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# GUIDE FOR RESPONSIBLE OFFICERS



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**Original French version written by**

Mtre. Isabelle N. Tremblay

**In consultation with**

Mtre. Julie Laganière, notary

Mireille Pelletier

Mtre. Dominic Veilleux

Carolynn Viera, FPAA, CRM

**Project management**

Marie Achard

AUTORITÉ DES MARCHÉS FINANCIERS

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**Original French version written by**

Mtre. Gabriel Meunier, lawyer

**In consultation with**

Mtre. Julie Laganière, notary

Christine Lemieux, BBA

Hugo Leroux

Robert Nadeau, lawyer

**Project management**

Marie Achard

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# FOREWORD

While reading this Guide is useful for all practising responsible officers and all those who wish to become a responsible officer, regardless of sector, this document is a reference and preparation tool for the exam intended for future responsible officers in mortgage brokerage. The contents herein will help readers develop the competencies set out in the responsible officer module of the Evaluation Curriculum.<sup>1</sup> The competency entitled “Set up an ethical professional practice in compliance with the rules governing the management of a mortgage brokerage firm” applies to firms, independent partnerships, and independent representatives.

**All sections herein are important for adequately preparing for the exam, but, throughout this Guide, content specific to future responsible officers in mortgage brokerage are shaded in grey.**

This Guide explains the regulatory framework that applies to distributing financial products and services in Québec and presents other frameworks related to the Autorité des marchés financiers (the AMF or the Authority) as well as to other organizations involved in regulating the Canadian mortgage market. Responsible officers must incorporate, into their professional practice, the roles and responsibilities applicable to their role in order to supervise and guide the activities of employees under their responsibility.

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*When this edition of the exam preparation manual was drafted, all content, extracts of statutes and other texts and forms presented herein were in use. Subsequent changes may have been made that are not reflected in the manual. Please note that the content presented in the edition of the manual in effect at the time you take the exam is the content that you must use for studying and that will be considered in the AMF's exams.*

In this text, the masculine form is used to refer to both men and women.

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1. Evaluation Curriculum – Mortgage Brokerage Qualification Program – Responsible Officer (lautorite.qc.ca).

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## List of abbreviations

<b>ACESC</b>	A comparative evaluation issued by a member of the Alliance of Credential Evaluation Services of Canada	<b>CIRO</b>	Canadian Investment Regulatory Organization
<b>AESS</b>	An attestation of equivalence of secondary V studies	<b>CISRO</b>	Canadian Insurance Services Regulatory Organizations
<b>AMF</b>	Autorité des marchés financiers	<b>CMHC</b>	Canada Mortgage and Housing Corporation
<b>AMP</b>	Administrative Monetary Penalty	<b>CRTC</b>	Canadian Radio-television and Telecommunications Commission
<b>APPIPS</b>	<i>Act respecting the protection of personal information in the private sector</i>	<b>CSF</b>	<i>Chambre de la sécurité financière</i>
<b>ARFS</b>	<i>Act respecting the regulation of the financial sector</i>	<b>DCPP</b>	Director of Criminal and Penal Prosecutions
<b>BCP</b>	Business Continuity Plan	<b>Distribution Act</b>	<i>An Act respecting the distribution of financial products and services</i>
<b>C.C.Q.</b>	<i>Civil Code of Québec</i>	<b>DNCL or TA</b>	<i>Telecommunications Act</i>
<b>CAI</b>	<i>Commission d'accès à l'information</i>	<b>EFVP</b>	Assessment of Privacy-Related Factors
<b>CASL</b>	<i>Canada's Anti-Spam Legislation</i>	<b>FCAC</b>	Financial Consumer Agency of Canada
<b>CEM</b>	Commercial electronic message	<b>FINTRAC</b>	Financial Transactions and Reports Analysis Centre of Canada
<b>ChAD</b>	<i>Chambre de l'assurance de dommages</i>	<b>IFP</b>	Institute of Financial Planning
<b>CIPR</b>	Canadian Insurance Participant Registry	<b>MBRCC</b>	Mortgage Broker Regulators' Council of Canada

## GUIDE FOR RESPONSIBLE OFFICERS

**NRD**

National Registration Database

**OACIQ**

*Organisme d'autoréglementation  
du courtage immobilier du Québec*

**OBSI**

Ombudsman for Banking Services  
and Investments

**OSFI**

Office of the Superintendent  
of Financial Institutions

**PCMLTFA**

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

**PDU**

Professional Development Unit

**Tribunal**

Financial Markets Administrative Tribunal



# CHAPTER 1

## Roles and responsibilities of responsible officers

### Competency components

- Understand the legal framework for mortgage brokerage
- Integrate into professional practice the rules governing the activities of responsible officers
- Supervise the professional activities of a mortgage brokerage firm

### Competency subcomponents

- Distinguish among the provisions of the *Civil Code of Québec (C.C.Q.)* that apply to the responsible officers of mortgage brokerage firms
- Distinguish among the other sources of law that apply to the responsible officers of mortgage brokerage firms
- Understand the role of mortgage brokerage regulatory bodies
- Integrate into professional practice the ethical obligations and duties prescribed by the *Act respecting the distribution of financial products and services* and its regulations
- Validate a mortgage brokerage firm's right to operate

## Introduction

### Regulatory framework

In Québec, the distribution of financial products and services such as insurance, claims adjustment, financial planning, and mortgage brokerage, is offered by intermediaries and governed by the *Act respecting the distribution of financial products and services (the Distribution Act)*. The *Distribution Act* and its regulations, adopted at the end of the 1990s, are the main sources of law that regulate intermediaries. In 2018, the *Distribution Act* was updated significantly. In particular, the legislator chose to include new technologies and to entrust the AMF with the responsibility of ensuring oversight and regulation of mortgage brokerage. Previously, mortgage brokerage was under the responsibility of the *Organisme d'autoréglementation du courtage immobilier du Québec (OACIQ)*.

It is interesting to note that, in Québec, unlike in the other Canadian provinces, one of the major distinctions is that insurers do not directly distribute their insurance products. In fact, their insurance policies and premiums are offered and sold by intermediaries (that is, insurance firms to which insurance representatives are attached) or through independent representatives. Thus, even if an insurer elects to offer and sell its policies directly online, it is required to register as a firm and must attach itself to a certified insurance representative.

### Representatives and registrants

The *Distribution Act* and its regulations use various terms that should fully be understood. As well, some terms, although not enshrined in the legislature, are used in practice.



**TABLE 1.1****A few definitions**

<b>Representative</b>	<p>Natural person holding a certificate issued by the AMF authorizing him to practise in one or more sectors in accordance with the <i>Distribution Act</i>. Acts on behalf of a firm or independent partnership or is registered as an independent representative.</p> <p>A representative may hold other titles such as damage insurance agent or mortgage broker.</p>
<b>Sector</b>	<p>Area of activity covered by the <i>Distribution Act</i>, including, insurance of persons, group insurance of persons, damage insurance, claims adjustment, financial planning, and mortgage brokerage.</p>
<b>Registrant</b>	<p>Term used in the financial sector to refer to persons registered with the AMF as a firm, independent representative, or independent partnership under the <i>Distribution Act</i>.</p> <p><i>Note: A firm can hold the title of damage insurance agency.</i></p>

A representative, who is a natural person, must carry out his activities in accordance with the provisions of the *Distribution Act* and its regulations. Also, to be in full compliance, a representative must be attached to a firm, be associated to an independent partnership, or be self-registered as an independent representative. The *Distribution Act* governs insurance representatives, claims adjusters, financial planners, and mortgage brokers. A representative must hold a certificate issued by the AMF to offer or sell financial products or services.

**TABLE 1.2****Titles representatives may use**

<b>Sectors and classes</b>	<b>Titles</b>
Insurance of persons	Financial security adviser
Accident and sickness insurance	Accident and sickness insurance representative
Group insurance of persons	Group insurance and group annuity plans adviser
Group insurance plans	Group insurance plans adviser
Group annuity plans	Group annuity plans adviser
Financial planning	Financial planner (Fin. Pl.)
Damage insurance	Damage insurance agent or damage insurance broker, as the case may be
Personal-lines damage insurance	Personal-lines damage insurance agent or broker
Commercial-lines damage insurance	Commercial-lines damage insurance agent or broker
Claims adjustment	Claims adjuster
Claims adjustment in personal-lines damage insurance	Claims adjuster in personal-lines damage insurance
Claims adjustment in commercial-lines damage insurance	Claims adjuster in commercial-lines damage insurance
Mortgage brokerage	Mortgage broker

As for “registrants,” they are not referred to as such in the *Distribution Act* and its regulations; however, the term is used frequently in regulatory jargon. Registrants are natural or legal persons who are required to register with the AMF to distribute their financial products and services. The term also includes firms (consisting of corporations), independent representatives, and independent partnerships.

**FYI**

Considering the small number of independent partnerships registered with the AMF in Québec—less than five—and subject to defining what constitutes an independent partnership, this Guide does not cover the particularities of the responsible partner thereof, except to say that he is appointed by the partners of the partnership. The principles applicable to executive officers and, more specifically, to the responsible officer of a firm concern the responsible partner, with the necessary adaptations.

**TABLE 1.3****Types of registration**

<b>Firm</b>	Legal person. This form of enterprise requires incorporation.
<b>Independent representative</b>	Representative wishing to act on his own behalf and not for a firm or independent partnership. Representatives must register as an independent representative. They are sole proprietorships (self-employed). This form of enterprise does not require a registration process unless the representative wishes to use a business name (another name that does not include the representative's first and last names).
<b>Independent partnership</b>	Partnership, i.e., a group of persons who join together to carry on an activity. To register as an independent partnership, all partners must be representatives.

**FYI**

The content of this Guide, adapted as required, applies to independent representatives. In fact, while acting on their own behalf, independent representatives must take the necessary measures, just like other registrants, to practise their activities in accordance with the *Distribution Act* and its regulations.

**Goal of the Act respecting the distribution of financial products and services (*Distribution Act*)**

Québec law has adapted the *Distribution Act* and its regulations to ensure the protection of the public and fair treatment of clients, sometimes referred to as “fair consumer practices.” Comparable laws exist in the other Canadian provinces and worldwide. Regulators tasked with applying such laws regularly meet and consult to discuss and standardize them, if possible.

## Roles and responsibilities of responsible officers

The role of responsible officer, regardless of the sector, is vital to the proper function and practice of the activities of a firm and its representatives. In accordance with the requirements of the *Distribution Act* and its regulations, this role requires vigilance. This chapter describes in detail the knowledge and best practices that the responsible officer of a registrant must integrate into his professional activities.

### 1.1 Who is the responsible officer?

A close reading of the *Distribution Act* indicates that the law has not specifically appointed the responsible officer. The *Distribution Act* uses the term “executive officer” of a firm and not “responsible officer” to designate one or more people that, in reality, manage and supervise the activities of the firm, and, in a general manner, are responsible for it.<sup>2</sup> In Québec, a responsible officer is the person appointed by the board of directors to manage a firm’s operations. Here are the items that apply specifically to this position:



#### Legislative or other references

*Distribution Act*, s. 84

All firms and their executive officers are bound to act with honesty and loyalty in dealings with clients.

They must act with care and competence.

*This section requires that all executive officers of a registrant act with honesty and loyalty in their dealings with clients and also demonstrate care and competence; these requirements immediately apply to the registrant’s responsible officer.*

*Distribution Act*, s. 85

A firm and its executive officers shall oversee the conduct of the firm’s representatives. They shall ensure that the representatives comply with this Act and the regulations.

*This section sets out the executive officer’s obligations.*

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2. See the *Companion Guide (Schedule – Declaration of officers and directors or partners)* according to which a responsible officer is the person appointed by the directors of the registrant to manage a firm’s operations In Québec.

**Legislative or other references (continued)**

*Distribution Act, s. 86*

The firm shall ensure that its executive officers and employees comply with this Act and the regulations.

*Under this section, firms are required to ensure that executive officers act in accordance with the Distribution Act and its regulations.*

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The expression “responsible officer” has been defined in two regulations adopted under the *Distribution Act*, i.e., the *Regulation respecting the compulsory professional development of mortgage brokers* and the *Regulation respecting the registration of firms, representatives and independent partnerships*.

In the case of independent representatives, the *Regulation respecting the registration of firms, representatives and independent partnerships* stipulates, in section 0.1, that the responsible officer is the independent representative himself.

In Québec, the *Distribution Act* imposes a number of compliance obligations on a registrant, and the responsible officer thereof is responsible for ensuring that the registrant’s activities comply with legislative and regulatory requirements. To summarize, the responsible officer is the guarantor of the registrant’s compliance; he is the representative.

To properly fulfill their mandate, responsible officers must possess the necessary independence, powers, and resources. Among other things, they must have access to senior management or to the board of directors of the registrant to communicate to them any relevant information on managing compliance (for example, by submitting a written report). As needed, they must obtain the support of the other officers.

The role of responsible officer is not to be taken lightly. A person would be ill-advised to accept this designation for prestige or to agree to act as a figurehead to enable the company to register with the AMF or to enable the registrant to maintain its registration.

If a responsible officer does not properly assume his responsibilities as set out by the law and regulation, in particular regarding the supervision of representatives, he could expose the registrant to legal proceedings and penalties and may even have to pay a penalty. Moreover, depending on the nature of the violations, he may no longer be authorized to act as a responsible officer for several years or be subject to strict supervision from another responsible officer in order to continue to practise his representative activities.

As for a registrant, it may incur a hefty penalty for not complying with the law or taking the necessary measures to ensure that its representatives respect the law or code of ethics. The court may order it to appoint another responsible officer or even cancel or suspend the registrant's registration or apply restrictions or conditions to it.

## 1.2 Designation of responsible officer in the *Distribution Act* and its regulations

The firm must appoint a responsible officer, as set out in paragraph 7 of section 2 of the *Regulation respecting the registration of firms, representatives and independent partnerships*:



### Legislative or other references

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

[...]

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;

[...]

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The Regulation therefore requires each registrant to designate a single responsible officer; by default, this person is responsible for ensuring compliance with the law and its regulations and for communicating with the regulator.

That being said, nothing prevents a registrant from appointing multiple people, even entire teams, to assist the responsible officer in fulfilling his responsibilities.

As for written or verbal communications with the AMF (request or maintenance of registration, forms, etc.), they may be completed and signed by a person other than the responsible officer. But, once again, the accuracy and validity of the answers remain the responsibility of the responsible officer, whose best interest it is to carefully review such communications.



### 1.3 Who appoints the responsible officer?

In the case of a firm (must be a corporation, also referred to as a company), its directors appoint the responsible officer. They can appoint an employee, a representative attached to the firm, or even a service provider as the responsible officer.

If a registrant is an independent representative, no designation is required, since the independent representative is automatically the responsible officer.

### 1.4 Training and competency of the responsible officer of a registrant in insurance, claims adjustment, or financial planning

The law imposes no specific training requirement on the responsible officer of a registrant in insurance, claims adjustment, or financial planning, no more than it requires any type of certification to be held on their part.

If the law and regulation are silent in this respect, the same is not true of the AMF's expectations. Specifically, the following is set out in paragraph 13 of section 2 of the *Regulation respecting the registration of firms, representatives and independent partnerships*:



#### Legislative or other references

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

[...]

- (13) except in respect of a legal person intending to register in the sector of mortgage brokerage, where its responsible officer does not hold a certificate issued by the Authority, a description of the competence of such officer to act in such capacity and, where applicable, any document establishing such competence.

[...]

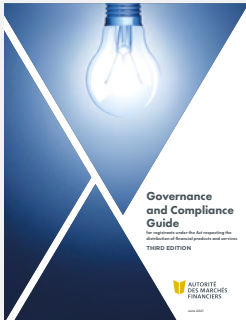
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Therefore, if a responsible officer is not certified in Québec, the regulator requires that a copy of his diplomas and curriculum vitæ be provided to demonstrate that he has the competencies needed to act in this role. The evaluation of a candidate's competencies is notably based on the following criteria:

- Relevant financial services experience;
- Functional authority suitable to his management position;
- Capacity to manage the firm's Québec operations; and
- Necessary competence in the areas of compliance or a capacity to work closely with a recognized compliance department in order to manage the firm's activities.

If the information sent to the AMF does not provide conclusive certainty that a candidate has all of the necessary competencies, the AMF may ask the candidate to successfully complete a training session and to pass an examination on the concepts of law and the regulations. In certain cases, the AMF may recommend the appointment of another person.





On page 28 of the *Governance and Compliance Guide for registrants under the Act respecting the distribution of financial products and services*<sup>3</sup> (hereafter referred to as the “Compliance Guide”), there are other specifications regarding the qualifications expected from responsible officers in the mortgage brokerage sector:

### “Competence

The registrant’s CPO should have sufficient experience and knowledge to carry out his mandate. At a minimum, the CPO should have extensive knowledge of the legislative and regulatory framework applicable to the registrant. Subject to the requirements specific to the responsible officer of a registrant in the mortgage brokerage sector, the following criteria may also be considered in assessing a CPO’s competence:

- The CPO holds a certificate issued by the AMF; and
- The CPO has relevant financial services or management experience.

The level of experience and training sought will vary according to the complexity of the CPO’s duties. For example, the CPO role in a small firm offering a single class of insurance products does not have the same level of complexity as in a large firm offering a diverse range of products and services.

[...]”



### FYI

The responsible officer of a multidisciplinary firm that also offers mutual fund products and services must register with the National Registration Database (NRD) and adhere to the AMF’s other registration requirements in accordance with Regulation 31-103.

3. *Governance and Compliance Guide for Registrants / 3rd edition* (lautorite.qc.ca).

### 1.4.1 Responsible officer of a mortgage brokerage registrant

While the certification of a firm-designated responsible officer is not mandatory in insurance, claims adjustment, or financial planning, the same is not true for mortgage brokerage. In fact, unlike in the other sectors, the responsible officer of a mortgage brokerage firm must be a certified mortgage brokerage representative.

He must satisfy the other requirements described in section 2.1 of the *Regulation respecting the registration of firms, representatives and independent partnerships*:



#### Legislative or other references

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

*The requirements are essentially the same for mortgage brokers who would like to register as an independent representative in this sector. Thus, section 4.1 of the Regulation applies.*

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

*Section 5 of the Regulation respecting the compulsory professional development of mortgage brokers specifically describes the type of training expected of the responsible officer:*

*Regulation respecting the compulsory professional development of mortgage brokers, s. 5*

A mortgage broker who acts as a responsible officer must, for any reference period, in addition to complying with section 4 of this Regulation, take part in professional development activities recognized by the Authority and accumulate at least 6 PDUs related to training activities among the following subjects:

- (1) compliance with standards;
- (2) ethics and professional conduct or professional practice;
- (3) keeping of records and registers;
- (4) risk management;
- (5) prevention of fraud or money laundering;
- (6) firm start-up and management.

*If a firm operates in more than one sector, including mortgage brokerage, its responsible officer must be certified in this sector to enable the firm to operate.*

## 1.5 Roles and responsibilities of responsible officers

While the mandate of a responsible officer is summarized in a few lines and concepts, it requires, in reality, the execution of a multitude of tasks to achieve the goal desired by the legislator, which is to protect the public and ensure fair treatment of consumers. The responsible officer shall:

- ensure compliance with the law, regulations, ethical rules, and the AMF's expectations;
- supervise the activities of the registrant, the representatives attached to the registrant, the employees, and service providers; and
- be the principal representative of the registrant with the AMF and other regulators.

### 1.5.1 Knowledge of legal rules

Since his actions trigger his responsibility and that of the firm or independent partnership, a responsible officer must have proficient knowledge of the laws and regulations that apply to him, the registrant, the representatives, the employees, and the service providers of the registrant.

A responsible officer must also stay abreast of regulatory changes given that regulations governing registrants are regularly modified. He may apply numerous means to prepare for changes:

- Participate in the *Rendez-vous avec l'Autorité*<sup>4</sup> event;
- Periodically perform regulatory monitoring;
- Subscribe to the AMF's E-Mail Info newsletters;<sup>5</sup>
- Read the bulletins and news issued by regulators;
- Read the regulatory consultations in progress and take part, if indicated, to provide the point of view of the registrant; and
- Read the specialized financial services publications.

### 1.5.2 Proficiency in ethical and professional rules

Responsible officers must have proficient knowledge of the professional and ethical requirements imposed on representatives by the *Distribution Act* and its regulations. In fact, as part of their responsibilities, responsible officers must ensure that their representatives respect the regulations applicable to their practice area, in particular as regards the authorization to operate in their sector, in accordance with the requirements of the AMF and engage in product offering, solicitation of clientele, and representation activities.

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4. *Rendez-vous avec l'Autorité* | AMF (lautorite.qc.ca).

5. Subscription to E-mail Info | AMF (lautorite.qc.ca).

Responsible officers must also verify that the directors and executive officers are informed of the firm's activities and that the representatives and employees obtain the necessary support regarding their questions on the regulations governing the firm.

What is more, the ethical and professional conduct of responsible officers must be beyond reproach, as they serve as role models for the registrant's representatives.

The firm must also comply with other regulations taken from charters, laws, regulations, or guides. A good example of the rules not in the *Distribution Act*, except as a reference, are those relating to the protection of the personal information of clients, representatives, and employees, which occupies an important place in the activities of a registrant. These other legal regulations are covered throughout this Guide.

Responsible officers would be well-advised to retain the services of professionals, (a lawyer for example), to help them understand the regulations, make informed decisions, or provide advice regarding the law and case law. Responsible officers must also sign up for training sessions addressing legal and ethical regulations.

As seen below, the responsible officer of a mortgage brokerage firm must follow training sessions until he has accumulated 30 PDUs (professional development units) per reference period.<sup>6</sup>

### 1.5.3 Supervision of the activities of a firm

The responsibilities of a firm's executive officer are outlined in a general manner in section 85 of the *Distribution Act*.



#### Legislative or other references

*Distribution Act*, s. 85

A firm and its executive officers shall oversee the conduct of the firm's representatives. They shall ensure that the representatives comply with this Act and the regulations.

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6. Mortgage brokerage – Professional Development Units | AMF (lautorite.qc.ca).

As for the responsible officer of a registrant, certain rules apply. Given his central position, the responsible officer is on the front lines when it comes to identifying any possible breaches or violations of the regulations imposed on the firm and representatives. For example, a responsible officer may identify conflict of interest situations that may arise in his firm's dealings with other financial partners. Or, the supervisory or regulatory role of a responsible officer might help him discover suspicious transactions that, when taken individually, appear harmless, but when combined, uncover a fraud scheme, for example.

