chapter 3, obtaining the certificate depends on fulfilling certain requirements:

- ✓ Satisfy the minimum qualifications.
- ✓ Pass the examinations prescribed by the AMF.
- ✓ Successfully complete a probationary period.
- ✓ Pay the required fees for the issuance of the certificate.

As set out in section 1 of the *Regulation respecting fees and contributions payable*, the fees payable are as follows:



Legislative or other references

Regulation respecting fees and contributions payable, s. 1

The fees payable for the issuance renewal of a representative's certificate are \$96 for each sector or sector class in which a representative is authorized to act.

Where a representative is authorized to act in the sector of mortgage brokerage, he must pay an additional fee of \$250 for the issuance of his certificate and an additional annual fee of \$250 for its renewal.³¹

31. These amounts are indexed annually.

4.2.3 Incompatible occupations

In addition to the certification requirements, mortgage brokers may not pursue activities or hold occupations that are incompatible with the pursuit of activities as a mortgage broker. When applying for a certificate or renewal, mortgage brokers must declare any other employment or occupation in which they are engaged to the AMF. Accordingly, responsible officers are required to check whether their mortgage brokers comply with the requirements of the Distribution Act and its regulations in this regard.

EXAMPLE

A mortgage broker therefore cannot keep or seek a second occupation as a judge, police officer, minister of religion, funeral director, bankruptcy trustee, lawyer or notary, among others.

However, they can pursue the occupation of real estate broker in the same real estate transaction.

4.2.4 Conditions and restrictions governing the pursuit of activities

The *Regulation respecting the pursuit of activities as a representative* sets out other conditions and restrictions.

As explained below, mortgage brokers are also required to maintain a separate account in which they must deposit all amounts collected or received on behalf of another person in the pursuit of their activities.

4.2.5 Compliance with professional development requirements

Mortgage brokers, like responsible officers, are subject to professional development requirements. The purpose of professional development activities is to enable representatives to acquire, maintain, update, improve and expand knowledge, skills and abilities associated with mortgage brokerage. Accordingly, for any reference period, i.e., any 24-month period beginning on May 1 of an even-numbered year,³² representatives must accumulate at least 24 professional development units (PDUs) recognized by the AMF, which are to be broken down as shown in Table 4.1.

32. *Regulation respecting the compulsory professional development of mortgage brokers*, definition of “reference year” under s. 3.

TABLE 4.1**Breakdown of PDUs****Mortgage brokers****Total: 24 DPU's**

3 PDUs related to training activities pertaining to compliance with standards, ethics and professional conduct or professional practice pertaining to the pursuit of mortgage brokerage activities.

21 PDUs related to training activities included among the following subjects:

- The legislative and regulatory framework for the pursuit of activities as a mortgage broker.
- Ethics, professional conduct and professional practice of mortgage brokers.
- Keeping of records and registers.
- Developments in the mortgage market.
- Financing products secured by immovable hypothec or the underwriting standards for such products.
- Mortgage brokerage.
- Personal and business accounting.
- Individual and business credit.
- Mortgage insurance.
- Risk management.
- Prevention of fraud or money laundering.
- New technologies associated with mortgage brokerage, financial services or financial technologies.
- Firm start-up and management.
- Management of human, material, information or financial resources.

**Responsible officers****Total: 30 DPU's**

6 PDUs related to training activities included among the following subjects, in addition to the preceding **24 DPU's**:

- Compliance with standards.
- Ethics and professional conduct or professional practice.
- Keeping of records and registers.
- Risk management.
- Prevention of fraud or money laundering.
- Firm start-up and management.

4.2.5.1 Compulsory nature

Professional development requirements are compulsory. Moreover, section 218 of the Distribution Act stipulates that the AMF may suspend the certificate of a representative who has not complied with compulsory professional development requirements.

In addition, representatives must keep, for a period of 24 months following the end of a reference period during which the training activity was given, the certificates of participation and other supporting documents relating to each recognized professional development activity in which they took part, including the certificates of exam or test results and the transcripts. They must also be prepared to provide the AMF with a copy of supporting documents upon request. If they fail to do so, the PDUs in question will not be considered valid, and they will have to complete them again.