Responsible officers therefore have a role of director of compliance, regulation, and supervision over his representatives and employees. This role requires a high degree of diligence and ethics in addition to the completion of certain essential tasks. Accordingly, responsible officers:

- oversee the development, implementation, and review of policies and procedures so that the registrant, its representatives, employees, and service providers comply with the applicable laws and standards;
- ensure that these policies and procedures are applied;
- periodically conduct an assessment and ensure the effectiveness of the system of control and supervision;
- oversee the conduct of the individuals reporting to the registrant: the attached representatives, employees, and trainees;
- conduct stricter follow-up in the event of material breaches on the part of a representative, employee, or service provider and take action, if needed;
- ensure that the registrant acts at all times through representatives certified in their sectors;
- notify senior management or the board as soon as possible of any breaches presenting a significant risk to the registrant, in particular, those that are recurring or that by nature could cause harm to clients;
- present senior management or the board with an annual report on the compliance of the registrant's activities; and
- unless another person has been so designated, act as the communication channel and liaison between the AMF and the registrant.

Responsible officers do not necessarily need to fulfill all of these tasks. In fact, the registrant may appoint a compliance officer who, assisted by his team, will monitor the execution of the compliance program and the compliance of transactions carried out by representatives and who will contact the AMF regarding various matters. The registrant may also appoint a complaints manager to respond to complainants and keep records in accordance with regulations. In large firms, the responsible officer does not usually respond to complaints personally or review the transactions of representatives. In this example, a vice-president, appointed as responsible officer of the firm, is ultimately responsible for handling the compliance, supervision, and processing of complaints and responses sent to the AMF. He responds to the actions taken by the compliance officer and complaints manager under his responsibility.



Thus, while a firm can appoint other people to occupy key positions and perform key tasks that are the responsibility of the responsible officer, it is ultimately the responsible officer's role to ensure that the firm respects the regulations and that its representatives are disciplined.

#### **1.5.4 Regulations adopted under the Act respecting the distribution of financial products and services (Distribution Act)**

Listed below are various regulations and codes of ethics arising from the *Distribution Act*:

- *Regulation respecting the eligibility of a claim submitted to the Fonds d'indemnisation des services financiers;*
- *Regulation respecting firms, independent representatives and independent partnerships;*
- *Code of ethics of the Chambre de la sécurité financière;*
- *The Code of ethics of claims adjusters;*
- *The Code of ethics of damage insurance representatives;*
- *Regulation respecting damage insurance brokerage;*
- *Regulation respecting special brokerage in damage insurance;*
- *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 minimum experience required of independent representatives and of representatives who are partners in independent partnerships in the sector of claims adjustments;*
- *Regulation respecting the compulsory professional development of the Chambre de l'assurance de dommages;*
- *Regulation of the Chambre de la sécurité financière respecting compulsory professional development;*
- *Regulation respecting the compulsory professional development of mortgage brokers;*
- *Regulation respecting the compulsory professional development of financial planners;*
- *Regulation respecting the registration of firms, representatives and independent partnerships;*
- *Regulation respecting Alternative Distribution Methods;*
- *Regulation respecting information to be provided to consumers;*
- *Regulation respecting the keeping and preservation of books and registers; and*
- *Regulation respecting titles similar to the title of financial planner.*

### 1.5.5 Enterprises subject to the *Act respecting the distribution of financial products and services (Distribution Act)*

The *Distribution Act* governs four types of enterprises: firms, independent representatives, independent partnerships, and insurers. They must be registered with the AMF to conduct their operations.

**Firm:** A business corporation (company or corporation) that must be registered with the Québec Enterprise Register. Its executive officer(s) are the directors. To be able to operate a firm in Québec, that firm must have an establishment in the province. It may be a single-sector firm and offer products and services in a single sector or a multi-sector firm that offers products and services in two or more sectors.

**Independent representative:** A natural person who holds a representative certificate and pursues activities on his own behalf. He must be registered with the AMF as an independent representative in each sector or class of sectors in which he is authorized to act pursuant to a certificate.

**Independent partnership** (less than five currently in Québec): Partnership within the meaning of article 2188 of the C.C.Q. All of the partners are also certified representatives. It can act in the sectors in which one or more of its representatives is authorized to act.

**Insurer:** Person authorized to act as such under the *Insurers Act*. He distributes products through firms, independent representatives, or independent partnerships. He may also sell products through non-registered distributors such as banks or automotive dealerships.

### 1.5.6 Representatives subject to the *Act respecting the distribution of financial products and services (Distribution Act)*

Sections 1 to 13 of the *Distribution Act* list the representatives governed by the law and its regulations. The following individuals must therefore obtain a certificate to carry out their activities.

In the field of insurance:

- **Insurance of persons representative:** A natural person attached to a firm, a partner of an independent partnership, or an independent representative offering individual insurance of persons products or individual annuities from one or more insurers.
- **Group insurance representative:** A natural person who offers group insurance of persons products or group annuities from one or more insurers. They are attached to a firm or independent representative.

- **Damage insurance agent:** A natural person who is attached to a firm held by an insurer or by a firm tied by an exclusivity contract with a single insurer who offers damage insurance products directly to the public.
- **A damage insurance broker:** A natural person who directly offers a range of damage insurance products from several insurers directly to the public or who offers damage insurance products from one or more insurers to a firm, an independent representative, or an independent partnership.

In the other sectors:

- **Claims adjuster:** A natural person who, in the field of damage insurance, investigates insured losses, appraises damages, and negotiates the settlement of claims.
- **Financial planner:** A natural person who offers objective advice in the field of financial planning.

- **A mortgage broker:** A natural person who, for others and in return for remuneration that is contingent on the making of a loan secured by immovable hypothec, engages in a brokerage transaction relating to such a loan.

The *Distribution Act* also lists the natural or legal persons not governed by its provisions when they perform acts that are reserved for representatives as part of their usual activities. The list includes lawyers, actuaries, customs brokers, employers, and syndicates.

### 1.5.7 Penal provisions

It is in a responsible officer's best interest to remain vigilant and proactive while striving to anticipate risks related to the offering of financial products and services.

Sections 461 to 494 of the *Distribution Act* identify the penalties likely to be imposed by a court. The penalties most applicable to a responsible officer are identified below:



### Legislative or other references

#### *Distribution Act, s. 485*

Unless otherwise specially provided, every person that contravenes a provision of this Act or the regulations is guilty of an offence and is liable to a minimum fine of \$2,000 in the case of a natural person and \$3,000 in other cases, double the profit realized or one fifth of the sums entrusted to or collected by the person, whichever is the greatest amount. The maximum fine is \$150,000 in the case of a natural person and \$200,000 in other cases, four times the profit realized or half the sums entrusted to or collected by the person, whichever is the greatest amount.

In the case of an offence under section 468, 469.1 or 469.3, the minimum fine is \$5,000 or any other minimum fine determined under the first paragraph, whichever is the greatest amount.

In the case of an offence under section 469.1 or 469.3, the maximum fine is \$1,000,000 or any other maximum fine determined under the first paragraph, whichever is the greatest amount.

In the case of a second or subsequent conviction, the minimum and maximum fines are doubled.

#### *Distribution Act, s. 468*

Every person that:

- (1) contravenes a decision of the Authority or the Financial Markets Administrative Tribunal;
- (2) fails to provide, within the prescribed time, information or documents required under this Act or the regulations;
- (3) fails to appear after summons, refuses to testify or refuses to communicate or deliver a document or thing required by the Authority or an agent appointed by it, in the course of an investigation or inspection;
- (4) attempts, in any manner, to hinder a representative of the Authority in the exercise of his or her functions in the course or for the purposes of an inspection or investigation.



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

#### *Distribution Act, s. 469.1*

Every person that in any manner makes a misrepresentation to the Authority, an insured, a client or any other person when pursuing activities governed by this Act or the regulations is guilty of an offence.

#### *Distribution Act, s. 488*

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.

#### *Distribution Act, s. 489*

The contravention of a regulation made under this Act constitutes an offence that is subject to the same provisions as offences under this Act.

#### *Distribution Act, s. 491*

A person who, by an act or omission, helps or induces another person to commit an offence is guilty of the offence as if the person had committed it. The person is liable to the same penalty as that prescribed for the commission of the offence.

The same applies to a person who, by encouragement or advice or by an order, induces another person to commit an offence.

#### *Distribution Act, s. 492*

Proceedings for an offence under any of the sections of this Title may be instituted by the Authority.

When the Authority has taken charge of the prosecution, the fine imposed to punish the offence belongs to the Authority.

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To clearly understand the scope of the role, a responsible officer may review past decisions (for example, those rendered by the Financial Markets Administrative Tribunal (Tribunal) or by the AMF). They are good indicators of the risks incurred by responsible officers who do not respect their duties and obligations, in particular as regards the supervision and conduct of representatives attached to the firm for which the individual is the responsible officer. In recent decisions, significant penalties have been levied. It should be noted that liability insurance does not cover or reimburse the cost of penalties.

In addition to the penalties, recently sanctioned responsible officers are unable to act as such for periods varying from three to five years. Ultimately, some are even subject to strict supervision from another responsible officer.

As for the registrant, the penalties are outlined in section 486 of the *Distribution Act*, which reads as follows:



#### Legislative or other references

*Distribution Act*, s. 486

A legal person convicted of an offence under any of sections 463, 464, 470.2, 477 and 478 is liable to a minimum fine of \$4,000, double the profit realized or one fifth of the sums entrusted to or collected by the legal person, whichever is the greatest amount. The maximum fine is \$200,000, four times the profit realized or half the sums entrusted to or collected by the legal person, whichever is the greatest amount.

In the case of a second or subsequent conviction, the minimum and maximum fines are doubled.

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Still on the topic of recent case law, certain registrants have received hefty penalties, in particular because their responsible officer had not detected the actions of representatives that contravened the *Distribution Act*, one of the regulations, or the code of ethics. In certain cases, the court ordered the registrant to hire another responsible officer that was pre-authorized by the regulator and, in other cases, the permit was cancelled.

### 1.5.8 Other laws applicable to responsible officers

A number of other laws govern registrants and responsible officers. With respect to a responsible officer's personal responsibility, we can refer to his role as a mandatary of the registrant, as defined in article 2130 of the C.C.Q.:



### Legislative or other references

Art. 2130, C.C.Q.

Mandate is a contract by which a person, the mandator, confers upon another person, the mandatary, the power to represent him in the performance of a juridical act with a third person, and the mandatary, by his acceptance, binds himself to exercise the power.

*Articles 312 to 330 of the C.C.Q., which cover the topic of legal person, personally apply to the responsible officer. Here are the important articles:*

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.

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 [...] other senior officers [...] 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.

Art. 321, C.C.Q.

A director is considered to be the mandatary of the legal person. He shall, in the performance of his duties, conform to the obligations imposed on him by law, the constituting act or the by-laws and he shall act within the limits of the powers conferred on him.

Art. 322, C.C.Q.

A director shall act with prudence and diligence. He shall also act with honesty and loyalty in the interest of the legal person.

Art. 323, C.C.Q.

No director may mingle the property of the legal person with his own property; [...]

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**Legislative or other references (continued)**

Art. 324, C.C.Q.

A director shall avoid placing himself in any situation where his personal interest would be in conflict with his obligations as a director.

[...]

Art. 329, C.C.Q.

The court, on the application of an interested person, may prohibit a person from holding office as a director of a legal person if the person has been found guilty of an indictable offence involving fraud or dishonesty in a matter related to legal persons [...]

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Moreover, the responsible officer must be familiar, at least in part, with some of the key provisions of the following laws that apply to registrants:

- *Québec Charter of Human Rights and Freedoms*;
- *Insurers Act*;
- *Act respecting the protection of personal information in the private sector (APPIPS)*;
- *An Act to establish a legal framework for information technology*;
- *Canadian Charter of Rights and Freedoms*;
- *The Criminal Code*;
- *Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTFA)*;
- *Telecommunications Act (National DNCL)*; and
- *Canada's Anti-Spam Legislation*.

This completes the introductory chapter covering responsible officers.



## CHAPTER 2

### **Registration and maintenance of registration**

#### **Competency components**

- Integrate into professional practice the rules governing the activities of responsible officers
- Supervise the professional activities of a mortgage brokerage firm

#### **Competency subcomponents**

- Integrate into professional practice the other obligations and duties of responsible officers that apply to their practice
- Validate a mortgage brokerage firm's right to operate



## Registration and maintenance of registration

Representatives exercise their activities for a firm to which they are attached. They may be an employee of the firm or even a self-employed worker.

Firms and independent representatives must register with the AMF to be authorized to practise their business of offering and selling financial services and products.

### 2.1 Registration of a firm or independent representative

The registration of a firm or independent representative is subject to various requirements, depending on the type and sector in which it is registered. Thus, responsible officers must ensure compliance with the requirements specific to the type of activities they exercise.

To register as a firm, a legal person must complete an AMF form entitled *Registration of Firm or Independent Partnership* and the related schedules.<sup>7</sup>

The person who declares the information provided is the responsible officer or a signatory authorized by the firm to do so.

If the responsible officer is not the signatory to the declaration, he should take measures to ensure the declaration is compliant and sent within the prescribed timeline.

A correspondent or an assistant to the correspondent can also be authorized to communicate with the AMF, but this person is not necessarily the authorized signatory.

One of the schedules, “*Schedule – Declaration of Officers and Directors or Partners – Firm / Independent Partnership*” is specifically intended for the responsible officer and the directors of the firm.<sup>8</sup> It asks the directors and the responsible officer to answer several questions. The responsible officer must indicate his residential address in Québec and whether or not he is certified in Québec. If not, he must provide his curriculum vitae, education, experience, and, as needed, certification in other provinces. In addition to their personal contact information and level of education, responsible officers are asked to provide information on their relationships with other registrants or financial services enterprises and whether or not they carry out other functions and activities, remunerated or not.

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7. Forms – Firms, independent representatives and partnerships | AMF (lautorite.qc.ca).

8. *Schedule – Declaration of Officers and Directors or Partners – Firm / Independent Partnership* | AMF (lautorite.qc.ca).

**N.B.**

In mortgage brokerage, responsible officers must confirm that they are certified in that sector and that they have passed the mandatory examination.

On page 2 of the Schedule, 11 questions are used to assess the integrity and solvency of each officer and director. If one of the answers is “yes,” they must provide additional information.

They must, pursuant to sections 78 and 79 of the *Distribution Act*, indicate the following:

**Legislative or other references***Distribution Act, s. 78*

The Authority may refuse registration for a given sector, or impose restrictions or conditions for registration, where the applicant’s registration for any of the sectors listed in the second paragraph of section 13 has previously been cancelled, where the registration of a director or executive officer of the applicant has previously been cancelled, or where a director or executive officer of the applicant has previously been a partner in an independent partnership, or a director or executive officer of a firm, whose registration has previously been cancelled.

*Distribution Act, s. 79*

The Authority may also refuse registration where the applicant for registration or a director or executive officer of the applicant does not, in the opinion of the Authority, show the required honesty, competence or solvency.

The duties of honesty and diligence were discussed earlier, but the duty of solvency warrants clarification. Executive officers must demonstrate that they can implement sound financial management practices, ensure the longevity of the enterprise, and meet their obligations (for example, with regards to their clients, partners, and creditors).

**N.B.**

When registering, if a firm changes the responsible officer, part 2 of the “Manage Business Relationships”<sup>9</sup> form must be completed.

For all of these documents, the AMF has prepared companion guides. *Companion Guide – Maintenance of Registration (Firm – Independent Partnership)* or the *Companion Guide – Renewal of Certificate/ Maintenance of Registration – Independent Representative; Companion Guide – Schedule – Declaration of Officers and Directors or Partners. Companion Guide – Managing Business Relationships – Mortgage Brokerage*.

Responsible officers should be familiar with these documents to ensure that all of the information provided on the application to maintain registration and in its schedules meet the expectations of the AMF.

**N.B.**

For mortgage brokerage, the companion guides are adapted to this sector.<sup>10</sup>

## 2.2 Registration of a mortgage brokerage firm

Responsible officers must ensure the compliance of the qualifications of the mortgage brokers working for them. In the past, firms have been penalized for allowing representatives to practise their activities despite having their permits suspended.

The AMF checks the compliance of mortgage broker qualifications, notably using its registration form and its maintenance of registration form for mortgage brokerage firms.

### 2.2.1 Mandatory certification

If a single-sector or multi-sector firm seeks to register in the mortgage brokerage sector, its responsible officer must be certified in that sector, as specified in section 2.1 of the *Regulation respecting the registration of firms, representatives and independent partnerships*:

9. Manage business relationships – Firm / Independent Partnership / Independent Representative (lautorite.qc.ca).

10. Companion Guide – Managing business relationships – Mortgage brokerage (lautorite.qc.ca).



### Legislative or other references

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

[...]

## 2.2.2 Minimum training, passing of examinations, and compulsory professional development

The *Regulation respecting the registration of firms, representatives and independent partnerships* also requires the responsible officer of a mortgage brokerage firm to pass the AMF's examinations on the subject matter in the two years preceding the registration application.



### Legislative or other references

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

[...]

- (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;

[...]

In addition to possessing the required training and competencies, the responsible officer of a mortgage brokerage firm must update his general industry knowledge and develop his expertise so that he can fulfill the ever-evolving responsibilities of his role. Such a requirement comes in addition to professional development. Accordingly, he must follow accredited training courses. This requirement is examined in greater detail later on in this Guide. Also indicated will be the obligation of the responsible officer or future responsible officer of a mortgage brokerage firm to attest, on the firm's registration form, that he is duly certified and has taken the necessary training courses.

### 2.2.3 Concept of registrant establishment

Registrants must have an establishment in Québec. It is not, however, mandatory for that establishment to be a branch of the registrant. It could, for example, be the office of an attached representative or a law office.

It must be possible to consult the establishment and obtain from the establishment all of the documents, information, books, accounts, files, and registers that must be kept and retained according to the law and regulations.

Registrants do not have to declare, as an establishment, the residences of representatives or employees who telework, whether or not it is an exceptional measure.

In accordance with section 5 of the *Regulation respecting the keeping and preservation of books and registers*, "the accounting books and other accounting registers shall be incorporated into an accounting system."



#### **N.B.**

Registrants shall keep a separate and distinct accounting of the general accounting for their separate accounts. The accounting books and registers pertaining to the separate account, as the case may be, shall 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.<sup>11</sup>

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11. Section 5 of the *Regulation respecting the keeping and preservation of books and registers*.

## 2.2.4 Registrant liability insurance

Sections 76, 83 and 131 of the *Distribution Act* require firms and independent representatives to have liability insurance, which is also an obligation to be registered with the AMF. This obligation for firms applies to all employees, partners, and 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.

With liability insurance, registrants can protect themselves from the consequences resulting from errors, mistakes, or omissions committed by them, their employees, representatives, or trainees, in the exercise of their activities (for example, a consequence could be the rectification of a harm to the reputation of clients of the firm due to leaked personal information).

## 2.2.5 Contributions and fees

To complete their registration with the AMF, registrants must also pay the applicable fees, as set out in sections 2 to 3.1 of the *Regulation respecting fees and contributions payable*. The firm must pay the annual fees to maintain the registration by sector for each representative through which it exercises its activities.

Independent representatives must also pay annual fees for each sector in which they are authorized to act. Such amounts are indexed annually.

Each representative must pay an annual fee for each additional sector in which they are authorized to act.

A contribution to the Financial Services Compensation Fund must also be paid.

## 2.2.6 Maintenance of registration

A registered firm must, each year, maintain their registration online using the *Maintenance of registration* form. Doing so involves reviewing, validating, updating and declaring the accuracy of the information sent to the AMF. Section 10 of the *Regulation respecting the registration of firms, representatives and independent partnership* sets out certain conditions that registrants must meet to maintain their registration, including:

- respecting the requirements of keeping a separate account; and
- transmitting annually to the AMF:
  - proof of liability insurance for all representatives;
  - an updated list of their names and residential addresses;

- a declaration signed by each director and officer confirming their compliance with the requirements of the AMF;
- 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; and
- the names of the mortgage lenders holding, directly or indirectly, interests in their ownership.

Responsible officers, or the signatory appointed by the firm, must sign the declaration.

Also, if, during the term of a registration, a change arises in the circumstances that affects the accuracy of the information and documents provided, the registrant is required to notify the AMF in writing within 30 days, in accordance with section 9 of the above-mentioned regulation.





In addition, regarding a representative's activities in mortgage brokerage, subparagraph 10(2)(j) of the *Regulation respecting the registration of firms, representatives and independent partnerships* sets out what the registrant 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;
- 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; and
- 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 compliant with 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*, s. 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.

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**Legislative or other references (continued)**

*Regulation respecting the registration of firms, representatives and independent partnerships, s. 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* and sections 15, 16 and 18 of the *Regulation respecting the keeping and preservation of books and registers*, 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:

- (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.

This completes the chapter covering registration application and maintenance as well as the related roles of responsible officers.

## CHAPTER 3

### **Exercise of activities through a representative**

#### **Competency component**

- Supervise the professional activities of a mortgage brokerage firm

#### **Competency subcomponent**

- Oversee the professional activities of mortgage brokers



## Exercise of activities through a representative

Responsible officers are required to oversee the professional activities of representatives and, also, of trainees. Doing so involves a number of aspects.

The aim of this chapter is to sensitize responsible officers about the importance of implementing best practices, notably the selection of candidates, the management of probationary periods, certification, and the right to practise.

### 3.1 Selection of representatives

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 that representatives are complying with the *Distribution Act* and its regulations.

The AMF suggests implementing a selection process for representatives, which should include checking the accuracy of the information provided. Accordingly, the AMF recommends that registrants check, for each candidate, the following information:

- Competence;
- Education;
- References and employment history;
- The reasons for contract termination, dismissal, or firing, where applicable;
- Criminal, penal and disciplinary history;
- Bankruptcy history; and
- The potential exercise of an outside activity that is incompatible with the profession of representative.

Following these verifications, responsible officers should be in a more informed position to select representatives.

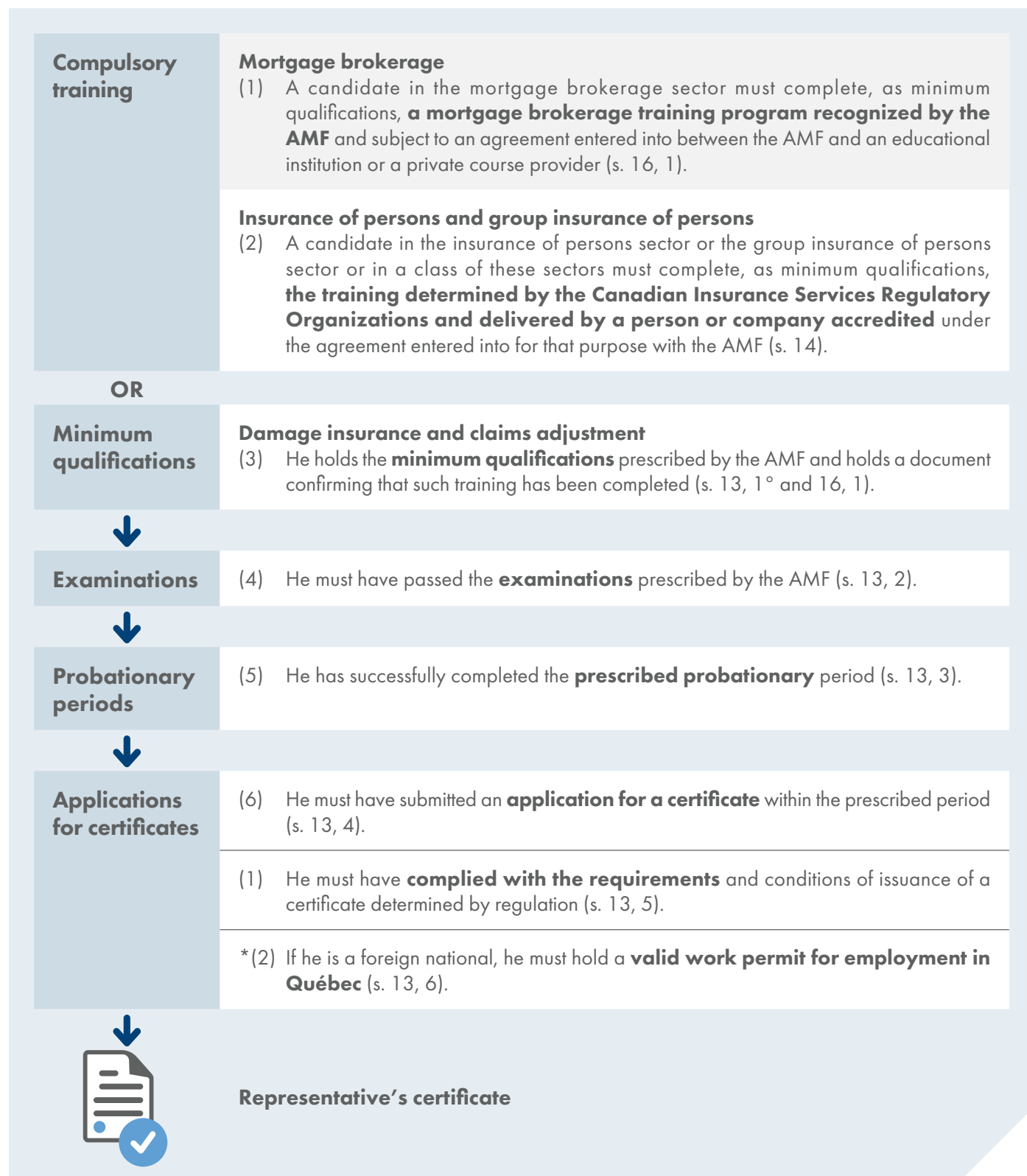
### 3.2 Career entry

A certificate issued by the AMF gives an individual the right to practise in one of the areas subject to the *Distribution Act*: Insurance of persons, group insurance of persons, damage insurance, claims adjustment, financial planning or mortgage brokerage.

The *Regulation respecting the issuance and renewal of representatives' certificates* sets out the conditions to be met by candidates wishing to obtain a representative's certificate issued by the AMF.

**TABLE 3.1**

**Career entry**



### 3.2.1 Compulsory training

To be eligible for the examinations in one of the following sectors regulated by the AMF, candidates must successfully complete specialized training with a training body recognized by the AMF:

- Mortgage brokerage;<sup>12</sup> and
- Insurance of persons and group insurance of persons.<sup>13</sup>

The compulsory training is based on the training curriculum and assessment curriculum produced by the AMF.

Training is valid for two years from the date the examination was passed.

#### EXAMPLE

Gustavo wants to become a mortgage broker. He believes that he can pass the AMF's examinations without taking the compulsory training since he has a bachelor's degree and has already worked in a bank. This belief is false. Gustavo must take the compulsory training given by an AMF-recognized course provider. Anyone seeking to join the mortgage broker profession must take this training.



#### N.B.

For the damage insurance and claims adjustment sector, compulsory training is not required, but the future representative must meet the AMF's minimum qualifications for the sector.<sup>14</sup>

12. Compulsory training | AMF (lautorite.qc.ca) in mortgage brokerage.

13. Compulsory training – Insurance of persons and group insurance of persons | AMF (lautorite.qc.ca).

14. To see the minimum qualifications: Becoming a professional | AMF (lautorite.qc.ca).

**FYI**

For the financial planning sector, future professionals must take the compulsory training and obtain a diploma from the Institute of Financial Planning (IFP). For more information, refer to the AMF's website.<sup>15</sup>

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### 3.2.2 Minimum qualifications

For the damage insurance and claims adjustment sectors, future representatives must satisfy the minimum qualifications and must have taken one of the following trainings or any superior education training that is required as a prerequisite for passing one of the following trainings:

- A Diploma of Collegial Studies in Québec or its equivalent;
- An Attestation of Collegial Studies in Insurance recognized in an agreement entered into for that purpose between the AMF and an establishment at the college level; and
- A high school diploma or the equivalent and have worked full time for 3 out of the last 10 years.

The training equivalents are provided in a reference work published on the AMF's website. Among other things, it presents the method used to calculate the number of years of study required to meet the minimum qualifications. The training equivalence issued by the AMF is valid only as part of the career entry process for damage insurance and claims adjustment.

For candidates seeking entry into the career through a high school diploma and work experience, the AMF assesses the amount of time worked. An attestation of employment (three years) will confirm whether or not the requirement is met.

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15. Financial planning | AMF ([lautorite.qc.ca](http://autorite.qc.ca)).

**FYI**

For educational equivalents in the sectors of damage insurance or claims adjustment, the following documents are equivalent to the high school diploma:

- A diploma of professional studies consisting of 60 or more units;
  - An attestation of equivalence of secondary V studies (AESS);
  - A certificate of equivalence of secondary studies; and
  - A comparative evaluation issued by a member of the Alliance of Credential Evaluation Services of Canada (ACESC).
- 

### 3.2.3 Examinations

After having taken the compulsory training or satisfied the minimum qualifications according to the chosen sector, a candidate must pass the AMF's examinations to obtain a representative certificate.

Registration for examinations involves two steps: The examination registration authorization and the registration itself.

An examination registration authorization request allows the AMF to:

- obtain the candidate's proof of identity;
- verify his capacity to work in Canada;
- check whether the candidate meets the minimum qualifications;
- assess the candidate's solvency, integrity, employment situation, and ability to practise; and
- obtain his commitment to preserving the confidentiality of the examinations.

Given that the qualification requirements differ for each sector, a candidate must request an examination registration authorization for each sector.



**FYI**

In mortgage brokerage, the recognized training provider delivering the compulsory training indicates that the training has been successfully completed directly in the AMF's online services. The candidate will receive a letter from the AMF informing him that the provider has stated that the training was passed and inviting him to request an examination registration authorization.

For the insurance of persons and group insurance of persons sectors, the candidate must provide his registration number to the *Canadian Insurance Participant Registry* (CIPR) during the application for examination registration authorization. The CIPR is a register used by all course providers to declare the registrations of candidates in the Life License Qualification Program and to enter the successful completions. The AMF refers to the CIPR to verify registration to a training program that it recognizes as well as the date that such training was successfully completed.

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

- their certificate or right to 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 the sector; or
- they occupy an outside activity that is incompatible with the activities of the representative.

Once an analysis of the request for examination registration authorization is complete, candidates receive a letter confirming their authorization to register. At that time, they apply to register to one or more examinations. They must select their examination dates within the available calendar blocks.

**FYI**

The AMF's qualification examinations are not knowledge exams but competency exams. They validate the technical competencies of the candidates related to consumer protection for the given sector. The questions are therefore based on actual scenarios experienced by representatives during the first three years of practice.

For each examination, the pass mark is 60%. Upon successful completion of the examinations, candidates have two years to begin their probationary period.

**FYI**

In the mortgage brokerage sector, the AMF requires candidates to pass two exams to make sure that future professionals have the competencies needed to properly advise clients.

Mortgage brokers who wish to qualify to be a responsible officer or register as an independent representative must pass a professional practice exam.

**EXAMPLE**

Mélanie has successfully completed her two mortgage brokerage exams and obtained her certificate given that she has met all of the conditions. Seeking to become a responsible officer, she can therefore register for the examination that will allow her to exercise this function. However, if she fails one or both of the mortgage brokerage exams, she cannot hold a mortgage broker's certificate. Since she holds her certificate, if she passes the responsible officer examination and meets the other conditions, she can exercise this function.

## 3.2.4 Probationary period

The probationary period is mandatory for obtaining the certificate of a representative in insurance, claims adjustment, and mortgage brokerage. As such, a future representative can apply, in a real context, the skills and knowledge acquired during their preparation.

### 3.2.4.1 Objectives of the probationary period

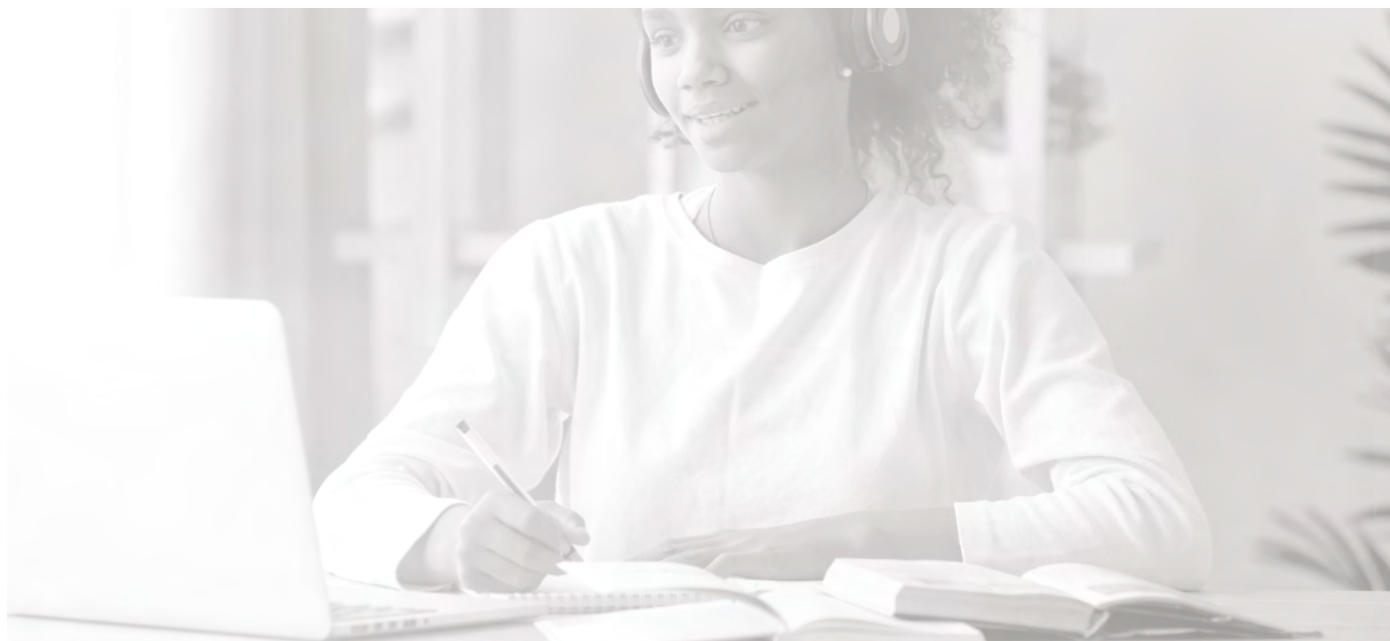
The probationary period is a phase in the career entry process whereby candidates can acquire and apply the knowledge, skills, and professionalism required to exercise the function of representative. In so doing, future representatives become familiar with the various facets of activities in their sector and assume, progressively and under supervision, the actions attached to it. This learning is done in an actual work context where a representative holding a certificate in the given sector supervises the work of the trainee. Responsible officers have probationary period 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.<sup>16</sup> This guide provides information to help trainees apply for a probationary certificate, sets out the obligations and responsibilities of trainees and supervisors, and provides information on the steps to be taken after the probationary period.

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16. See [https://lautorite.qc.ca/fileadmin/lautorite/devenir-professionnel/dq\\_guidepp-a.pdf](https://lautorite.qc.ca/fileadmin/lautorite/devenir-professionnel/dq_guidepp-a.pdf)

### 3.2.4.2 Eligibility for probationary period

When 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.

### 3.2.4.3 Trainees and probationary certificate

Once a candidate's probationary period is authorized, they are issued a probationary certificate by the AMF. They then become trainees. The probationary certificate includes the information needed to identify the candidate and its period of validity. Trainees must obtain their certificate before beginning their trainee activities in order to avoid a situation of illegal practice.



#### FYI

A simple way to check whether a trainee is compliant and able to start his activities is to check if he is registered with the Québec Enterprise Register and individuals authorized to exercise. Updated in real time, the Register confirms that the trainee does in fact hold a probationary certificate and can carry out the professional acts subject to the regulation.

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Candidates undertaking a probationary period must present themselves publicly as trainees. This obligation arises from the fact that consumers have the right to know that a person who is not yet duly certified is handling their file and that a certified representative will be verifying the work. Thus, the supervisor, who may also be, but need not be, the responsible officer of the registrant, must ensure that all trainees are presented as such to the public.



#### N.B.

In the event of any change to the information provided to the AMF, the candidate or supervisor must inform the AMF within five days of the date on which the change occurs. If trainees are no longer eligible for the probationary period, the AMF will withdraw the probationary certificate.

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### 3.2.4.4 Supervisor

During the probationary period, the supervisor is the representative authorized to act in the sector or sector class for which the trainee is seeking a certificate, and who has been authorized by the AMF to supervise the trainee.

## Supervisor qualifications

A supervisor must hold a certificate issued by the AMF when the probationary period is taking place, and he must have acted as a representative in the sector chosen by the trainee during 24 of the 36 months preceding the probationary period. The AMF must have authorized the supervisor to supervise the trainee. The application for supervision is submitted to the AMF by the supervisor, the firm, or the independent partnership.

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; and
- Have not received in the past year a second written notice from the AMF for a breach of the obligations of a supervisor.

### EXAMPLE

Samuel, a mortgage broker, has already supervised the work of future mortgage brokers. However, his certificate now carries certain restrictions. He can no longer act in a supervisory capacity so long as this situation is unresolved.

## Obligations, duties, and responsibilities of supervisors

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

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 chosen sector. Supervisors must also provide trainees with a working environment conducive to learning and developing their competencies. Supervisors must give trainees enough leeway to gradually pursue the activities reserved for representatives. Supervisors must ensure at all times that the activities are conducted correctly, both for the good of the client as well as that of the trainee.

**EXAMPLE**

Rémi, a supervisor in the mortgage brokerage sector, may, if his client agrees, let Sara, his trainee and future mortgage brokerage representative, attend the meeting and take notes. He may then ask her to analyze the client's needs and consult her about which product or service is most suitable. Then, Rémi can ask Sara to lead the meeting with the client while still being in attendance himself.

Supervisors must also ensure that trainees are at all times compliant with the law and rules of ethics and professional conduct and that trainees are in compliance with the policies and procedures of the firm. Supervisors must ensure that trainees have the knowledge, competencies, behaviours, and attitudes necessary to pursue activities as a representative. They must, evidently, ensure their presence and record their work hours. If a trainee must be absent or take vacation, the supervisor must see to it that these hours are made up.

To summarize, a supervisor's functions consist of:

1. determining the tasks that the trainee must carry out, specifying the time limits in which they must be completed, and ensuring that these tasks include all the activities that a representative carries out in the sector;
2. at least once a week, evaluating and reviewing the tasks carried out by the trainee;

**EXAMPLE**

In addition to observing Paul, a trainee, during meetings with clients, Stéphanie, his supervisor, meets with him each Friday. She reviews Paul's weekly activities, discusses his strong points and areas for improvement, and plans with him the objectives for the coming days. Stéphanie notes these activities and observations in the trainee's file, in addition to the total number of learning hours completed weekly by Paul.

3. entering these approvals in the client record;
4. entering the actions taken by the trainee in a file reserved specifically for the trainee; and
5. making a recommendation as to whether or not the probationary period has been successfully completed (a recommendation that has to be approved by the firm).

**N.B.**

For the mortgage brokerage sector, supervisors must approve proposed loans and any other recommendation pertaining to the mortgage brokerage transaction conducted by the trainee before the trainee proposes a loan or recommends it to the client.

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**N.B.**

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

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**FYI**

A file kept by a supervisor is an important document. He uses it to record the tasks carried out by the trainee regarding representative activities. The supervisor must also use it to enter a summary of his meetings with the trainee and the trainee's progress during the probationary period, the hours worked, and list of files handled. The supervisor may also enter the compensatory measures or training sessions taken by the trainee if the trainee cannot take them during the probationary period. The firm is responsible for maintaining this file for a period of five years, regardless of whether or not the trainee successfully completes the probationary period.

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If a supervisor is absent, he must be replaced by a replacement supervisor approved by the AMF. The replacement supervisor must have the same qualifications and fulfill the same obligations as those imposed on the supervisor.

Two supervisors can be assigned to a same probationary period at the same time. If one supervisor takes vacation, the second supervisor continues the supervision. They cannot take vacation simultaneously. At least one supervisor must be available at all times to guide and supervise the work of the trainee.

**EXAMPLE**

Amin and May are supervising five trainees during a probationary period. They can't supervise any more trainees. If Amin is absent for a few days, the probationary period of the trainees will not be interrupted, as May will continue the supervision.

As for the responsible officers, they must ensure that their supervisors are providing such supervision. They must also set up accountability mechanisms to stay informed of the probationary periods in the firm and to provide support as needed.

**3.2.4.5 Authorized acts by trainees**

During their probationary period, trainees are permitted to perform the following activities under the responsibility and supervision of a supervisor:

- Attend a supervisor's meetings with a client;
- Collect information about the financial condition of a client;
- Analyze, along with the supervisor, the needs of a client;
- Suggest to their supervisor products that can be tailored to the needs of clients before proposing them to clients;
- Help a client complete the insurance proposal and other associated documents required by financial institutions; and
- Forward the documents to the financial institution after having them approved by the supervisor.

**N.B.**

During the probationary period, supervisors and their firms remain responsible for all professional acts performed by trainees. Supervisors must therefore closely monitor trainees so as to avoid any error and to ensure the safeguarding of the assets and interests of the registrant's client.

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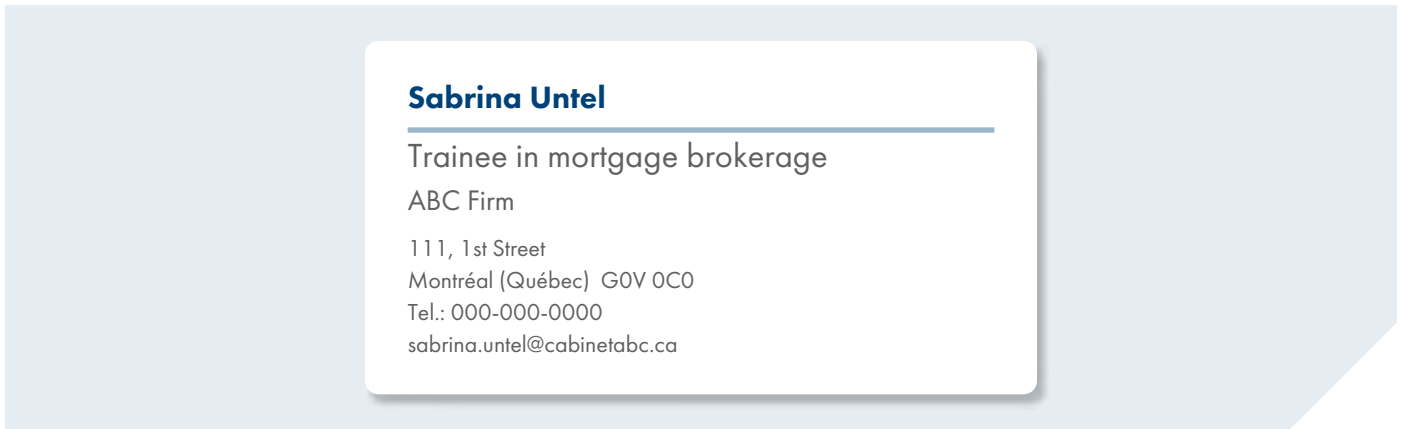
When meeting with new clients, trainees must provide a document that includes the following information:

- The trainee's name;
- Their business address, business telephone number and electronic mail address;
- 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; and
- Their title of trainee.

Often, this document is a simple business card. Responsible officers and supervisors must make them available to the trainee.



However, if a trainee communicates remotely with a client, the trainee must send the following information to the client's email address:

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

Responsible officers and supervisors must ensure that a signature email template is in place for the trainee's electronic communications.

At a client's request, a trainee must send other information and documents set out in the regulation at the time the other documents are first sent.



### FYI

Trainees may change supervisors, provided that they notify the AMF at least 10 days before the change and that 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, i.e., the firm, the trainee, and the new supervisor.

### **Interruption or discontinuance of a training period**

Should a probationary period be interrupted (for example, due to illness or disability), the trainee must immediately cease to carry out authorized acts.

As for the supervisor, he must notify the AMF within five days of the first day of absence. The same is true if the trainee discontinues his probationary period.

It is possible to resume a probationary period if it has been interrupted. To do so, an application for extension must be presented to the AMF by the trainee or firm, independent representative, or independent partnership on behalf of whom the trainee is in a probationary period. The application must contain documentation showing the reason for the interruption.

A 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 due to a preventive withdrawal, because they are on parental leave or where warranted by exceptional circumstances.

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

Furthermore, they must cease to perform the actions of a trainee if, when their probationary period certificate expires, they do not hold a certificate to practise.

### **Remuneration of trainees**

Trainees may receive any form of remuneration (salary or commission) when they hold a valid probationary certificate. They are associated with representatives holding a certificate for the application of the rules relating to remuneration.

#### **3.2.4.6 End of probationary period: Report and recommendation**

In the 10 days following the end of the probationary period, supervisors must issue a report to the AMF concerning their satisfaction with the tasks performed by the trainee and mentioning any weaknesses. The management of the firm or independent partnership must approve the report.

### 3.2.5 School training period

Although less frequent to do so, a candidate does their training as part of an agreement between an educational institution and the AMF. The obligations of supervisors and trainees are the same. The duration of the school training period varies according to the agreement and type of training period carried out. This is entered in the academic record of the student.<sup>17</sup> 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;
- have successfully completed courses set out in the agreement for the sector or sector class that is the subject of the training period;
- be accepted as a trainee with a registrant; and
- complete the necessary forms.