4.2.6 Liability insurance specific to each broker



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For more information on this subject, see Chapter 6, *Professional practice of and legal framework governing mortgage brokerage*, section 6.1.2.

4.3 Verify compliance of client records

In the sector of mortgage brokerage, each client must be associated with a client record (a.k.a. client file).³³ Client records kept by a registrant in the sector of mortgage brokerage must contain the following information.



Legislative or other references

Regulation respecting firms, independent representatives and independent partnerships, s. 21.1

[...]

- (1) the client's name;
- (2) the client's address, telephone number and facsimile number or electronic mail address, if any;
- (3) the name of the mortgage broker involved in the transaction;
- (4) the address of the immovable to which the transaction pertains or its cadastral description if there is no address;
- (5) the date on which their services were retained;
- (6) where a document evidencing a loan application is submitted to a mortgage lender through them, a copy of the document;
- (7) where a document evidencing the acceptance or refusal of a loan is received from a mortgage lender through them, a copy of the document;
- (8) the method of payment and date of payment of the services rendered, if applicable;
- (9) a copy of:
 - (a) the receipt provided in accordance with section 28.2 of this Regulation or section 9.2 of the *Regulation respecting the pursuit of activities as a representative* (chapter D-9.2, r. 10), as applicable;
 - (b) the documents delivered in accordance with sections 9.3 to 9.6 of the *Regulation respecting the pursuit of activities as a representative*, as applicable;

33. *Regulation respecting firms, independent representatives and independent partnerships, s. 12.*

Legislative or other references (*continued*)

- (c) the document in which the information pertaining to the identification of the client's needs and the client's financial situation is recorded in accordance with section 9.7 of the *Regulation respecting the pursuit of activities as a representative*;
- (d) the document in which the identity of the borrower is recorded in accordance with the second paragraph of section 9.8 of the *Regulation respecting the pursuit of activities as a representative*;
- (e) the documents enabling the identification of the borrower, where the mortgage broker involved in the transaction was unable to meet the borrower in person;
- (10) for the withdrawal from the separate account of an amount deposited therein in accordance with paragraph 1 of section 10 of the *Regulation respecting the registration of firms, representatives and independent partnerships* (chapter D-9.2, r. 15) or paragraph 2 of section 4 of the *Regulation respecting the pursuit of activities as a representative*, a copy of the document evidencing an electronic transfer, the cheque, the other bill of exchange or the transfer slip used to make the withdrawal, and a copy of the cheque or the other bill of exchange cashed in, as the case may be.

All other information or documents concerning the services rendered to the client or obtained from him must also be inscribed on or filed in the client's record.

The role of responsible officers is, in particular, to supervise and oversee the management of the records kept by their mortgage brokers, and ensure they are complete and the confidentiality of the information is preserved.

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For more information on this subject, see Chapter 6, *Professional practice of and legal framework governing mortgage brokerage*, section 6.2.6.

**N.B.**

Responsible officers must ensure all brokers comply with the requirements for the issuance of their certificates. If a representative does not complete their compulsory PDUs and continues to practise mortgage brokerage, their practice becomes illegal. This can have serious consequences, particularly since the representative will no longer be covered by professional liability insurance in the event they make an error in performing their duties. Accordingly responsible officers have every interest in remaining vigilant.

4.3.1 Compliance standards for client records

Registrants must keep their records at their establishment in Québec or, if they are kept at another establishment, they must provide the contact information to the AMF.

They must also have implemented appropriate practices for locating client records (such as an orderly and consistent filing system).

Client records may be kept using a computer system. However, registrants must take the necessary measures to prevent the loss, destruction or falsification of data. Registrants must also ensure they are able to make their records available to the AMF, by such means as the AMF directs, as well as all documents and information from their brokers within a reasonable time.

In addition, registrants may consolidate their client records in a single document, provided that all required information is recorded in such document and that the information can be separated as necessary.