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

#### EXAMPLE

Naima, a student, completes her studies in an educational establishment that offers the *Techniques de services financiers et d'assurances* program. She receives a favourable recommendation for a part-time, summer training program, in various sectors. The duration of the training periods are much longer than the probationary period set out in the regulations. Currently, Naima is doing her end-of-study training period. Once she receives her diploma and successfully completes her examinations, she has one year to apply for her certificate to be issued in the sectors where she completed her training program.

### 3.2.6 Applying for the issuance of a certificate

The *Regulation respecting the issuance and renewal of representatives' certificates* also establishes the time limits for candidates seeking their certificates. Accordingly, the AMF must receive the application before the expiry of the validity period of the examinations. If the validity period of the examinations expires during the probationary period, the AMF must receive the application within 30 days following the end of the period.

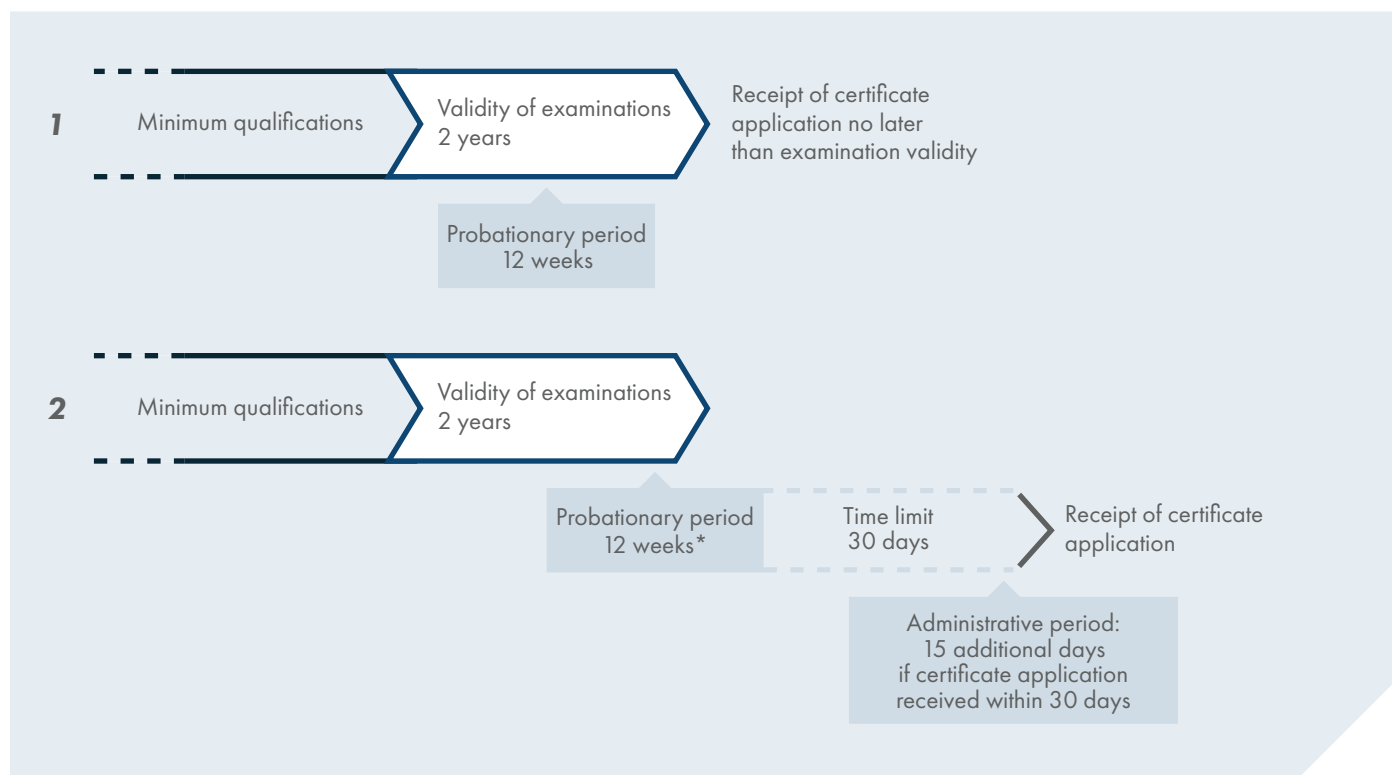
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17. See [https://lautorite.qc.ca/fileadmin/lautorite/devenir-professionnel/dq\\_guidepp-a.pdf](https://lautorite.qc.ca/fileadmin/lautorite/devenir-professionnel/dq_guidepp-a.pdf).

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 commence during the examination validity period.

#### 3.2.6.1 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. Candidates will have to retake the examination on the legislation governing the pursuit of the activities of a representative in the sector where they wish to work.

##### 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.

**EXAMPLE**

Marie-Ève Haché obtained a representative's certificate in mortgage brokerage (mortgage broker) in January 2022. She acted in this capacity for one year, from January 2022 to January 2023. She did not subsequently renew her certificate because she went on a trip around the world. She has until May 2024 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 a representative's certificate in mortgage brokerage (mortgage broker) in May 2022. He did not renew it in June 2023 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.

**EXAMPLE**

Fanny held a representative's certificate in the mortgage brokerage sector (mortgage broker) from May 1, 2020 to May 1, 2021. She plans on taking a maternity leave and extending it until her child starts kindergarten. After May 1, 2024, Fanny must, once again, meet the minimum qualifications, pass the AMF's examinations, and complete a probationary period so she can again practise as a mortgage brokerage representative.

**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 provided 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 to amend 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 also 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.

### 3.3 Attachment and certificate

Representatives who wish to work through a firm must first attach themselves to the firm so that the AMF may then proceed to issue its certificate. The firm is responsible for attaching the business representatives who will act in its name.

A representative without a valid right to practise cannot act as a representative with clients.

#### 3.3.1 Certification

A responsible officer must therefore, at all times and for all attached representatives working for his firm, ensure the compliance of their qualifications.



#### **N.B.**

A firm may be sanctioned for allowing a representative whose licence has been suspended to pursue his activities (for example, for having been struck off the roll, failing to pay the fees, or failing to comply with professional development requirements).

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##### 3.3.1.1 Other conditions of issuance

Furthermore, additional conditions apply to the issuance of a representative's certificate. Candidates cannot obtain their certification if, for example, they:

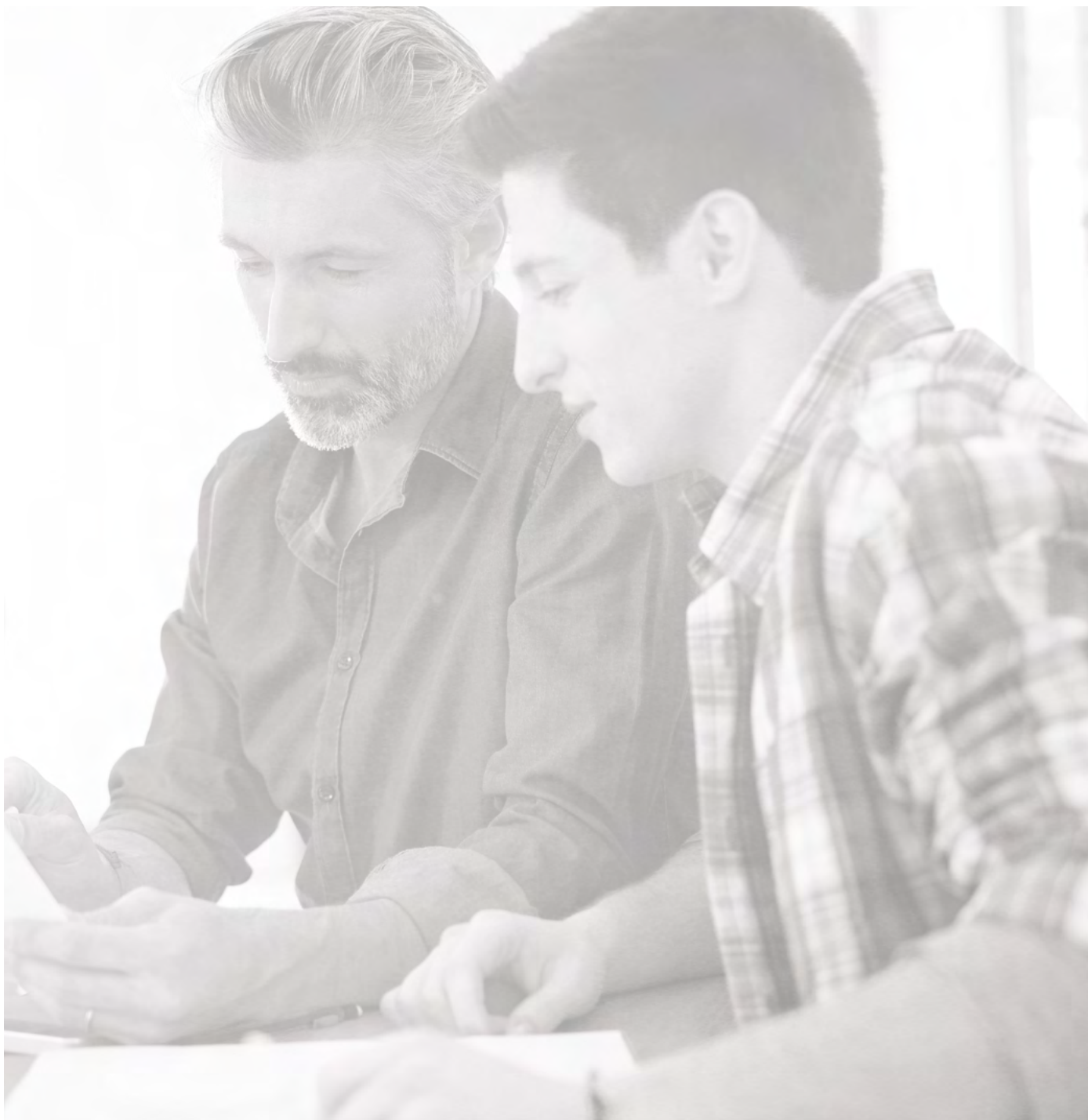
- have been the subject of a disciplinary sanction by a disciplinary council related to financial services;
- are in default of paying any outstanding fines, administrative penalties, or costs;
- have not repaid any amount they were ordered to pay by final judgment owing to their liability in any matter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



**N.B.**

Trainees cannot complete their probationary period if they are in one of the previous situations, even if they plan to resolve it as soon as possible.

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### 3.3.1.2 Issuance of a 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 the holder;
- the sector or sector class in which they work;
- the titles they are entitled to use; and
- any conditions and restrictions imposed by the AMF.



Le 1<sup>er</sup> 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

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...



## Modifications

Once they are aware of any change to the information or to a document they have provided to the AMF, the holders of a certificate must inform the AMF of the change.



### Legislative or other references

*Regulation respecting fees and contributions payable, s. 1*

The fees payable for the issuance of a representative's certificate and the annual renewal fees are \$107 for each sector or sector class in which the representative is authorized to act.

Where a representative is authorized to act in a sector, he must pay an additional fee for the issuance and an additional annual fee for the renewal of his certificate.

## Mandatory contributions to the Financial Services Compensation Fund

Independent representatives, independent partnerships, and firms must pay an amount to the Financial Services Compensation Fund for each attached representative and for each sector in which the representative is authorized to act.

The cost of this contribution is set out in section 3.1 of the *Regulation respecting fees and contributions payable*. The AMF also sets the contributions of the different sectors based on their fraud risk, as specified in Section 278 of the *Distribution Act*.

The Financial Services Compensation Fund was created to compensate victims of fraud who conducted business with a representative certified by the AMF. When there is a claim for compensation, the AMF will analyze it, decide on eligibility, and determine an amount payable to the fraud victim. The maximum amount that can be paid for a claim is \$200,000.

### 3.3.2 Certificate carrying restrictions or conditions



The AMF can attach restrictions or conditions to a representative's 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). When conditions of supervisions are imposed, firms must appoint a person in charge of supervising 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 appropriate supervision.

### 3.3.2.1 Close supervision

In a context of close supervision, one of the conditions is that each transaction carried out by the representative must be examined 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.

### 3.3.2.2 Strict supervision

In a context of strict supervision, a registrant's responsible officer or compliance officer must sign a *supervision agreement*, entitled the *Engagement de supervision*, which states that he must unequivocally pre-approve each of the transactions of the supervised representative. This agreement also usually requires that the person in charge of the strict supervision:

- oversees the conduct of the representative and ensures that he complies with the laws and regulations;
- reviews and pre-approves, for each transaction, the suitability of the products and services proposed to the clients by the representative;
- ensures that no amount of money is transacted, without the approval of the manager, between the client and the representative;
- evaluates the other tasks completed by the representative; and
- fills out a monthly *Statement regarding strict supervision* form that he will transmit to the AMF.

Each month, responsible officers must complete and submit to the AMF a statement of the transactions carried out by supervised representatives. The responsible officers must 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. Therefore, they must adequately control and oversee the activities of supervised representatives, whether they have delegated part of the task or not. They must place the necessary seriousness on complying with their duties and obligations of ensuring strict supervision of the activities of supervised representatives.

**EXAMPLE**

The Tribunal can sanction Rebecca, a responsible officer, for having approved a transaction conducted by a representative under strict supervision after that transaction took place given that she should have approved them beforehand. An administrative penalty of a few thousand dollars may be personally imposed on her, and the Tribunal will prohibit her from acting as a supervisor of representatives for a period of 5 years.

**3.3.3 Renewal**

A representative's certificate must be renewed annually. Representatives are responsible for renewing their certificates; however, responsible officers must ensure that all representatives acting for the firm or independent partnership hold a valid certificate at all times.

It is suggested that responsible officers implement a certificate renewal policy to alert representatives of their renewal obligations. They should also deploy a mechanism or procedure that tracks and follows up on certificate renewals.

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 before the certificate expires. 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, certificate holders may file their renewal application within 30 days of the certificate's expiry if they demonstrate that they were unable to act before. In such cases, the certificate is deemed to be in effect until the AMF's decision authorizing or refusing renewal.

**3.4 Outside activities<sup>18</sup>**

At all times, representatives must remain independent and avoid situations involving conflicts of interest or the appearance of conflict of interest while also demonstrating availability and diligence in pursuing their activities.

If a representative exercises one or more outside activities, he must declare each of these activities in writing to each of the firms to which he is attached, as needed. This obligation is his responsibility.

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18. The AMF understands "outside activity" to mean any occupation, function, or activity exercised with the public that is not related to their activities as a representative, remunerated or not, and that is carried out full – or part-time for a definite or indefinite period.

Representatives do not have to declare to the AMF all the outside activities they have declared to the firm. The only activities that they must declare to the AMF are the following:

- Activities constituting the provision of finance-related services; and
- Activities requiring the separation of client groups.

### 3.4.1 Obligations related to conducting outside activities

Once a representative has declared outside activities to his firm, he may exercise his functions if he satisfies the following conditions:

- The exercise of outside activities is not likely to be confused with the exercise of representative-related activities; certain outside activities may create confusion. Clients could confuse the outside activities with those for which the representative holds a representative certificate.
- If the representative has access to privileged or confidential information as part of his outside activities and wants to use this information for his activities as representative, he must first receive the written consent to do so from the person in question.
- In certain cases, a representative cannot offer financial products and services to a client that he serves as part of his outside activities.

### 3.4.2 Two obligations of firms

#### 1. General obligation

The rules stem from a firm's general obligation to oversee the conduct of its representatives and their compliance with the *Distribution Act*. The firm's responsible officer must ensure this.

To meet this general obligation, a best practice consists of implementing a compliance program (see the *Governance and Compliance Guide for Registrants*<sup>19</sup>), which includes:

- hiring policies that include questions about outside activities;
- annual follow-up meetings aimed at reviewing the situation; and
- annual training that addresses general compliance.

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19. *Governance and Compliance Guide for Registrants / 3rd Edition* (lautorite.qc.ca).

## 2. Record-keeping obligation

Firms must keep a record of the outside activities carried out by each of their representatives. Such records should contain the following information:

- A description of the representative's outside activity;
- A written declaration about the outside activity submitted by the representative to the firm, except for independent representatives;
- The start date and, if known, the end date of the outside activity; and
- The actions taken by the firm, as needed, to ensure that the representative complies with the *Distribution Act*.

A best practice consists of documenting the following information in the file:

- The verifications conducted;
- The result of the analysis of the situation;
- The follow-up of remedial actions, as needed; and
- The authorization or refusal of the firm regarding the exercise of the outside activity.

### 3.4.3 Supervision of the outside activities of mortgage brokers

Firms must also see ensure that mortgage brokers declare any outside activities to the firm and provide the firm with all the information it needs to identify the measures required to ensure that such activities are compliant with the law and its regulations, including ensuring the following:

- Outside activities carried out by mortgage brokers cannot be confused with their activities carried out as a mortgage broker.
- The mortgage broker does not offer his services to the persons to which he exercises the below-listed outside activities or to the members of the family of such a person (spouses, children or children's spouses, brothers and sisters, parents and in-laws or their spouses):
  - Judge or police officer;
  - Minister of religion or leader of a religious organization;
  - High school, college, or university teacher;
  - Immigration or citizenship consultant;
  - Trustee in bankruptcy;

- Union manager;
- Lawyer;
- Notary;
- Chartered professional accountant practising public accountancy;
- Money lender;
- Loan administrator, except if he acts on behalf of a natural person who wants to take out or has taken out a loan secured by immovable hypothec;
- Chartered appraiser; and
- Building inspector.

More generally speaking, firms must also ensure that mortgage brokers always:

- act with independence in respect of their clients and in their clients' best interests;
- not place themselves in a conflict of interest; and
- demonstrate availability and diligence in the pursuit of their mortgage brokerage activities.

For example, a firm must ensure, in compliance with such rules, that the mortgage broker does offer to act as the administrator of the mortgage loan for which he was engaged in the brokerage transaction and, conversely, if he acted as the mortgage loan administrator, he cannot offer the borrower to engage in the brokerage operation on the client's behalf.

Firms must also ensure that mortgage brokers declare the following activities to the AMF:

- Activities constituting the provision of finance-related services; and
- Activities listed in the preceding section (judge, police officer, minister of religion, etc.).

This completes the chapter on the exercise of activities through a representative.

# CHAPTER 4

## Activities of a firm

### Competency components

- Understand the legal framework for mortgage brokerage
- Integrate into professional practice the rules governing the activities of responsible officers
- Supervise the professional activities of a mortgage brokerage firm

### Competency subcomponents

- Distinguish among the provisions of the *Civil Code of Québec* (C.C.Q.) that apply to the responsible officers of mortgage brokerage firms
- Integrate into professional practice the other obligations and duties of responsible officers that apply to their practice
- Oversee the work of clerical and support staff
- Monitor complaint examination process



## Activities of a firm

Responsible officers must ensure that a registrant exercises its activities in accordance with the *Act respecting the distribution of financial products and services* (the *Distribution Act*). They must ensure compliance with the rules applicable to advertising, solicitation, and representation conducted by the registrant and its attached representatives, the remuneration and sharing of commissions, and the management of incentives. Responsible officers must also ensure that the registrant's records and files are properly maintained in accordance with regulations. Lastly, responsible officers are responsible for processing or properly handling any complaints made by clients and consumers.

### 4.1 Advertising, solicitations, and representations

Registrants must satisfy several requirements in the area of advertising, solicitations, and representations. As for the responsible officer, he must ensure the implementation of measures complying with these requirements, requested by the registrant or one of its representatives.

#### 4.1.1 Use of name

In all of its representations, advertising, or client solicitations, a firm must use its name or the other names it uses in Québec. It may not use a trademark, slogan, symbol, or other formulation that could cause confusion.

#### 4.1.2 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.

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

Furthermore, no registrant may falsely claim that an organization recognizes a service or product or appear to promise improbable results. Their claims must be moderated.

#### **EXAMPLE**

The Assurances Protège-Atout firm cannot post “We give you the best price for your insurance” on its website.



It is also prohibited from disclosing its income or financial performance at the time of solicitation.

### **EXAMPLE**

In an advertisement, Tommaso, a mortgage broker, cannot indicate that it granted more than \$10,000,000 in loans the previous year.

## **4.1.3 Advertising: Obligations**

Firms and independent representatives must adhere to certain rules when introducing themselves to clients or soliciting clients (for example, on websites, business cards, advertising on social or traditional media, brochures or any other type of representation and solicitation). Sections 1 to 11.1 of the *Regulation respecting firms, independent representatives and independent partnerships* set out the rules to be followed.

### **4.1.3.1 Obligation of consistency**

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

### **EXAMPLE**

Eyota, a mortgage broker, 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. Ama, the responsible officer, must intervene to remind Eyota that she cannot boast about a product in this manner.

### **4.1.3.2 Obligations regarding the competition**

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

### **4.1.3.3 Acknowledgement of sources and authorization of the person marketing the product**

To advertise a financial product, a registrant must first obtain authorization from the financial institution, insurer, or the person marketing it.

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

#### 4.1.3.4 Particularity of mortgage brokerage advertising

In the mortgage brokerage sector, the interest rates shown in a registrant's advertising material, representations, or client solicitations must comply with all applicable rules. In advertising, for example, an interest rate cannot be indicated without clearly and legibly mentioning any conditions applicable to obtaining that rate. Otherwise, the AMF may consider it to be false, misleading, or deceptive advertising or representation.

Also, when a registrant shows an interest rate and identifies the related lender, it must first obtain the lender's authorization to do so.

## 4.2 Remuneration, sharing of commissions, and other benefits

The remuneration and sharing of commissions are significant aspects of the practice of representatives. 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.

**Remuneration** is the amount that a representative is entitled to receive for the sale of a financial product or the provision of a financial service. This amount is payable by the firm. The law prohibits the firm from paying remuneration to a person who is not a representative.





### Legislative or other references

#### *Distribution Act, s. 12*

Subject to the provisions of Title VIII, no person may act as or purport to be a representative without holding the appropriate certificate issued by the Authority. [...]

#### *Distribution Act, s. 14*

No representative may pursue activities as a representative unless the representative is acting for a firm, is registered as an independent representative or is a partner in or employee of only one independent partnership. [...]

#### *Distribution Act, s. 15*

No person acting in contravention of the provisions of section 12 or 14 may claim or receive remuneration for any products sold or services rendered.

#### *Distribution Act, s. 17*

Where representatives require compensation from the persons with whom they transact business, they must, according to the procedure determined by regulation of the Authority, disclose to the client the fact that they also receive remuneration for the products sold and the services rendered and any other benefit determined by regulation.

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**Sharing of commissions** is the amount paid by a registrant to another registrant for the sale of a financial product or provision of a financial service. Generally, it is a percentage of the commission paid by an insurer or financial institution to a registrant, who then shares it with another person who is authorized to receive it. The sharing of commissions is conducted among registrants and not representatives; meaning, two representatives cannot directly share a commission or reach a sharing of commission agreement, since such an agreement must be entered into by registrants. The representatives will have their respective remuneration paid to them by the firm to which they are attached, or directly, in the case of an independent representative. Section 100 of the *Distribution Act* authorizes the sharing of commissions only between registrants; therefore, a firm cannot share commissions with, for example, a company or entity not registered with the AMF. Such an arrangement would be a referral, which has its own rules.

**Remuneration**

Remuneration is the amount to which a representative or registrant (firm, independent partnership) is entitled to receive in consideration of the sale of a financial product or the provision of a financial service, regardless of how it 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 or independent representative) splits the remuneration and gives part of it to another person authorized under the *Distribution Act*. Accordingly, sharing of commissions always takes place after the remuneration has been paid.

### 4.2.1 Sharing of commissions

As mentioned above, 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 real estate broker or an agency governed by the *Real Estate Brokerage Act*;
- A securities dealer or securities adviser governed by the *Derivatives Act* or the *Québec Securities Act*;
- An authorized deposit institution;
- A bank or an authorized foreign bank;
- An authorized trust company;
- An insurer; or
- A federation within the meaning of the *Act respecting financial services cooperatives*.

**EXAMPLE**

Mathieu, a mortgage broker, cannot remit a commission to Alix, a builder who referred a client to Mathieu.

**EXAMPLE**

Arianne, an insurance of persons representative, wants to share her commission with Valérie, a damage insurance representative. She must do so through her firm.

### 4.3 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 the person is a registrant or representative, he may also receive a commission. If the person is neither a registrant nor a representative nor a person authorized to share commissions, the payment cannot depend on the outcome of the referral.

**N.B.**

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

Similarly, when a representative refers a client to another person or entity, he must disclose to the client that he may receive a sharing of commission, if applicable.

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Mortgage brokers must be aware that they are prohibited from limiting the pursuit of their activities solely to making referrals (for example, a broker whose sole key activity is client referrals to a lender).

## 4.4 Separate account

A firm that receives or collects amounts on behalf of others must keep a separate account in which to deposit such amounts. It must be opened in a deposit-taking institution and be separate from the firm's other accounts.



### N.B.

A declaration about the separate account must be made during registration and during the maintenance of registration.

### 4.4.1 Obligations of a firm

The amounts to be deposited in the separate account are those entrusted to the firm but intended for a third party.

#### EXAMPLES

- Premiums collected for an insurer;
  - An indemnity intended for an insured;
  - Payment of suppliers involved in the settlement of a claim;
  - Advances on the remuneration required of a client;
  - Payment of taxes collected by the firm and due to government authorities;
  - The repayment of a premium due to a client;
  - Amounts owed to a registrant such as commissions not yet transferred to their account; and
- In mortgage brokerage, the commission paid by a lender but due to a third party.

#### EXAMPLE

The accounting of the separate account must be distinct and separate from general accounting. The accounting books and registers must contain the accounting of all amounts deposited in the separate account as well as any amount paid out of this account.

Firms that conduct mortgage brokerage activities must give the person from whom they receive or collect an amount on behalf of others a receipt indicating:

- the date on which the amount was received or collected;
- the amount received or collected;
- the purposes for which the amount was received or collected;
- the name of the person from whom it is received or collected;
- the name of the mortgage broker involved in the transaction; and
- the receipt date and the name of the person who signed the receipt.

In addition, the receipt must indicate that the amount received or collected was or will be deposited in the firm's separate account and be signed by someone authorized by the firm.

Withdrawals made from the separate account must be done by transfer, cheque, or other bill of exchange. Withdrawals cannot be made in cash.

#### 4.4.2 Obligations of representatives

Section 4 of the *Regulation respecting the pursuit of activities as a representative* requires that a representative "must forthwith deposit in a separate account held by him as an independent representative or by the firm or independent partnership on whose behalf he acts, as the case may be, all amounts collected or received on behalf of another person in the pursuit of his activities."

#### 4.5 Keeping of client records

Registrants must keep, in Québec,<sup>20</sup> the information collected about clients in client records and make that information accessible to the AMF and to any person legally authorized to verify it.<sup>21</sup>

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20. Sections 88 and 139 of the *Distribution Act*.

21. Sections 12, 17, 20 to 21.1 of the *Regulation respecting firms, independent representatives and independent partnerships*.

### 4.5.1 Confidentiality of client records

Registrants must ensure the confidentiality of client records, notably by giving access only to the information required for the exercise of representative activities.

Section 13 of the *Regulation respecting firms, independent representatives and independent partnerships*, which addresses client records, requires registrants to “take the necessary measures to prevent loss, destruction or falsification of entries.”

The information contained in client records is often personal and sensitive. A data leak is generally considered catastrophic. For a client, it could result in serious financial and personal consequences, identity theft, or even harm their reputation. For a registrant, a data leak tarnishes its reputation and could lead to significant financial penalties. Registrants are therefore legally bound to ensure the confidentiality of client records and to take the necessary measures to avoid the loss, theft, transmission or use thereof by persons not authorized to consult them.

The *Distribution Act* addresses this in section 113, stating “the inspector shall report his findings regarding the manner in which the firm concerned protects the personal information relating to its clients to the *Commission d'accès à l'information* established by the *Act respecting Access to documents held by public bodies and the Protection of personal information*.”

The next chapter will address a registrant's obligations under the *Act respecting the protection of personal information in the private sector*.

### 4.5.2 Content of client records

The content of client records is prescribed by regulation. Sections 17, 20, 21 and 21.1 of the *Regulation respecting firms, independent representatives and independent partnerships* describes in detail the information that must be found in a registrant's client records.





### Legislative or other references

*Regulation respecting firms, independent representatives and independent partnerships, s. 17, 21 and 21.1.*

In the **insurance of persons** sector, section 17 of the regulation stipulates that the following information be included in client records:

- (1) The client's name;
- (2) The client's address, telephone number and facsimile number or electronic mail address, if any;
- (3) Where the client is a natural person, his date of birth where such information is obtained by the representative;
- (4) The amount, object and nature of the product sold or service rendered, as the case may be;
- (5) The policy number, contract issue dates and the date of signature of the proposal or request for services, as the case may be;
- (6) The name of the representative involved in the transaction and the method of remuneration for each product sold or service rendered to the client;
- (7) The method and date of payment of the products sold or services rendered;
- (8) A copy, in any medium, of the needs analysis prescribed in section 6 of the *Regulation respecting the pursuit of activities as a representative* (chapter D-9.2, r. 10);
- (9) A copy of the form completed and signed, at the time of replacement of an insurance policy, where applicable, as prescribed in Division VII of the *Regulation respecting the pursuit of activities as a representative*;
- (10) A copy of the documents described in sections 8, 9 and 16 of the *Regulation respecting the pursuit of activities as a representative*;

*All other information or documents concerning products sold or services rendered to the client and obtained from him must also be inscribed or filed in the client's record by the firm, the independent representative, or the independent partnership.*

**Legislative or other references (continued)**

If a firm or independent representative is registered in the **group insurance of persons** sector, it must also keep the following information, as described in section 20:

- (1) The name of the holder of the group insurance policy;
- (2) The name of the person designated as the policyholder's contact person;
- (3) The calls for tenders and the proposals submitted; and
- (4) A copy of the mandate and report prescribed in sections 8.1 and 9.1 of the *Regulation respecting the pursuit of activities as a representative*.

The client records that must be kept by an entity registered in the sector of **damage insurance** in respect of each client in the pursuit of the entity's activities must include the following information, in accordance with section 21 of the Regulation:

- (1) The client's name;
- (2) The amount, object and nature of the insurance coverage;
- (3) The policy or contract number and the contract issue dates and the proposal signature dates, where applicable;
- (4) The method and date of payment of the insurance contract;
- (5) Any listing evaluating the insured's property transmitted by the insured, where applicable.

*Any other information or document pertaining to the products sold or services rendered gathered from the client must also be filed or inscribed in the register.*

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### Legislative or other references (continued)

In the sector of **mortgage brokerage**, each client must be associated with a client record, in accordance with section 21.1 of Regulation respecting firms, independent representatives and independent partnerships. Client records kept by a registrant in the mortgage brokerage sector must contain the following information.

*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;

**Legislative or other references (continued)**

- (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;
  - 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.*

Among other things, a responsible officer's role is to govern and supervise the management of the client records kept by registrants, including access by representatives, to ensure that they are compliant and complete and that the confidentiality of the information is preserved.

### **4.5.3 Format of client records (digital or physical)**

Like registers, client records may be kept in paper or electronic format or using any other data-processing technique. Section 13 of the *Regulation respecting firms, independent representatives and independent partnerships* requires registrants to ensure "that the information contained in each client record can be provided within a reasonable time and in a precise form that is comprehensible to any person authorized under the Act to audit the records."

Client records may consist of information collated in various formats (for example, emails, text messages, or even traditional notes in paper format).

Section 14 of the same Regulation permits client records to be consolidated in a single document, provided that "all required information is recorded in such document and that the information can be separated."

Section 15 of the Regulation indicates that registrants may keep the information in client records in various locations, provided that "the information is recorded with the firm or independent partnership and provided that every client record can be provided within a reasonable time and in a precise form that is comprehensible to any person authorized under the Act to audit such records."

Consequently, responsible officers must verify that the information contained in client records is accessible, categorized, and kept in an adequate and comprehensible manner. An inspector or investigator who visits a registrant's office or who requests information remotely must be able to access the files quickly and easily.

It is also in a registrant's interest to be able to trace the complete information entered into a client record to defend itself in potential legal proceedings. Lastly, in the event that a firm or a clientele is sold, the buyer would like to have all of the information required to pursue the professional activities, that is, the complete client records that meet the regulatory requirements, failing which the value of the firm or clientele may be negotiated downwards.

#### 4.5.4 Retention and destruction of client records

Just like with registers, registrants must take all necessary measures to prevent the loss, destruction, or falsification of information stored in paper format, electronically, or on any other support. The data must also be fairly accessible, physically and technologically, to provide clients with access, if they so request, within a reasonable timeframe.<sup>22</sup>

All client records must be preserved for five years as of the last of the following events:

- The final closing of the client record;
- The date the last service is rendered to the client; or
- The expiry without renewal or the replacement of the last product sold to the client.

After the five-year period has elapsed, the records may be destroyed, unless prohibited by another law or regulation. The records must be destroyed responsibly. For example, a firm must not toss the client records directly into an unsecured garbage or recycling bin but instead destroy them in a way that prevents any third party from reconstituting them.<sup>23</sup>

### 4.6 Keeping of books and registers

Registrants must keep and maintain up-to-date records, books and registers, the content of which is set out in the regulation.

As for responsible officers, they must ensure that records, books and registers are properly preserved, according to regulatory obligations, and maintained or destroyed safely such that they remain protected and confidential throughout their life cycle. Regardless of the preservation method, responsible officers must take reasonable measures to prevent the loss or destruction thereof or the falsification of entries. A responsible officer must ensure that the information can be provided upon request and in a precise form that is comprehensible to any person authorized by the law to verify it.

#### 4.6.1 Mandatory register: Accounting books and registers

Firms must maintain, and keep up to date, at their establishments in Québec, accounting books and other accounting records required for the registration of transactions they carry out in connection with their activities, according to section 1 of the *Regulation respecting the keeping and preservation of books and registers*.

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22. Sections 13 and 15 of the *Regulation respecting firms, independent representatives and independent partnerships* and sections 13 to 18 of the *Regulation respecting the keeping and preservation of books and registers*.

23. Section 90 of the *Distribution Act* and sections 13 to 18 of the *Regulation respecting the keeping and preservation of books and registers*.

### 4.6.2 Register pertaining to separate accounts

In accordance with sections 1 to 7 of the *Regulation respecting the keeping and preservation of books and registers*, a firm that receives or collects amounts on behalf of others must maintain a register pertaining to the separate account.

It is used to identify and justify the deposits and withdrawals made. It must contain the following information:

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;
5. The date on which the transaction was made at the financial institution; and
6. The name of the recipient of the amount paid out of the separate account.

Registers maintained by firms that receive or collect amounts in connection with their mortgage brokerage activities must also indicate the date of the deposit to or withdrawal from the separate account as well as the recipient of the amount paid out.

Responsible officers can refer to the *Governance and Compliance Guide for Registrants*,<sup>24</sup> which covers separate accounts.

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24. *Governance and Compliance Guide for Registrants / 3rd edition* (lautorite.qc.ca).

**TABLE 4.1****Maintaining a separate account****Sections of the Act****Distribution Act: s. 79 and 146****Regulation respecting the registration: s. 2(17), 4(7), 6 (11) and 10 (1)**

To obtain registration, it is necessary to provide the AMF with a declaration pertaining to the opening or absence of a separate account pursuant to the *Regulation respecting the registration*.

If it holds amounts on behalf of others, a registrant must maintain a separate and distinct account from the one it maintains for day-to-day operations. In the separate account it deposits all of the amounts that it has received or collected as part of its activities governed by the *Distribution Act* (for more information, refer to the Separate Account<sup>25</sup> page of the AMF's website.)

**Regulation respecting firms, independent representatives and independent partnerships: s. 21.1, 28.2 and 28.3****Regulation respecting the pursuit of activities as a representative: s. 4 and 9.2**

In mortgage brokerage, any withdrawal from a separate account must be done by electronic transfer, cheque, bill of exchange, or transfer slip. The client record must contain a copy of the document indicating the electronic transfer, cheque, other bill of exchange or transfer slip by means of which the withdrawal was made as well as a copy of the cheque or the other bill of exchange that was received, as required.

A receipt must be issued to the person from whom the amount is collected or received.

**N.B.**

Advances on remuneration received by a representative must be deposited in a separate account given that they do not belong to him.

25. <https://lautorite.qc.ca/en/professionals/firms-representatives-and-independent-partnerships/separate-account>.



### 4.6.3 Commission register

As soon as a registrant receives a commission, or remuneration, it must be immediately recorded in a commission register. The responsible officer must verify that such commissions are correctly noted. The 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, 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 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.

As indicated in the 3rd paragraph of section 22 of the *Regulation respecting firms, independent representatives and independent partnerships*, commissions and remuneration received by a registrant must be recorded in a commission register. Remuneration is the amount to which a registrant or representative is entitled for the sale of a product or the provision of a financial service, regardless of how it is paid. Here are some examples of remuneration:

- A **salary**, which is the remuneration of individuals bound by an employment contract;
- **Fees** or **expenses**, which is the remuneration paid by a client in exchange for services rendered;
- A **commission**, which is the remuneration calculated as a percentage of the premium or amount invested. It usually varies depending on the type of financial product or service sold or the various embedded coverage options; and
- A **bonus**, which is a fixed remuneration or one calculated as a percentage of the premium, the amount invested or the commission, paid as a form of compensation or incentive for sales performance.

Legal and regulatory provisions govern the sharing of commissions as well as commission registers.



### Legislative or other references

Section 100 of the *Distribution Act* provides for the following:

A firm may share a commission it receives only with another firm, an independent representative or independent partnership, a broker or 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, an authorized foreign bank, an authorized trust company, an insurer or a federation within the meaning of the *Act respecting financial services cooperatives*.

The commission shall be shared in the manner determined by regulation.

The firm shall enter every sharing of a commission in a register in accordance with the regulations.

A person receiving an amount from the sharing of a commission made in accordance with this section is not required, by virtue of that fact, to be registered with the Authority under the third paragraph of section 71.

It should be noted that section 24 of the *Distribution Act* states that “No representative may receive an amount deriving from a sharing of commissions except through a firm or independent partnership for which the representative acts.”



If a commission is shared, sections 23 and 25 of the *Regulation respecting firms, independent representatives and independent partnerships* requires that the registrant record it in the commission register along with the following additional 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.
- 

#### **4.6.4 Register of incentives**

Firms must also keep a register of the incentives that they introduce in accordance with section 28.1 of the *Regulation respecting firms, independent representatives and independent partnerships*.

Such a register must contain a description of 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; and
- the names of the winners.

#### **4.7 Accessibility, retention, and destruction of records**

Registrants may keep registers in paper or electronic format in various locations provided that all of the information is entered therein. Records may also be consolidated in a single document provided that the information therein can be separated, as previously mentioned.

In all cases, registrants must ensure they take the necessary measures to prevent the loss, destruction, or falsification of such information.<sup>26</sup> They must also keep the registers or the information recorded so that it is possible “to provide the information upon request and in an accurate form that is comprehensible to any person authorized by the Act to verify it,” in accordance with sections 13 to 16 of the *Regulation respecting firms, independent representatives and independent partnerships* and with section 3 of *Regulation respecting the keeping and preservation of books and registers*.

#### 4.7.1 Retention period for registers

Registers must be kept for five years after they are closed.<sup>27</sup>

All information about the separate account must be kept for at least five years after the last entry.<sup>28</sup>

#### 4.7.2 Destruction of registers

After five years have elapsed, registers can be destroyed provided that doing so is not prohibited by any other regulation or act.

Sales, service or accounting transactions may be removed five years after entry thereof.<sup>29</sup>



#### N.B.

Even when destroying a record or the contents of a register, registrants must still uphold the confidentiality of a client’s information.

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In fact, “in the event of the destruction of records, books, registers, and documents containing personal information, the confidentiality of such information shall be maintained.”<sup>30</sup> The destruction must therefore be done in a responsible manner; for example, a firm must not toss the information contained in the registers directly into a garbage or recycling bin. It must instead implement a process for the destruction thereof so that they cannot be reconstructed by a third party. One of the most frequently used tools for doing so is the paper shredder, but other solutions may be used.

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26. Section 3 of the *Regulation respecting the keeping and preservation of books and registers*.

27. Section 13 of the *Regulation respecting the keeping and preservation of books and registers*.

28. Section 14 of the *Regulation respecting the keeping and preservation of books and registers*.

29. Section 17 of the *Regulation respecting the keeping and preservation of books and registers*.

30. Section 18 of the *Regulation respecting the keeping and preservation of books and registers*.

Also, when records are saved on computer systems or servers, whether or not the management thereof is outsourced (e.g., information stored on the servers of a host), as soon as a piece of equipment becomes obsolete or unusable and the registrant would like to dispose of it, the registrant must ensure that the data is permanently and irretrievably erased and obtain confirmation thereof. When a host disposes of its servers, it could be a target for specialized hackers who steal and recover such data. Some technicians and certain specialized external firms guarantee the destruction of data stored on computers, laptops, cellular phones, and personal or external servers. Registrants would be well-advised to retain the services of such specialists.

### 4.7.3 Register for the sharing of commissions

The information to be included in a commission register was previously provided. If a commission is shared, the register must also contain the following information:

- The name and business address of each person sharing the commission and the sectors, if applicable, for which they are registered with the Authority;
- The names of the parties to the transaction and the object and date of the transaction; and
- 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.

### 4.7.4 Incentive management

Under section 11.1 of the *Regulation to amend the Regulation respecting firms, independent representatives and independent partnerships*, registrants may not introduce or use any incentives that could have an influence on the performance of a representative's obligations.

#### **EXAMPLE**

A contest or promotion based on the sale of specific products could create a conflict of interest. Managers risk encouraging mortgage brokers to advise their clients to take out a particular loan, whereas another loan would better meet the needs of the clients; such a situation is prohibited.

However, firms can offer non-monetary incentives of modest value if they do not have a significant influence on the work and products advised by representatives.

In all situations, registrants must always record incentives in the incentive register.

## EXAMPLES

The following are two examples of financial and non-financial incentives that are prohibited for representatives:

- A product with a higher commission that leads the registrant to recommend it without that product being best suited to the client's needs; or
- A contest or bonus program that influences the choice of products proposed by a registrant to his clients.



### N.B.

The responsible officer of a mortgage brokerage firm must pay specific attention to his relationships with sector stakeholders. For example, lenders that require a certain volume of business in exchange for service could constitute a conflict of interest for the firm. Registrants may be tempted to offer this irrelevant service to clients in order to meet supplier-imposed quotas.

## 4.8 Cybersecurity

To better supervise the work of administrative and support staff, various controls and oversight measures are recommended, particularly in the areas of cybersecurity, protection of personal information, and outsourcing of activities. The objective of these measures is to ensure compliance with the registrant's activities. They apply to all items covered by the *Distribution Act* and its regulations.

### 4.8.1 Controls

Increasingly common cyber attacks have multiple purposes: Obstruction of access to data and services to theft of client data and corporate fraud. Such attacks may include the spread of a computer virus in a 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.

To prevent disruptions to the professional activities of firms and representatives and the related implications for clients, it is recommended that sufficient security measures that are proportionate to the risks incurred be implemented. The responsible officer of a firm must ensure that the firm’s representatives and support staff are aware of real IT risks and trained thereon. Their vigilance is required in all aspects of their work, particularly regarding the information the firm exposes to potential attackers, electronic transmission of documents containing confidential information, or transactions using online service platforms.

Registrants must implement cybersecurity measures that render the firm secure. The requirements are determined by several factors such as the size of the firm, the client base, the technological environment, the level of risk, and the nature of the registrant’s operations.



**TABLE 4.2****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 that are related, among other things, to the use of technology, electronic devices, 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 (continued)**

2) Determine the measures to be taken to protect against cyber risk and manage the identified vulnerabilities.

**For the firm****Implement the previously identified prevention and protective measures**

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

**For employees****Create an awareness and training program**

Implement information security governance and guidelines and IT systems that are designed, for example, to structure the manner in which confidential information is transmitted.

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

Firms and independent representatives must restrict access to sensitive data strictly to those individuals who require it to fulfill their tasks. In addition, to strengthen security practices, they may provide training to assist in recognizing fraudulent transactions, in particular through phishing identification exercises.

**FYI**

The world of cyber threats is expanding exponentially, and new risks are emerging daily. That's why responsible officers must stay informed of publications on this subject, particularly those from the AMF, which issues information bulletins, guides, and cybersecurity guidelines<sup>31</sup> and those from the Canadian Centre for Cyber Security, which specializes on the topic and offers tools and services.

The Canadian Insurance Services Regulatory Organizations (CISRO) have published a reference tool covering the cybersecurity readiness of insurance intermediaries. Entitled *Cybersecurity Readiness*, the document invites firms and independent representatives to develop a cybersecurity culture and proposes various courses of action to help identify cybersecurity measures that can be deployed to mitigate the risk of cyber incidents arising from their activities and to ensure that they are ready to respond to such incidents.

The Mortgage Broker Regulators' Council of Canada (MBRCC) has also published a guide entitled *Principles for Cybersecurity Preparedness*. The objective of the guide is to support cybersecurity preparedness in the mortgage brokering sector by proposing practices to avoid cybersecurity incidents and to properly respond to them when they occur.

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## 4.9 Complaint processing

The processing of complaints is an important aspect of a firm's activities and an invaluable source of information that can help registrants identify areas of non-compliance or to improve its offering of financial products and services. Registrants have an obligation to treat all complaints lodged by clients in a fair manner, be they in written or verbal format.