These records must be preserved for at least five years from their final closure, the date the last service was rendered or the expiration without renewal or the replacement of the last product sold to the client.³⁴

34. Regulation respecting the keeping and preservation of books and registers, s. 15.

4.3.2 Mortgage broker's record

Where registrants maintain an individual record for each of their brokers or employees, it is advisable to include the following.

- The broker's workload, including:
 - The number or percentage of mortgage files assigned to them.
 - The objectives for mortgages closed per year and the content of the objectives.
 - The ability to meet timelines for processing application files.
- Follow-up memos for UFCs taken and to be taken by brokers.
- Follow-up memos to ensure the broker maintains their right to practise in an uninterrupted manner.
- Information regarding any dual duties of the broker, if applicable (name of the entity and the broker's duty within it).
- Internal or external professional development activities offered by the registrant to its brokers or employees, detailing the subject matter and the type of training taken or to be taken (reading material, lectures, webinars, etc.).
- Findings of the registrant's audit or internal control of the broker's or employee's work, including validations of the:
 - Data collection carried out.
 - Appropriateness of the products offered to clients and the broker's notes in support of the recommendation.
 - Keeping of records.
 - Whether reserved acts are performed by certified brokers only.
 - Etc.

- Follow-up memos detailing the implementation remedial action requested from the broker or employee by the registrant in relation to deficiencies identified in the audit or internal control performed.
- Any disciplinary sanctions imposed by the registrant on its brokers or employees for recurring breaches (of compliance, rules of conduct, internal policies and procedures, reserved acts performed by a non-certified employee):
 - Notes detailing the nature and timing of sanctions.
 - The action plans implemented to ensure remedial action is taken and accompanying follow-up memos.
- Where applicable, the record opened by the registrant for the broker's probationary period.
- Any declarations relating to a condition of close supervision of a broker for the entire reporting period or a report detailing the items included in such declarations.
- Disclosures made to the AMF in the event of a dismissal, including those relating to ethical and compliance breaches.



4.4 Verify compliance of the firm in mortgage brokerage's registers

Responsible officers must also ensure compliance of a firm in mortgage brokerage's registers.

4.4.1 Mandatory registers

Registrants are also required to keep and maintain certain accounting registers relating to separate accounts, commissions and incentives.

4.4.1.1 Accounting registers

Firms must maintain and keep up to date at their establishments in Québec, accounting books and other accounting records required for the registration (i.e. entry) of transactions they effect in connection with their activities.³⁵ The accounting books and other accounting registers must be incorporated into an accounting system.³⁶

4.4.1.2 Register pertaining to the separate account

Firms must also maintain and keep up to date at their establishments in Québec a register pertaining to the separate account where they receive or collect amounts on behalf of others.³⁷

This register must contain the accounting of all amounts received or collected on behalf of others which are deposited in the separate account and of all amounts paid out of such separate account.³⁸

The register pertaining to the separate account of a registrant in the sector of mortgage brokerage must contain the following information:³⁹

- (1) The client's name.
- (2) The number of the insurance contract or any other contract in respect of which the representative has received an amount, as the case may be.
- (3) The amount and the object of the transaction.
- (4) In the case of the separate account kept by a firm or an independent partnership, the name of the representative involved in the transaction when he may be identified.

35. Regulation respecting the keeping and preservation of books and registers, ss. 1 and 4.

36. Regulation respecting the keeping and preservation of books and registers, s. 5.

37. Regulation respecting the keeping and preservation of books and registers, ss. 1 and 6.

38. Regulation respecting the keeping and preservation of books and registers, s. 5.

39. Regulation respecting the keeping and preservation of books and records, s. 7, and the Regulation respecting the pursuit of activities by a representative.

- (5) In the case of the separate account kept by a firm, an independent representative or an independent partnership registered in the sector of mortgage brokerage:
- (a) The date on which the transaction was made at the financial institution.
 - (b) The date of the withdrawal from the separate account.
 - (c) The name of the recipient of the amount paid out of the separate account.