The *Distribution Act* requires firms to process the complaints filed with it in a fair manner. They must:

- follow a policy for processing complaints filed by clients and for resolving disputes with them; and
- keep a complaint register.

In the event of a complaint, the role of responsible officer is to oversee the handling of disputes and complaints in accordance with legal and regulatory requirements.

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31. Canadian Centre for Cyber Security.

## 4.9.1 Complaint processing and dispute-resolution policy

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### FYI

The *Regulation respecting complaint processing and dispute resolution in the financial sector* will come into force on July 1, 2025. The regulation will provide a framework for how enterprises are required to process and document complaints. It also specifies which elements should be integrated into the complaint processing policy that registrants will have to implement. Responsible officers must ensure that the policy adopted by their firm is updated by July 1, 2025 and that the firm complies with these new requirements.

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The complaint processing policy that must be adopted by firms establishes how registrants process complaints by governing the receipt of complaints, delivery of acknowledgments of receipt to complainants, the creation of complaint records, transfer of complaint records to the AMF where necessary, and complaint reporting to the AMF.

A summary of this policy must be written and available on the firm's website and publicly accessible.



### Legislative or other references

*Distribution Act*, s. 103 and 103.1

The complaint processing and dispute resolution policy must, in particular, set out the characteristics that define a complaint, require a record to be opened for each complaint, and prescribe rules for the keeping of such records.

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A complaint processing and dispute-resolution policy should, in particular, set out:

- the purpose of the policy;
- the contact information of the **person in charge**;
- the **definition** of a complaint;
- the contents of a **complaint record**;
- the process for **processing complaints**; and
- the transfer of complaints and reporting to the AMF.

## 4.9.2 Person in charge of processing complaints

A person in the firm must be responsible for ensuring that complaints are processed in accordance with the policy and for sending a report to the AMF annually. If someone is not appointed to this role, the task will be performed by the responsible officer. Within a firm, all employees and representatives must know that, if they receive a complaint, they must send it to the person in charge.

**TABLE 4.3**

### Steps to follow upon receipt of a complaint

- |          |  |
|----------|--|
| <b>1</b> | <p>Upon receipt of a complaint, a <b>complaint record</b> must be opened and the following information must be submitted:</p> <ul style="list-style-type: none"> <li>• The complaint;</li> <li>• The acknowledgment of receipt;</li> <li>• The final response with supporting arguments; and</li> <li>• The analysis of the complaint and all documents used to respond to it.</li> </ul> <p>The complaint record must be kept up to date.</p> |
| <b>2</b> | <p>Within 10 days of a complaint being recorded in the complaint register, a notice indicating the complaint will be processed must be sent to the complainant.</p>  |
| <b>3</b> | <p>Within a reasonable time, a <b>final response</b> must be provided to the complainant.</p>  |
| <b>4</b> | <p>At the complainant's request, the firm must transfer the complaint record to the AMF without delay.</p>   |

The AMF's expectations concerning the fair processing of complaints are described on the Complaint Examination page of the AMF's<sup>32</sup> website.

The AMF recommends that complaints be processed within a reasonable time. A draft regulation is currently being prepared. Once published, the prescribed deadlines must be respected.

## 4.9.3 The AMF's right to review

At the request of a complainant, a registrant must send the AMF a copy of the complaint record that it created.

The sending to the AMF of a record of all the complaint-related information must be done within a reasonable timeframe.

32. Your complaint examination obligations | AMF (lautorite.qc.ca).

#### 4.9.4 Reconciliation and mediation

When a complaint record is sent to the AMF, the AMF examines it and may, if there are elements in the record authorizing it to do so and with the parties' consent, 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 agreed to by the parties, nothing said or written during any of its sessions is admissible as evidence before a court of law or any person carrying on adjudicative functions. In this regard, the conciliator or mediator cannot be compelled to disclose the content of these sessions, and no one may request access to the documents resulting from them.

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#### 4.9.5 Submitting complaints to the AMF

The period for declaring complaints runs from March 1st to May 1st of each year. Registrants must therefore declare the complaints received between January 1st and December 31st of the preceding year. Harmonized for the entire industry, the process for entering and declaring complaints is accessible via the AMF's E-Services for businesses in the section entitled "Complaint Reporting."

#### 4.9.6 Access to records

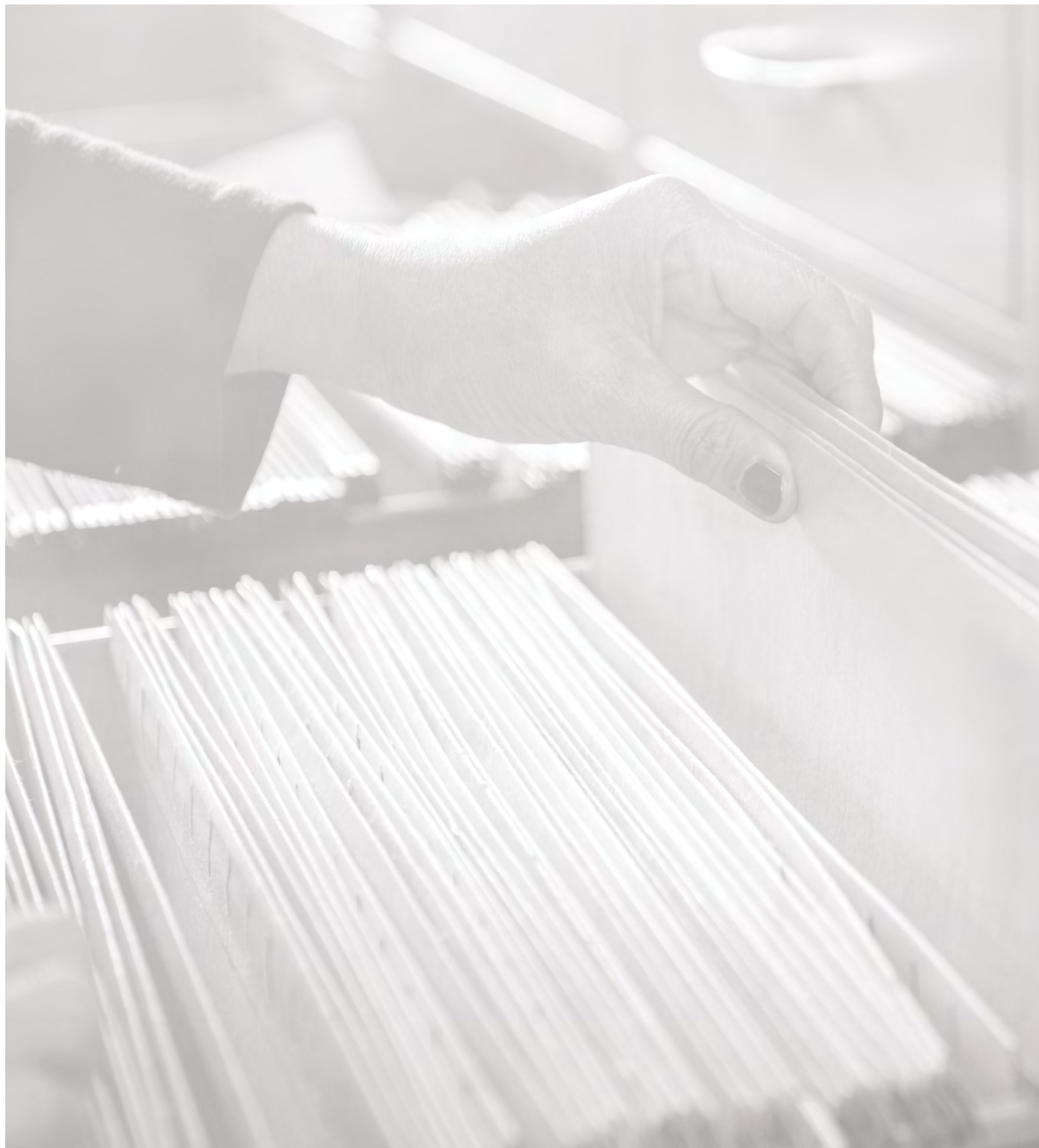
Section 91 of the *Distribution Act* requires registrants to ensure that "representatives have access only to the information necessary for the pursuit of their activities."

Section 92 of the *Distribution Act* states that, if a representative asks a registrant for access to the information that it holds about a client "for purposes unrelated to the object of the file for which the information was collected," the registrant must obtain "specific consent" from this client, that is, "consent collected on a form used solely for that purpose."

As for computer systems, an AMF inspector or investigator may verify the access rights so as to restrict access to the information to authorized persons.

If an AMF investigator finds that a registrant does not adequately protect the personal information of clients, he may report his findings to the *Commission d'accès à l'information*, pursuant to section 113 of the *Distribution Act*.

This completes the rules governing the compliance of the transactions of firms. Accordingly, a major task of a responsible officer is to ensure that his firm, all of its personnel, and its representatives meet all the requirements related to day-to-day operations.



# CHAPTER 5

## Supervision of the activities of a firm

### Competency components

- Integrate into professional practice the rules governing the activities of responsible officers
- Supervise the professional activities of a mortgage brokerage firm

### Competency subcomponents

- Integrate into professional practice the ethical obligations and duties prescribed by the *Act respecting the distribution of financial products and services* and its regulations
- Integrate into professional practice the other obligations and duties of responsible officers that apply to their practice
- Oversee the work of clerical and support staff
- Oversee the professional activities of mortgage brokers
- Validate a mortgage brokerage firm's right to operate



## Supervision of the activities of a firm

A firm and its executive officers must oversee the conduct of the representatives who act on behalf of the firm. They must ensure that representatives do so in compliance with the *Distribution Act* and its regulations.<sup>33</sup> Firms must ensure that their executive officers and employees also carry out their activities in accordance with the *Distribution Act* and its regulations.<sup>34</sup> These obligations must be executed rigorously.

In Chapter 1, the roles and responsibilities of responsible officers were covered, notably the responsibility to supervise a firm's activities. This chapter covers the duty the firm has to supervise the individuals through which it exercises its activities and proposes actions to ensure that those individuals comply with the *Distribution Act* and its regulations.

Responsible officers are specifically tasked with ensuring the implementation of a compliance system that ensures that attached representatives, employees, and service providers who are acting on behalf of a firm respect the law, regulations, and policies and procedures of the firm.

### 5.1 Knowledge of the AMF, other regulators, and actors

To begin with, it should be stressed that responsible officers, who are the authority figures, often become the key spokesperson with the AMF and also with provincial and federal regulators having regulatory and oversight power over the various areas of a firm's activities. Responsible officers must be aware of the existence of these organizations as well as their roles and the roles of their stakeholders. Here are some of these organizations, regulators, and self-regulators with whom responsible officers are likely to interact regularly:

- The *Autorité des marchés financiers* (the AMF) is the organization that oversees the areas of insurance, securities, derivative instruments, deposit institutions—with the exception of banks—and the distribution of financial products and services, including the professional development and ethical training of mortgage brokers as well as the exercise of the activity of credit assessment agent.

Moreover, depending on the sectors in which a registrant is authorized to act, he may be called on to act with various self-regulatory organizations.

- The Canadian Investment Regulatory Organization (CIRO) is a Canada-wide regulatory organization that oversees all investment dealers, mutual fund dealers as well as all trading activity conducted by these dealers on Canada's debt and equity marketplaces.

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33. Section 85 of the *Distribution Act*.

34. Section 86 of the *Distribution Act*.



- The *Chambre de la sécurité financière* (CSF) is a self-regulatory organization that oversees the compulsory professional development, ethics and conduct of its representatives working in insurance of persons, group insurance of persons, brokerage, scholarship plans, group savings plans, and financial planning.
- The *Chambre de l'assurance de dommages* (ChAD) is a self-regulatory organization that supervises the training and ethics of damage insurance agents and brokers as well as claims adjusters.
- The *Institute of Financial Planning* (IFP) awards the financial planning diploma and administers the continuous education of financial planners for the AMF.

As well, in carrying out their activities, firms will likely have to interact with the following organizations:

- The *Commission d'accès à l'information* (CAI) is a tribunal and an oversight body that ensures the application of the *Act respecting the protection of personal information in the private sector*.
- The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is Canada's financial intelligence unit. It facilitates the detection, prevention and deterrence of money laundering and the financing of terrorist activities.

For the most part, registrant activities are overseen by more than one organization. For example, firms operating in the insurance of persons sector are subject to the oversight and control of the AMF, the CAI, and FINTRAC. The CSF, for its part, oversees the professional development and ethics of representatives who act on behalf of a firm.

Firms that operate solely in the sector of mortgage brokerage are governed primarily by the AMF, the CAI, and, potentially, FINTRAC. The product and service distribution activities of a damage insurance firm or agency are overseen by the AMF, whereas the ChAD ensures the professional development and ethics of its representatives. The CAI controls, for its part, the collection of personal information about the clients of a registrant.

It isn't always easy to disentangle the powers of the various regulatory organizations. Nevertheless, responsible officers must be able to do so and acquire a knowledge of their roles, the roles of their stakeholders (inspectors, investigators, etc.) and the services offered (publications, registers, guides, information centres, etc.) in order, specifically, to ensure an adequate follow-up on any request from them. In so doing, responsible officers can refer to the correct resources as needed and provide the requested information, when needed. To summarize, responsible officers must:

- understand the expectations of regulatory organizations and, in particular, those of the AMF, for example, by reading the guides, notices, guidelines, bulletins and publications made available to them;

- react diligently to any requests made by such organizations (for example, a responsible officer may need to act as a resource person if the AMF initiates an inspection process of a firm's activities, or merely asks it by letter or email to provide information or documents); and
- understand the difference between the roles (for example, of an employee following up on the maintenance of a firm's registration and that of an inspector or an investigator).

## 5.2 Obligations towards clients

The objective of the *Distribution Act* is to ensure the protection of the clients of a firm and the protection of the general public. To achieve this objective, it requires firms to supervise its executive officers, employees, and representatives. The responsible officer plays a key role in this obligation to supervise these individuals and could be held responsible, along with the firm, for any breach of this obligation. Failure to exercise or adequately execute such supervision could require the AMF to intervene.

As well, with regards to civil liability, section 80 of the *Distribution Act* specifically stipulates that a firm is responsible for any injury caused to a client by the fault of one of its attached representatives in the performance of the representative's functions. That said, the firm retains remedies available to it against the representative's concerned.

## 5.3 Officers of a firm

The executive officers of a firm are usually, but not required to be, its shareholders and directors. They manage and make important decisions for the firm and on its behalf.

Executive officers must respect the law and regulations that apply to a firm's activities, ensure that they themselves comply with the law and regulations, and adopt measures and resolutions to ensure that the representatives, employees, and service providers acting on the firm's behalf also comply therewith.

### 5.3.1 Honesty, loyalty, care, and competence

As seen in Chapter 1, section 84 of the *Distribution Act* requires all executive officers of a firm to act with honesty, loyalty, care, and competence in their dealings with clients; these requirements apply to responsible officers from the very outset.

The executive officers of a firm act with honesty and loyalty in their dealings with the firm's clients, notably by making decisions on the board of directors and by ensuring that the firm and individuals acting on its behalf:

- avoid conflicts of interest;
- introduce themselves consistently to consumers and clients;

- advertise the firm’s activities in accordance with the rules—and without inducing the consumer into error; and
- disclose mandatory information to consumers and provide them with any relevant or useful information.

For independent representatives, the obligation to act with honesty and loyalty in their dealings with clients is set out in section 16 of the *Distribution Act*.

Section 84 of the *Distribution Act* also requires executive officers of the firm to act with care and competence. This obligation is notably met when executive officers:

- ensure the compliance of the activities of the firm and its representatives;
- stay informed of the changes that affect the firm by, for example, reading the AMF’s *Le Bulletin* documents and *Info-Conformité* documents, which report on regulatory changes and consultations about draft regulations, the notices published by the AMF, disciplinary notices, and best practices recommended by the AMF;
- read communications transmitted by the AMF, through E-Services or otherwise;
- ensure that the firm maintains an adequate record;
- ensure that the firm is maintaining adequate accounting;
- ensure that the regulatory registers are being kept correctly;
- ensure the protection of the information that the firm and its stakeholders keep about clients and the employees, as required, regardless of the support platforms on which this information is kept (e.g., computerized or paper records); and
- ensure the sound management of risks and adopt a continuity plan.

The key mandate of a responsible officer is to make sure that, at all times, its practices and those of the firm, the executive officers, representatives, and employees are honest and loyal towards clients, and that the firm’s culture and values promote the fair treatment of consumers. The implementation of an effective compliance program is one way for responsible officers to do so.



### Legislative or other references

*Distribution Act, s. 84*

All firms and their executive officers are bound to act with honesty and loyalty in dealings with clients.

They must act with care and competence.

*Distribution Act, s. 16*

All representatives are bound to act with honesty and loyalty in their dealings with clients.

They must act with competence and professional integrity.

*Distribution Act, s. 79*

The Authority may also refuse registration where the applicant for registration or a director or executive officer of the applicant does not, in the opinion of the Authority, show the required honesty, competence or solvency.

### 5.3.2 Availability and diligence

Responsible officers must also ensure that attached representatives serve clients in a timely and useful manner and demonstrate diligence in their regard.

Because executive officers are generally board of director members, they must take the necessary measures to fulfill this obligation of availability and diligence and to ensure that such obligations are respected and reflected in their client dealings.

Responsible officers must ensure that such measures are implemented and that the individuals acting on behalf of a firm are serving clients in a timely and diligent manner.

In addition to the positive obligations described in the previous sections, the *Distribution Act* imposes a restriction on a registrant's officers: in no case may officers "help or, by encouragement, advice or consent, or by an authorization or order, induce another firm, an independent representative or an independent partnership to infringe any provision of this Act or the regulations," as indicated in section 87 of the *Distribution Act* for firms and their executive officers and in section 138 of the *Distribution Act* for independent representatives.



### Legislative or other references

*Distribution Act, s. 87*

In no case may a firm or its executive officers help or, by encouragement, advice, or consent, or by an authorization or order, induce another firm, an independent representative or an independent partnership to infringe any provision of this Act or its provisions.

*Distribution Act, s. 138*

In no case may an independent representative or a representative who is a partner in or employee of an independent partnership help or, by encouragement, advice or consent, or by an authorization or order, induce a representative, a firm or an independent partnership to infringe any provision of this Act or the regulations.

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## 5.4 Representatives

A representative is a natural person who acts on behalf of a firm or registers as an independent representative. He must offer financial products or services in accordance with the rules of conduct imposed by the *Distribution Act* and its regulations, including the codes of ethics.

As mentioned above, a firm and its executive officers must oversee the conduct of their representatives and ensure that they act in accordance with the law and its regulations. In addition, with respect to civil liability, section 80 of the *Distribution Act* specifically states 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.” That being said, the firm retains remedies available to it against the representative concerned.

It is therefore important for firms to implement policies, procedures, and control measures that enable responsible officers to guarantee adequate supervision of the representatives.

### 5.4.1 Honesty, loyalty, competence, and professionalism

A representative, like a firm and its executive officers, must demonstrate honesty and loyalty when exercising his activities. This obligation is found in the law and is detailed in the regulations governing the exercise of representative activities as well as in the code of ethics applicable to their activities.

One of the obligations, for representatives, stemming from honesty and loyalty, is to avoid an actual or potential conflict of interest situation. A representative might place himself in a potential conflict of interest when his professional or personal interests are incompatible or divergent with a client's interests. He risks not acting in the fundamental interest of the client and placing his own interests first.

The obligation to avoid conflicts of interest is essential to ensuring the fair treatment of consumers. Responsible officers must therefore ensure that the representatives attached to a firm avoid such situations. Different measures can be used to prevent such conflicts (for example, the implementation of a procedure that proactively identifies potential conflict-of-interest situations in which a representative might find himself and the creation of control measures that help to identify such conflicts should they arise). If he notices a conflict of interest, a responsible officer must intervene to end and appropriately resolve the situation; in certain cases, the representative will have to cease serving the client.

Conflicts of interest are a matter of fact. The situation must be objectively examined to determine whether it is an actual or potential conflict (for example, situations where the representative has a degree of influence that could lead him to favour his own interests over the client's interests). Money is an obvious factor that could lead to a conflict of interest or the appearance of one, but so is the awarding of titles and the resulting prestige or the possibility of obtaining free training or training at little cost, etc. These factors should help representatives determine if the situation places them in a position of influence. The ethical rules applicable to representatives identify certain situations that clearly present conflicts of interest. For example, representatives in the insurance of persons sector may not:

- advise a client to invest in a legal person, partnership or property in which he has, directly or indirectly, an interest; or
- conduct any transaction or enter into any agreement, in the capacity of insurance of persons representative with a client for whom he acts as dative tutor, curator, or adviser to a person of full age within the meaning of the *Civil Code of Québec*.<sup>35</sup>

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35. Section 19 of the *Code of Ethics of the CSF*.

## EXAMPLES

As for acts not specifically set out in the code of ethics, listed below are some examples of conflicts of interest:

- A borrowing from a client or a loan from a representative to his client;
- A benefit offered to a client, such as gifts or charitable donations, in exchange for financial products of services or, conversely, a benefit offered by a client to a representative; and
- A job or outside activity that could give rise to a conflict of interest or the appearance of one (as explained in the section covering outside activities exercised by representatives).

Certain situations that solely have an appearance of conflict of interest must be avoided. For example, when a representative acts as both the liquidator of a succession and financial security advisor for this same succession. In most cases, this situation creates a conflict of interest between the interest of the heirs and those of the financial security advisor, who wears two hats. However, this may not be the case, for example, if the representative is the sole heir to a non-deficit succession.





### Legislative or other references

#### *Distribution Act, s. 16*

All representatives are bound to act with honesty and loyalty in their dealings with clients.

They must act with competence and professional integrity.

#### *Distribution Act, s. 84*

All firms and their executive officers are bound to act with honesty and loyalty in dealings with clients.

They must act with care and competence.

#### *Distribution Act, s. 85*

A firm and its executive officers shall oversee the conduct of the firm's representatives. They shall ensure that the representatives comply with this Act and the regulations.

#### *Distribution Act, s. 86*

The firm shall ensure that its executive officers and employees comply with this Act and the regulations.

#### *Regulation respecting the pursuit of activities as a representative, s. 16.5 and 16.6*

16.5 Mortgage brokers must act with independence in respect of their clients and in their clients' best interests.

To that end, they must subordinate their personal interests and the interests of any other person or company to their clients' interests and must not let their judgment be subject to any pressure whatsoever.

16.6 Mortgage brokers must not place themselves in a conflict of interest.



**Legislative or other references (continued)**

*Code of Ethics of the CSF, s. 18 to 22*

18. A representative must, in the practice of his profession, always remain independent and avoid any conflict of interest.
19. A representative must subordinate his personal interests to those of his client or any potential client. Without limiting the generality of the foregoing, the representative:
  - (1) may not advise a client to invest in a legal person, partnership or property in which he has, directly or indirectly, a significant interest;
  - (2) may not conduct any transaction or enter into any agreement or contract whatsoever with a client who, manifestly, is unable to manage his affairs, unless the decisions to conduct these transactions or enter into these agreements or contracts are made by persons who may legally decide in lieu of this client;
  - (3) may not conduct any transaction or enter into any agreement or contract whatsoever in the capacity of representative with respect to a client for whom he acts as dative tutor, curator or adviser within the meaning of the *Civil Code*.
20. A representative must be objective when his client or any potential client asks him for information. He must express opinions and make recommendations objectively and impartially, without considering his personal interest.
21. A representative must ignore any intervention by a third party that could influence the way in which he performs the duties related to his practice to the detriment of a client or any potential client.
22. A representative must not pay or undertake to pay to a person who is not a representative any compensation, any remuneration or any other advantage, except where permitted by the *Act respecting the distribution of financial products and services* (chapter D-9.2).

**Legislative or other references (continued)**

*Code of ethics of damage insurance representatives, s. 10 to 19*

10. A damage insurance representative must avoid placing himself, directly or indirectly, in a situation in which he would have a conflict of interest. Without limiting the generality of the foregoing, a representative would be in a situation of conflict of interest where:
    - (1) the existing interests are such that he might favour some of them over those of his client or his judgment and loyalty towards his client might be adversely affected;
    - (2) he obtains a current or future personal benefit, directly or indirectly, for a given act.
  11. A damage insurance representative must support any measure designed to protect the public.
  12. A damage insurance representative must support any measure likely to improve the quality of service in the field in which he carries on his activities.
  13. A damage insurance representative must promote measures designed to provide education and information in the field in which he carries on his activities.
  14. The conduct of a damage insurance representative must be characterized by objectivity, discretion, moderation and dignity.
  15. No representative shall, in any manner whatsoever, make any representations which are false, misleading or liable to be misleading.
  16. A damage insurance representative must avoid any misrepresentations as to his level of competence or the effectiveness of his services or those of his firm or independent partnership.
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**Legislative or other references (continued)**

17. Before accepting a mandate, a damage insurance representative must take into account the limits of his abilities and knowledge and the means available to him. He must not undertake or continue a mandate for which he does not have the necessary skills without obtaining the proper assistance.
18. A damage insurance representative must not advise his client not to consult another representative or another person of his choosing.
19. A damage insurance representative must always place the interests of the insured and of all prospective clients before his own interests and those of any other person or institution.

*Code of ethics of claims adjusters, s. 9, 11 and 28*

9. Claims adjusters must avoid placing themselves, directly or indirectly, in a situation of conflict of interest. Without limiting the generality of the foregoing, a claims adjuster would be in a situation of conflict of interest where:
    - (1) the interests involved are such that the claims adjuster may tend to favour certain interests over those of the client, or the claims adjuster's judgment and loyalty towards the client may be adversely affected;
    - (2) the claims adjuster a current or future personal benefit, directly or indirectly, for a particular act.
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### **Legislative or other references (continued)**

11. Claims adjusters must not:
    - (1) have a personal interest in the settlement of a claim;
    - (2) derive or seek to derive personal benefit from a matter entrusted to them, other than their remuneration;
    - (3) ask anyone, except a client or client’s representatives, to inform them of an event giving rise to a claim;
    - (4) obtain or attempt to obtain details concerning an insurance policy from any person other than a client or client’s representatives, with a view to having the settlement of claim entrusted to them; or
    - (5) advise an insured, a claimant, a client or a third party against consulting another representative or another person of their choice.
  
  28. Claims adjusters may not be the mandatary of both the insurer and the insured at the same time.
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Responsible officers must therefore ensure that a firm’s practices do not create situations where representatives find themselves trapped between their interests and those of their clients. A firm’s code of ethics or specific conflict-of-interest policy are tools that can help achieve this goal.

Among other things, a responsible officer must ensure that any financial incentives adapted by a firm or offered by business partners to stimulate sales will not cause any conflicts of interest among representatives and clients.<sup>36</sup> To prevent, detect, and avoid such situations, the responsible officer must ensure that the firm:

- analyzes its expectations, practices, or activities (for example, the financial and non-financial incentives established or agreed upon, its relationships with other entities of a same financial group, its other commercial agreements or outside activities (double employment)), as needed, in order to determine whether or not they are likely to create conflicts of interest;

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36. An AMF document entitled *Managing Conflict of Interest Risk in Relation to Incentives* describes the conflict of interest risks arising from financial and non-financial incentives.

- establish benchmarks or clear standards (for example, maximum thresholds related to financial incentives) in order to mitigate conflicts of interest. These benchmarks and standards should frequently be reassessed; and
- negotiate and sign distribution agreements in accordance with the established benchmarks and standards.

## 5.4.2 Availability and diligence

A representative must, during his certificate validity period, demonstrate availability and diligence towards his clients when exercising his activities as a representative.



### Legislative or other references

*Regulation respecting the pursuit of activities as a representative, s. 4*

During the period of validity of his certificate, a representative must comply with the following conditions governing the pursuit of activities:

- (1) he must demonstrate availability and diligence;
- [...]

As for availability, a representative may work part time for a firm or have a limited volume of clients if, when active, he is available for his clientele and serves them effectively.

This rule of availability also applies when the person does not dedicate themselves exclusively to the activities of representative and exercises another activity.<sup>37</sup> The exercise of other activities, remunerated or not, by a representative is limited by his obligation to remain available to his clients.

In this regard, the role of responsible officer is to ensure that each representative attached to a firm can adequately serve his clients.

## 5.4.3 Representation and solicitation

A representative must follow precise rules when presenting himself to a client, either in person or remotely.<sup>38</sup> In fact, the regulation requires that he use the titles of the sectors or the titles of classes of sectors appearing on his certificate. Thus, during a first meeting with a client, a representative must provide a document (usually a business card but could be a simple sheet of paper and, when remotely, electronic information, including a digital signature) indicating the following items:

37. Notice on the application of the *Regulation respecting the pursuit of activities as a representative*, R.R.Q., c. D-9.2, r. 10 (Act respecting the distribution of financial products and services).

38. Section 12 of the *Regulation respecting the pursuit of activities as a representative*.

- The representative's name, main business address, telephone number and, as required, electronic mail address;
- The titles and abbreviations he is authorized to use; and
- The name of the firm or independent partnership for whom the representative is acting or, if he is registered as an independent representative, the indication of "independent representative."<sup>39</sup>

This document or any other written representation (including social media) may also contain other information provided that it does not cause confusion, is related to the pursuit of activities as a representative, and is compatible with the pursuit of those activities.

**FYI**

Some of the representative's education or qualifications, his years of experience in the sector where he exercises his activities, or a description of the products and services he offers may be indicated in the document given to the client.<sup>40</sup>

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**N.B.**

When representatives contact clients remotely, they 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*.

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Responsible officers may ensure compliance with these requirements by enacting procedures that inform representatives on how to present themselves to clients or, for example, by verifying the content of business cards or electronic signatures before they are used by representatives.<sup>41</sup>

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39. Section 10 of the *Regulation respecting the pursuit of activities as a representative*.

40. Section 11 of the *Regulation respecting the pursuit of activities as a representative*.

41. See also *The Representations Guide* ([lautorite.qc.ca](http://lautorite.qc.ca)).

#### 5.4.4 Prospecting and advertising

Representations likely to cause confusion or use of wording that could cause confusion (such as a slogan or trademark) are prohibited.

Also prohibited are representations about a representative's income or financial performance or representations that boast about results he cannot deliver.

##### EXAMPLE

Georges is an insurance of persons representative who posts, everywhere on social media, that he provides clients with a temporary 10-year life insurance policy at the lowest price on the market.

Because he cannot guarantee such a result, he must not conduct this type of advertising. This type of behaviour is prohibited.

Also, representatives must indicate the source of any statistic used in their written representations.

Responsible officers can refer to the *Representations Guide*<sup>42</sup> published by the AMF to ensure that representatives attached to a firm fulfill this obligation.

#### 5.4.5 Traditional media and social media

While firms, representatives, and, generally speaking, financial services professionals still use traditional media such as newspapers, magazines, or radio to advertise their services, social media networks such as LinkedIn, Facebook, Instagram, or TikTok are increasingly gaining importance. Representatives advertise on these platforms to reach potential clients, often in a way that is distinct from the firm to which they are attached.

The use of all media formats requires compliance with the previously reviewed advertising rules. However, special attention must be paid to social media, as it is a showcase that could pose a reputation risk that projects the image of the representative and, thus, the firm to which he is attached. For example, a representative who expresses a hate-filled opinion in an article, news story, or a trade publication has damaging effects on the firm's reputation. Responsible officers must be aware that current and future clients use such media to learn more about the representative and the firm even before meeting them for the first time.

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42. *Representations Guide* ([lautorite.qc.ca](http://autorite.qc.ca)).

The role of responsible officer is to control what is in his power, to be aware of anything likely to damage the reputation of the firm and its representatives, to react promptly to any observed risk, and to seek help from professionals as soon as material risks surface.

Two types of policies must be put in place: One for the firm and the other for its employees.

- The policy pertaining to employees—certified or not—aims at governing their activities and presence on social media, and it reminds representatives, in particular, of the ethical obligations arising from their code of ethics.
- The policy of a firm may define the firm’s guidelines, identify its own presence on the web, and indicate the approvals needed before a post mentioning it can be put online. A form of monitoring could also be put in place.

A responsible officer must monitor his firm’s policies to avoid frustrating situations. For example, he may require representatives to separate their personal and professional profiles so as to maintain a professional image and request approval for their profiles. The responsible officer must also ensure that advertisements do not provide any information that is false, misleading, or likely to cause confusion.

Here are the points that a responsible officer must verify:

- Separation of personal (private) vs. professional profiles;
- Presentation using exact titles and name of the firm;
- Compliance with policies pertaining to social media of insurers and the firm;
- Compliance with the regulations governing representations and advertising applicable to representatives and firms;
- Offers and advice pertaining to the sectors of representatives;
- Prevention of misleading representations or representations that could cause confusion; and
- Citation of sources when publishing statistics.



## 5.5 Employees and service providers

The *Distribution Act* does not govern the employees of a firm and the service providers with whom the firm does business. That being said, employees must not, through their acts or omissions, violate the laws or regulation applicable to the firm. Thus, the responsible officer must ensure that they:

- do not use reserved titles;<sup>43</sup>
- do not take actions that are reserved for representatives (for example, offering a financial product to a client or providing them with advice on the product);
- do not hinder the work of an inspector or investigator (for example, by refusing to answer questions or by destroying or deleting information that is subject to an investigation);
- protect the information of clients; and
- serve clients in a timely manner.



### Legislative or other references

*Distribution Act*, s. 12

Subject to the provisions of Title VIII, no person may act as or purport to be a representative without holding the appropriate certificate issued by the Authority.

[...]

*Distribution Act*, s. 111

No person may hinder the work of an inspector, in particular by misleading the inspector.

*Distribution Act*, s. 342

No person may hinder the work of a person conducting an inquiry, in particular by misleading that person.

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## 5.6 Governance and compliance with a registrant's activities

The governance of an enterprise can be defined as the set of rules, decisions, and practices aimed at ensuring optimal functioning of the enterprise. It applies to both representatives registered as independent representatives as well as to enterprises registered as firms. With respect to firms, governance is the responsibility of the board of directors and, in this particular case, the executive officers of the firm.

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43. Sections 44 and 56 of the *Distribution Act*.

Compliance is the set of preventive procedures adopted and deployed by an enterprise designed to help it comply with the law and regulations and avoid exposing itself to the risk of non-compliance.

### 5.6.1 Compliance program

Registrants must establish a compliance program that covers the nature and scope of its activities. This program should ensure that their activities are carried out in accordance with the *Distribution Act*.

The program must consist of written policies, control measures, training, and oversight of the registrant's full range of activities. Independent representatives may adapt the best compliance practices recommended below to their particular reality. The AMF specifies its expectations of independent representatives in the *Governance and Compliance Guide for Registrants*.<sup>44</sup> For example, rather than establishing policies and procedures, an independent representative could develop and use checklists that ensure he is meeting legislative and regulatory obligations in his pursuit of activities as a registrant and representative.

Independent representatives can also decide to outsource their compliance activities, in particular to a firm. But, ultimately, the independent representative remains responsible.

A firm's adoption of compliance policies and procedures is a necessary and essential practice to ensure compliance with the law and regulatory framework applicable to the firm and its attached representatives, directors, executive officers, partners, and employees.

Policies and procedures are distinct but complementary aspects of a program. Policies can be defined as a set of general principles adopted by a registrant for the pursuit of its activities and that cover a given topic (for example, in a privacy policy, protect the information stored in a laptop). As for procedures, they represent the methodology or steps to follow to obtain a desired result (for example, creating a strong password for accessing a laptop, locking the screen after three minutes, etc.). Thus, a compliance program comprises these two aspects, which are tools to be used by registrants and to be made available to representatives and their employees to manage the risks related to their activities, specifically risks that are recurring and by nature harmful to clients. Note that the adoption of such a program is not an obligation specified by the *Distribution Act* (aside from the adoption of complaint processing and dispute-settlement policies covered hereafter). However, implementing a compliance program is one of the best practices that can be adopted to help a firm and its executive officers to fulfill their obligation of ensuring compliance with the *Distribution Act* and its regulations by representatives and employees. Other laws that also apply to a firm's activities entail an obligation, for registrants, to implement policies and procedures on specific topics, such as the protection of personal information.

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44. *Governance and Compliance Guide for Registrants / 3rd edition* (lautorite.qc.ca).

Given that the responsible officer is the compliance champion of a firm's activities, he is responsible for the application of the registrant's compliance program. Certain aspects thereof can be entrusted to another person, preferably someone connected to the firm; however, the responsible officer is not relieved of his supervision and governance responsibilities. Also, ensuring compliance must remain everybody's business and not only that of the compliance officer and employees assigned to compliance activities.

The officer in charge of a registrant's compliance must create, update and periodically revise the compliance program, including the compliance policies and procedures designed to ensure the fair treatment of consumers. He must ensure that the program is adapted to the size of the registrant, to the number of its attached representatives, to its employees, and to its service providers. Also, he must consider the complexity of the registrant's activities, the number of sectors in which it is registered, and its risk profile.

Specifically, whether these tasks are performed personally by the responsible officer or assigned to another person, the responsible officer must ensure that the registrant adopts certain policies and procedures on:

- the selection of attached representatives, their competency, the pursuit of their activities, and declaration of irregularities concerning them;
- conflicts of interest;
- adequate keeping of client records;
- the financial situation and needs analyses of clients;
- the disclosures made to consumers, specifically those about remuneration and business relationships;
- the maintenance of adequate accounting, including management of a separate account; and
- the processing of complaints, which is a legal obligation set out under section 103 of the *Distribution Act*.

The long list of regulatory obligations translates into a multitude of details that are difficult to control without the effective implementation of a compliance program. The adoption of policies and procedures is the firm's responsibility and thus, that of its executive officers, but once adopted, policies and procedures must be forwarded to employees, attached representatives, and even service providers. Consequently, the registrant's board of directors must assign the mandate to a person, usually the responsible officer. This is done to ensure that the policies and procedures are effectively applied and firmly integrated into the firm's daily activities. The program must not simply remain written documents that the executive officers are content to simply adopt with no more effect.

In addition to the adoption and integration of these policies and procedures, responsible officers must also ensure the effectiveness thereof and check that the goals are being achieved, i.e., compliance with regulations and protection of consumers. Responsible officers must adopt control and oversight measures that can detect any breaches of the *Distribution Act* or its regulations by representatives and employees or that can identify any weaknesses in the compliance program. If major weaknesses are observed, responsible officers must be free to conduct strict follow-up, require the implementation of corrective measures, and ensure follow-up and maintenance over time. In the case of recurring or serious violations of the policies and procedures, the responsible officer must have the power to enforce serious actions.

Responsible officers must also inform senior management, executive officers, or the board of directors of any weaknesses that pose a material risk to the registrant, notably recurring risks or those that harm the client.

Lastly, as for the compliance program, responsible officers must present to senior management or the board an annual report on the compliance of the registrant's activities.

The registrant must plan for the replacement of the responsible officer in the event of an absence or impossibility to act.

### **5.6.2 Competencies of responsible officers**

A registrant's director of compliance must have sufficient experience and knowledge to fulfill his mandate. At the very least, he must be familiar with the legislative and regulatory framework applicable to the registrant. Practically speaking, he must know what and when to check certain compliance aspects.

### **5.6.3 Independence of responsible officers**

A registrant's compliance director must have the independence, powers, and resources necessary to carry out his mandate. In addition, he must have access to senior management or to the board of directors of the registrant to communicate sufficient and relevant information about compliance management, where necessary.

## 5.7 Business continuity plan (BCP)

Certain events can paralyze the activities of a firm or those of an independent representative and, in turn, adversely affect clients.

Depending on the size of a firm, the disability or death of a key person could significantly impact the operations of the firm and force them to cease activities, in particular if the representative subject to the situation is the only one attached to one of the sectors for which it is registered. In fact, in this situation, the firm can no longer act in this or these sectors.

Here's a recent example: The pandemic. While the occurrence of such a natural disaster was, until very recently, deemed highly unlikely by many people, the executive officers and representatives of firms were clearly able to see the short – and medium-term impacts of the pandemic. This pandemic changed how financial services professionals exercised their activities and tested everyone's capacity to adapt. The registrants who had previously adopted a business continuity plan (BCP) were ready to respond. They knew what to do, who to contact, and how to act in this situation. Consequently, their activities in general were able to resume more quickly and easily than those who had no BCP in place. These days, the usefulness of a BCP is no longer in doubt.

The implementation of a BCP is a good preventive practice that is likely to limit the harm caused to employees, representatives, partners, suppliers, and clients when a major event or disaster occurs. Apart from a pandemic, such events could include cyber attacks, breakdowns of operating systems, or interruptions to a major service that limits access to data.

The role of a BCP is to ensure that critical activities continue at a minimum level with a tolerable interruption duration, in particular when the usual resources are not available. A BCP may, for example, cover the following topics:

- Development of policies, procedures, action plans, emergency measures, reliability tests, updates, etc.;
- Awareness, training, etc.;
- Software, hardware, databases, networks, etc.;
- Infrastructures, recovery sites, etc.;
- Risks for the registrant and remedies, such as the action plans;
- Identification of major stakeholders (e.g., key employees, business partners and main service providers);
- Communication plan (e.g. role of every individual and deployment mechanism);

- Employee training and awareness; and
- Different places to keep the BCP (including access management) and the contact information of stakeholders.

A BCP must be written in clear terms. It must easily guide everyone called upon to intervene and clearly describe how the plan is to be quickly deployed in the event of unforeseen or disastrous events that could affect the registrant's activities. The BCP must also be reviewed and updated regularly. Simulations could be used to test its effectiveness. Lastly, the BCP must also be accompanied by a communication plan that informs employees and representatives about the role they will be required to play and to do so in a timely manner.

While the adoption of a BCP is the responsibility of the board of directors and its executive officers, the responsible officer, or a person under his responsibility, must be responsible for implementing, updating, and disseminating it. The registrant must therefore mandate him to do so.

## **5.8 Training and supervision**

Knowledge of the rules, policies, and procedures and the application thereof to the daily activities of a firm is one of the key aspects of supervision. Accordingly, responsible officers must arrange training sessions for people acting on behalf of the firm, namely, attached representatives, employees, and service providers. A best practice is to survey representatives about their training needs on these rules, policies, and procedures, to organize them, remain abreast of the training sessions offered, promote them or propose them over time. The training and supervision of people acting on behalf of the firm are two vital tools that cannot be separated. New employees and representatives must also receive training when they start. There is also room to plan for an update and to see that they are followed by everyone.

### **5.8.1 Employees**

Registrants may have employees, certified or not, working for them. Thus, within a same firm are certified salaried representatives and attached representatives not employed by the firm, but who are instead independent workers for tax purposes (not to be confused with independent representatives, who are not attached to a firm).

Other employees, such as assistants, technicians or others, occupy support positions that are essential to the proper functioning of the registrant.

Employees generally have access to client information and sensitive documentation. The following section examines the training and supervision of non-certified employees.

### 5.8.1.1 Oversight

Responsible officers must ensure that all employees, regardless of their status (employee, administrative staff, manager, etc.) adhere to the laws and regulations applicable to the firm. Ensuring compliance with the firm's policies and procedures is one way of achieving this objective.

The size of a firm could require the managers to assume the oversight role with the employees, but this does not remove the responsible officer from his obligations. Ultimately, it is the responsible officer's role to oversee the managers and ensure that all employees adhere to the law and its regulations.

### 5.8.1.2 Employee compliance with policies and procedures

The policies and procedures adopted by a firm are, in general, summaries of the legal obligations that the firm and representatives must respect as well as best practices for treating consumers fairly. If all of a firm's employees follow and comply with the policies and procedures, the responsible officer can feel confident that the firm is compliant with the law and its regulation.

The responsible officer must deploy control and oversight measures that ensure compliance with the regulations (for example, random risk-oriented checks of certain tasks such as the keeping of records, the notes on transactions, the entries of information in the commission register, as well as the recording of conversations between an assistant and client when collecting information, etc.).

### 5.8.1.3 Delegation – Acts that can be delegated to a non-certified employee

A non-certified employee can gather, at the request of a representative, the factual information about a client's situation. Such information-gathering must be properly conducted, because, in all instance, the representative is responsible.

The representative must ensure that the collection of information is conducted in a neutral and unbiased manner (for example, in the way the questions are asked), to ensure the reliability of the information gathered. He must also review the information and determine those elements likely to impact his analysis of the client's situation and, as needed, contact the client to obtain clarification to complete the information gathering.

A non-certified employee cannot, however, decide on the opportunity for the client to disclose, or not, certain information, provide them with explanations, or make comments likely to influence them. Such acts risk being mixed up with those that only the representative can perform in this context.

Conversely, a representative cannot delegate his obligation to advise to a non-certified person. A consumer who communicates with a registrant may therefore expect a certified representative to provide them with advice. The AMF considers advice to be the following: Discussing the choice of insurance coverage or a mortgage loan with a client, recommending to clients an insurance product or mortgage loan, and presenting clients with the results of his analysis. For more details on this subject, additional examples of what the AMF considers to constitute advice and examples of activities suitable to a certified representative or, conversely, activities that could be exercised by non-certified persons, refer to the AMF's *Notice regarding information collection and insurance advice* or its page covering the collection of information and mortgage brokerage advice.<sup>45</sup>

#### **5.8.1.4 Training on policies and procedures (representatives, executive officers, and employees)**

As seen previously, the responsible officer must ensure the development, implementation, and application of a firm's policies and procedures (for example, policies covering conflicts of interest, reserved actions, cybersecurity rules, advertising rules, representations, client solicitation, and record keeping).