**N.B.**

General accounting and accounting for the separate account must always be separate and distinct from one another.⁴⁰

4.4.1.3 Commissions register

As we saw in Chapter 2, as soon as a commission is collected, it must be promptly entered in the commissions register.⁴¹ The commissions register must contain the following information.

**Legislative or other references**

Regulation respecting firms, independent representatives and independent partnerships, s. 22

[...]

- (1) the contract number or client name, as the case may be;
- (2) the name of the client, the insurer or any other person who has paid a commission to the firm, independent representative or independent partnership;
- (3) the statement pertaining to each commission or other remuneration received by the firm, independent representative or independent partnership.

However, in the event that the statement provided for in subparagraph 3 of the first paragraph includes the information prescribed in subparagraphs 1 and 2 of said paragraph, the filing of the statement in the register of commissions is regarded as sufficient.

40. *Regulation respecting the keeping and preservation of books and registers, s. 5.*

41. *Regulation respecting firms, independent representatives and independent partnerships, s. 25.*

If the commission is shared, the register must also contain the following information:



Legislative or other references

Regulation respecting firms, independent representatives and independent partnerships, s. 23

[...]

- (1) the name and business address of each person sharing the commission and the sectors, if applicable, for which they are registered with the Authority;
 - (2) the names of the parties to the transaction and the object and date of the transaction;
 - (3) the percentage of the commission or the fixed amount resulting therefrom and the manner in which the commission is allocated between the persons sharing it.
-

4.4.1.4 Register of incentives

Firms are also required to keep a register of the incentives that it introduces.⁴² This register must contain a description and the terms and conditions of each incentive introduced, including:

- Its duration.
- Related benefits.
- Applicable products or services.
- A description of the group of representatives concerned.
- The names of the winners.

4.4.1.5 Preservation and destruction of records

These records may be preserved in paper or computer form. However, firms must ensure they take the necessary measures to prevent the loss, destruction or falsification of such information. The data must also be sufficiently accessible, both physically and technologically, for clients to have access to it within a reasonable time if they so request.⁴³

42. *Regulation respecting firms, independent representatives and independent partnerships, s. 28.1.*

43. *Regulation respecting firms, independent representatives and independent partnerships, ss. 13 and 15 and Regulation respecting the keeping and preservation of books and registers, s 3.*

These records must be preserved for a period of five years from their closing.⁴⁴ All information regarding to the separate account must be retained for at least five years after the last registration (i.e. entry).⁴⁵

After five years, these records may be destroyed, unless prohibited by another act or regulation.⁴⁶ Such records are to be destroyed in a responsible manner, which prohibits firms, for instance, from disposing of them directly in garbage bins. They must instead have implemented a process for the destruction of records, books and registers or documents in such a manner as they cannot be reconstructed by a third party.

Sales, service or accounting transactions dating from over five years may be removed from their books and registers.⁴⁷

**N.B.**

Even when destroying a record or the contents of a register, the registrant is still required to uphold the confidentiality of the client's information.⁴⁸

This completes our review of the rules governing the brokerage operations compliance of firms in mortgage brokerage. Accordingly, a major task of responsible officers consists in ensuring that their firm and its representatives meet all requirements relating to day-to-day mortgage brokerage operations.

44. Regulation respecting the keeping and preservation of books and registers, s. 13.

45. Regulation respecting the keeping and preservation of books and registers, s. 14.

46. Regulation respecting the keeping and preservation of books and registers, s. 16.

47. Regulation respecting the keeping and preservation of books and registers, s. 17.

48. Regulation respecting the keeping and preservation of books and registers, s. 25.

CONCLUSION

This guide constitutes the foundation of the skills and knowledge to be acquired by future responsible officers of firms registered in the sector of mortgage brokerage as part of their path toward the qualifying examination and obtaining authorization from the *Autorité des marchés financiers* to act in this capacity.

This guide allows future responsible officers, whose main duty will be to supervise and oversee mortgage brokers, to acquire more knowledge of the principles arising from the legal framework applicable to mortgage brokerage; they must be able to manage the firm or independent partnership and the mortgage brokers they supervise or act as a representative.

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