The responsible officer must ensure the development of a training program addressing policies and procedures that is designed for employees and that helps them understand the importance of the regulations, the implementation thereof, the firm's expectations about them, and the risks incurred by the registrant should employees fail to comply.

The responsible officer must also ensure that employees have taken the training sessions (for example, the attendance sheet for in-person training or software applications that count the number of minutes of online presence of a participant). Lastly, the responsible officer must ensure that the information has been understood and absorbed (for example, using a questionnaire about the training). Over time, the responsible officer must also plan for the distribution of information or recurrent reminders on various topics so as to keep employees abreast of best practices and updates made to the registrant's policies and procedures.

### **5.8.2 Representatives**

To ensure the continuous supervision of all representatives through which the firm acts, the responsible officer should ensure:

- compliance with the requirements applicable to certificate renewal (for example, obligations to take compulsory training, to have liability insurance, etc.);

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45. *Notice regarding information collection and insurance advice* ([lautorite.qc.ca](http://autorite.qc.ca)) and *Collecte de renseignements et conseil* | AMF ([lautorite.qc.ca](http://lautorite.qc.ca)).



- the representative's integrity and honesty (for example, by monitoring ongoing investigations or pending accusations in disciplinary or criminal matters); and
- the compliance of representatives in the pursuit of their activities, specifically with respect to the expected competency with the products offered.

Responsible officers must continuously supervise a representative who has little experience in the sector or who has been the subject of a disciplinary penalty. For example, during a time period deemed necessary by the responsible officer, a representative's client needs analysis and recommendations may be reviewed prior to being proposed to the client.

As well, in the event of a mistake or incident, a firm's responsible officer must properly assess the resulting risk, communicate it to the firm's executive officers so that action may be taken to limit this risk. The protection of consumers of financial products and services should guide the responsible officer in this assessment.

Responsible officers must follow-up on incidents, for example, by revising a policy or procedure, supervising more closely, providing training to representatives, or providing support to the representative who made the compliance mistake. In the latter scenario, a plan could be put in place to support the representative, monitor the appropriateness of his professional activities, and document the support framework. In certain cases, a single incident may suffice and give the firm legitimate reasons to no longer act through a representative. In other cases, the recurrence of compliance mistakes or incidents can justify a firm putting an end to its business relationship with a representative.

### **5.8.2.1 Compliance of client records**

Keeping thorough records is a key aspect of compliant practice. As seen in Chapter 4, registrants must keep a record for each client. Responsible officers must therefore ensure compliance with this record-keeping obligation of representatives through sufficient supervision of client records (for example, by asking them to make a list of documents (*checklist*) that are in the records or an audit of certain records). Specific requirements about the content of records apply, depending on the sectors or classes of sectors, but generally speaking, the following points should be observed:

- Keep records in a safe and orderly manner;
- Have all of the information needed to understand the overall portrait of the client's situation. A record is considered as being complete if it provides an overall portrait of the client's situation upon reviewing the content. Consequently, a client record must also include the representative's notes:
  - a complete analysis of the client's needs; and
  - legible and understandable notes of the representative after a meeting or conversation with the client.

Registrants must include, in the client record, proof attesting to the fact that each document has been provided to the client. This could take the form of an acknowledgement of receipt or, if the document was sent by email, a read receipt.



### **Legislative or other references**

*The following sections refer to the general and specific requirements related to keeping and accessing client records:*

*Distribution Act, s. 88, 89 and 91*

*Regulation respecting firms, independent representatives and independent partnerships, s. 12 to 17 and 20 and 21*

*Regulation respecting the keeping and preservation of books and registers, s. 13, 15, 16 and 18*

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Sound record-keeping also makes it easier to supervise representatives, in particular to ensure that they are adequately fulfilling their obligations, i.e., collecting information, analyzing needs, providing advice, and informing clients according to their circumstances and sector. In particular, representatives must:

- notify their client about their remuneration when they require fair and reasonable compensation for the services rendered;
- issue a notice of rescission of an insurance contract;
- give their client a notice informing them of their freedom to do business with the insurer or representative of his choice when underwriting an insurance contract to guarantee the repayment of a loan;
- disclose their business relationships;
- disclose the names of insurers for whom they are authorized to offer products; and
- disclose the names of insurers for whom they are authorized to offer products, at the request of the client.

Generally speaking, representatives must provide their clients with all useful and necessary information.

As for responsible officers, they must ensure compliance with these regulations using timely or random verifications or specialized software or computer tools (for example, client relationship management (CRM)).

## 5.9 Conditions for strict or close supervision by the AMF

As explained in Chapter 3, if, according to the AMF, a non-compliant or illegal practice of a representative poses a risk to the protection of the public, it may apply a condition of either strict or close supervision (depending on the severity of the situation) to the representative's right to practise.

In both cases, the AMF subjects a representative's right to practise to a condition of supervision to prevent that individual from breaching the law and its regulations. Without this supervision, the representative will no longer have the capacity to act as a representative.

In such a situation, the firm makes a commitment to the AMF to supervise and oversee the representative's work. The responsible officer, or another certified representative appointed by the responsible officer, must act in the capacity of supervisor. He must take this role very seriously, since it ensures the protection of the public and integrity of financial markets. In particular, the supervisor must examine and review (and even approve, in the case of strict supervision) the transactions of the representative under supervision and document everything in a declaration form pertaining to a condition of supervision or in a detailed report. The firm must keep a copy of the declaration. This documentation must be sent to the AMF upon request, when the supervision is close or, according to specified intervals, if it is strict supervision. It must be sent to the AMF when the supervisor reports problems concerning the transactions carried out by the representative (if he is subject to complaints from clients or if he violates the law, code of ethics, or the firm's policies and procedures).

The AMF has high expectations regarding the supervision of representatives whose certificate is bound by conditions, because, as mentioned above, the imposition of conditions is a way to ensure the protection of the public. This task of supervision must not be taken lightly, failing which the supervisor may, in the future, be prohibited from supervising a representative. The supervisor may even be subject to an administrative penalty if the supervision is not conducted according to the supervisor's commitment and the AMF's expectations.<sup>46</sup>

## 5.10 Monitoring of conditions for the right to practise

A firm is authorized to offer financial products and services only through representatives certified in their sector. If a representative is attached to a firm, he must absolutely hold an in-force certificate. One way to make sure of this is to verify if the representative's name appears in the AMF's register and, also, if the certificate is subject to conditions.

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46. *Autorité des marchés financiers c. Infinitem Succession et Patrimoine Inc.*, 2023 QCTMF 2.  
*Autorité des marchés financiers c. Bernard*, 2022 QCTMF 9.  
*Autorité des marchés financiers c. R. Beauchamp & Laplante Courtiers d'assurances Inc.*, 2015-002.

Subsequently, the responsible officer must ensure that each representative maintains his right to practise his activities throughout his period of attachment to the firm. The implementation of a monitoring system helps to confirm that each representative attached to the firm is fulfilling his certificate renewal conditions within the prescribed deadlines. The responsible officer may therefore ensure that no representative is in a situation where he is exercising his activities illegally during a period in which his certificate is not valid.

Other measures also help firms to avoid such situations (for example, by removing the defaulting representative's access to client files and the firm's systems. Also, sending a notice informing the defaulting representative to cease from acting or presenting himself as a representative until the default situation has been resolved to avoid any illegal practice of activities).

### 5.10.1 Renewal of a certificate

Each year, representatives must send the AMF a certificate renewal application. They must satisfy certain specific obligations before the AMF grants the renewal, including compulsory training, obtaining liability insurance coverage, and the payment of fees. They must also satisfy the requirements of honesty and integrity.

It is the representative's responsibility, and not that of the firm or responsible officer, to ask the AMF to renew his certificate and to pay his fees before the deadline.

- For representatives attached to a firm, the certificate renewal is done by means of a personalized form sent by the AMF.
- For independent representatives, certificate renewal is done at the same time as the maintenance of registration and by way of a personalized form sent by the AMF.
- A representative who has ceased his activities and who would like to reinstate his certificate can refer to the Reinstatement<sup>47</sup> page of the AMF's website for more information on the applicable terms and conditions.

Responsible officers are responsible for checking that representatives have renewed their certificate. A copy of the certificate issued by the AMF and a verification of the register will reassure the responsible officer of compliance in these matters.

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47. Reinstatement | AMF ([lautorite.qc.ca](http://autorite.qc.ca)).

### 5.10.2 Professional liability insurance (errors and omissions)

Firms or independent representatives must maintain uninterrupted professional liability insurance that is consistent with the regulatory requirements to cover their responsibility as well as the responsibilities of their mandataries, employees or the trainees of representatives.

Such requirements were modified on June 1, 2023 so that two new ones could be added.

Going forward, insurance coverage must include gross fault. In fact, the liability insurance policies must not contain any exclusion clause for gross fault. The insurance coverage must also include a compliance clause further to which the insurance contract includes guarantees at least equal to those required by regulation.

Transitional measures have been provided for in a number of situations detailed in the notice of publication, which can be consulted in the AMF's *Le Bulletin*.<sup>48</sup>

Since January 27, 2024, registrants no longer need to provide proof of professional liability to maintain their registration (except upon the AMF's request). However, each year, registrants must send a declaration stating that they maintain liability insurance consistent with the regulatory requirements.

When a firm acts through representatives that are not its employees, it must declare that these representatives are covered by such insurance. To do so, the responsible officer of the firm must complete this declaration and obtain and keep the proof that representatives are covered by professional liability insurance coverage that is consistent with these requirements.

The liability insurance declaration is done by means of a maintenance form.

Under certain circumstances and for the purpose of verifying compliance with insurance policies, the AMF may ask a registrant to provide, within a 30-day period, proof of the maintenance of insurance.



#### FYI

The administrative requirement that requires insurers to declare to the AMF, twice annually, modifications made (or absence thereof) to the wording of liability insurance policies will be withdrawn on June 1, 2024.

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48. *Bulletin de l'Autorité des marchés financiers* – vol. 19, n° 48 – 3-2.pdf (lautorite.qc.ca).

When a representative acts on behalf of a firm without being one of its employees, the firm must ensure that this representative is also covered by professional liability insurance consistent with regulatory requirements for as long as the representative acts on behalf of this firm. These requirements are set out in the *Regulation respecting the pursuit of activities as a representative*.



### Legislative or other references

*Regulation respecting the pursuit of activities as a representative, s. 17*

The insurance contract covering the professional liability of a representative acting on behalf of, but not employed by, a firm must provide for the following;

- (1) a minimum coverage amount of \$500,000 per claim and \$1,000,000 per year;
  - (2) that any deductible amount not stipulated in the contract may not exceed \$10,000;
  - (3) express stipulations to the effect that:
    - a) coverage is provided for liability arising from the fault, including gross fault, errors, negligence, or omissions committed by the representative in pursuing activities as a representative, or arising from the fault, errors, negligence, or omissions committed by the representative's mandataries, employees or trainees in the performance of their duties, regardless of whether or not such persons are still so engaged on the date of the claim;
    - b) the coverage provided in respect of the activities of the representative during the period for which the contract is in effect will continue to apply beyond the period of insurance provided for in the contract for a further term of 5 years, in respect of all the activities contemplated by such coverage, from the date on which the representative ceases, temporarily or permanently, to pursue activities, whether or not he has died;
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**Legislative or other references (continued)**

- c) the insurer must advise the Authority of its intention not to renew the contract or to terminate the contract 30 days prior to the date of non-renewal or termination;
- d) the insurer must notify the Authority upon receiving from the representative notice of non-renewal or termination of an insurance contract;
- e) the insurer must notify the Authority upon receiving any claim under the contract, regardless of whether the insurer decides to honour the claim;
- f) the contract is considered to include coverage at least equal to the coverage required by the law applicable in Québec and to satisfy the conditions set out in this Regulation.

*Distribution Act, s. 76*

Legal persons who register as firms must establish that they have subscribed for liability insurance that is consistent with the requirements determined by regulation. They must also establish that every representative acting on their behalf without being an employee has liability insurance that is consistent with the requirements determined by regulation.

*Distribution Act, s. 82*

No legal person that has failed to comply with section 71.1, 74, 76 or 77 may claim or receive remuneration for products sold or services rendered during that period.

*Distribution Act, s. 83*

A firm must, while registered, maintain liability insurance that is consistent with the requirements determined by regulation. The firm must also ensure that every representative acting on its behalf without being an employee carries liability insurance that is consistent with the requirements determined by regulation.

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

*Distribution Act, s. 131*

Representatives who register as independent representatives must establish that they have subscribed for liability insurance that is consistent with the requirements determined by regulation.

Partnerships that register as independent partnerships must do likewise with respect to their partners and the representatives employed by them.

*Distribution Act, s. 136*

Independent representatives must, while registered, maintain liability insurance that is consistent with the requirements determined by regulation.

Independent partnerships must do likewise with respect to their partners and the representatives they employ.

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### **5.10.3 Compulsory professional development**

Professional development is compulsory for all representatives who wish to maintain their right to practise issued by the AMF. If a representative does not comply with the compulsory professional development rules, his right to practise will be suspended for the sectors or classes of sectors for which he is in default.

Representatives must accumulate a prescribed number of professional development units (PDUs) per two-year period. Each hour of training generally gives a right to one PDU. The number of PDUs required varies for each sector. The websites of the AMF, the *Chambre de la sécurité financière*, the *Chambre de l'assurance de dommages* and the *Institute of Financial Planning* provide specific information on this topic. An attestation confirming attendance at a training session can be entered directly in the PDU record of representatives.

Responsible officers must encourage representatives not to wait until the last minute to complete their professional development requirements. They may also ensure follow-up, remind representative of the importance of complying with these obligations, and give them access to training sessions that yield PDUs.



In the mortgage brokerage sector, responsible officers must accumulate, in addition to PDUs as a mortgage broker, six (6) compulsory training units specific to their tasks as responsible officer. These PDUs address compliance, ethics, professional conduct or practice, record – and register-keeping, risk management, the prevention of fraud or money laundering, or firm start-up and management.

The following table clarifies the number of PDUs required for a responsible officer in the mortgage brokerage sector for a two-year period.



**TABLE 5.1**  
**Breakdown of PDUs**

<b>Mortgage brokers</b>	<b>Total: 24 PDUs</b>
<p><b>3 PDUs</b> related to training activities pertaining to compliance with standards, ethics and professional conduct or professional practice pertaining to the pursuit of mortgage brokerage activities.</p>	
<p><b>21 PDUs</b> related to training activities included among the following subjects:</p> <ul style="list-style-type: none"> <li>• the legislative and regulatory framework for the pursuit of activities as a mortgage broker;</li> <li>• ethics, professional conduct and professional practice of mortgage brokers;</li> <li>• keeping of records and registers;</li> <li>• developments in the mortgage market;</li> <li>• financing products secured by immovable hypothec or the underwriting standards for such products;</li> <li>• mortgage brokerage;</li> <li>• personal and business accounting;</li> <li>• individual and business credit;</li> <li>• mortgage insurance;</li> <li>• risk management;</li> <li>• prevention of fraud or money laundering;</li> <li>• new technologies associated with mortgage brokerage, financial services or financial technologies;</li> <li>• firm start-up and management; and</li> <li>• management of human, material, information or financial resources.</li> </ul>	
<b>+</b>	
<b>Responsible officers</b>	<b>Total: 30 PDUs</b>
<p><b>6 PDUs</b> related to training activities covering the following subjects in addition to the preceding <b>24 PDUs</b>:</p> <ul style="list-style-type: none"> <li>• compliance with standards;</li> <li>• ethics, professional conduct and professional practice;</li> <li>• keeping of records and registers;</li> <li>• risk management;</li> <li>• prevention of fraud or money laundering; and</li> <li>• firm start-up and management.</li> </ul>	

To maintain their registration in the mortgage brokerage sector, responsible officers must, just like the other mortgage brokers in their firm, satisfy the conditions set out by the regulations.<sup>49</sup> The registrant must make a declaration attesting to this fact.

The firm, or independent representative himself, must preserve and keep an up-to-date record on the responsible officer, entering the following information therein:

1. A document confirming that the responsible officer passed the examinations pertaining to the skills that he must possess;
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.

## 5.11 Documentation regarding general supervision

Responsible officers are advised to use control documents to ensure that they have properly fulfilled their supervisory obligations in a diligent and orderly manner. Responsible officers must also record their actions and interventions. Such records could be used to show regulators that measures are regularly taken to verify that the firm is assuming its responsibilities and that it is in compliance with the law and regulations.

### 5.11.1 Checklists

Control and supervision measures must be written out and accessible to attached representatives, directors, executive officers, partners, or employees, and their nature and application frequency must be provided. The approach must validate the appropriateness of professional activities and be risk-oriented.

Control and supervision measures may, for example, take the form of random or timely verifications of client records:

- Verifying the notes, transactions, analysis documents used for recommendations, conservation of proofs of remittance of mandatory documents. (Thus, if the responsible officer does not personally conduct these verifications, he must be able to rely on someone to ensure, for example, with the aid of a very specific checklist, the performance of these tasks by representatives. The person who verifies a record may ensure, for example, that an analysis of the client's needs has been done and that the actions arising therefrom comply and match the specified needs.);

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49. Sections 2, 4 and 6 of the Regulation respecting the compulsory professional development of mortgage brokers.

- Verifying good compliance practices applied to the most at-risk activities (e.g., those that have specific requirements or obligations with regards to certain products or situations, in particular private loans, policy replacements, leverage strategies, or the acquisition of certain investment products) or on the topic of recurring complaints; and
- Verifying the knowledge of policies and procedures using brief periodic questionnaires.

Responsible officers must be certain that such control and supervision measures are well documented and subject to proper follow-up. In fact, a firm's policies and procedures must stipulate that any material weakness (such as an insufficient recommendation or incomplete needs analyses) are subject to a more strict follow-up and that weaknesses that pose a material risk for the firm (e.g., those that are recurring or any other weakness that could harm the client) must be sent to senior management or the board of directors.

### 5.11.2 Supervision reports

As previously seen, a firm's responsible officer or the certified representative appointed by the responsible officer who agrees to supervise a representative under supervision must examine, check, and sometimes even approve each of the transactions conducted by the representative subject to a supervision condition.

#### 5.11.2.1 Close supervision report

In a situation of close supervision, a firm must review, once a week, each transaction of the representative under supervision.

The AMF's expectations for close supervision are found in the close supervision instructions set out in the *Statement Regarding Close Supervision*<sup>50</sup> form.

Once this review is complete, the responsible officer and supervisor must complete, on a monthly basis, the *Statement Regarding Close Supervision*, which indicates the transactions carried out by this representative.<sup>51</sup> This Statement must be kept in the records and sent to the AMF **upon request** or immediately if compliance or complaint issues concerning these transactions are identified.

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50. *Statement Regarding Close Supervision* | AMF (lautorite.qc.ca).

51. See the *Statement Regarding Close Supervision* form.

### 5.11.2.2 Strict supervision report

The strict supervision report is similar to the close supervision report, the difference being that, when a representative is subject to a condition of strict supervision, each transaction carried out by him must be approved beforehand by the firm.

Once this review is complete, the responsible officer and supervisor must complete, on a monthly basis, the *Statement Regarding Strict Supervision*, which indicates the transactions completed by the representative.<sup>52</sup> This Statement must be kept in the records and then **sent, on a monthly basis**, to the AMF —and not simply upon request. A statement indicating the transactions conducted by this representative must also be kept in the records.

### 5.11.3 Meeting reports

Responsible officers must document their meetings with employees and attached representatives. These reports need not be drafted according to a specific format but must report the essential facts about a meeting (for example, the presentation of a new policy or procedure, explanation of new regulations, or application of special or corrective measures). When a representative is subject to a disciplinary measure, a report of the meeting and, subsequently, any follow-ups must be included therein. In severe cases, a report describing disciplinary measure imposed on the representative must also be prepared.



52. See the *Statement Regarding Strict Supervision* form.

### **5.11.4 Schedule of compulsory training**

As seen previously, a representative's right to practise is conditional to following compulsory training and obtaining PDUs.

To help representatives fulfill this obligation, the responsible officer must, for each representative, keep a register of the training taken during the reference period along with proof of the representative's participation (usually, a certificate signed by the trainer).

If the responsible officer wants to be proactive, he may encourage the representatives to take part in periodic compulsory training sessions. As already mentioned, if the responsible officer has conducted a training needs analysis for his representatives and keeps a register of the training sessions being offered, he may then easily offer, over time, relevant training to meet those needs. To do so, the responsible officer must communicate with the trainers and, preferably, select timely topics of interest. By providing representatives and employees with a schedule of future training sessions, the responsible officer is helping them to integrate this training into their agenda and to organize their time to participate therein.

## **5.12 Outsourcing**

In its *Outsourcing Risk Management Guideline*, which is addressed to financial institutions, the AMF reminds readers of the importance of adopting sound outsourcing risk management practices. Registrants may refer to the document for guidance in this area.

In this guideline, outsourcing is defined as delegating to a service provider, over a defined period, the performance and management of a function, activity, or process that is or could be undertaken (in this case, by the registrant) by the financial institution itself.

To incorporate these principles, the executive officers of a firm must evaluate certain items before deciding to outsource a task.

- Assess the outsourcing opportunity to determine the scope of the risk:
  - cost of the outsourcing arrangement compared with the overall expenses assumed by the firm;
  - scope of the outsourced activity as regards, for example, its contribution to revenues and profits; and
  - degree of difficulty and time needed to replace the service provider or undertake the outsourced activity internally within the firm;
- Verify the degree of expertise and capabilities of the service provider;
- Document the outsourcing arrangement;
- Follow up on outsourcing arrangements;

- Identify and assess the outsourcing risks:
  - impacts of a deficiency in the outsourced activity on the firm’s financial condition, operations, or reputation;
  - the firm’s ability to comply with regulatory requirements when faced with issues related to the outsourcing activity; and
  - risk of concentration where the firm outsources several activities to a single service provider.
- Manage the continuity of activities (ensure that the reliance on service providers is not detrimental to the firm’s activities); and
- If the outsourcing activity involves the use of personal information, the outsourcing arrangement must include a disclosure to the registrant of incidents that could pose a threat to such information, as described in the next chapter.

This concludes the chapter on the supervision of the activities of firms.



# CHAPTER 6

## **Supervision of the activities of a mortgage broker**

### **Competency components**

- Integrate into professional practice the rules governing the activities of responsible officers
- Supervise the professional activities of a mortgage brokerage firm

### **Competency subcomponents**

- Integrate into professional practice the ethical obligations and duties prescribed by the *Act respecting the distribution of financial products and services* and its regulations
- Integrate into professional practice the other obligations and duties of responsible officers that apply to their practice
- Oversee the professional activities of mortgage brokers



## Supervision of the activities of a mortgage broker

A mortgage broker is a representative within the meaning of section 1 of the *Distribution Act*. Section 11.1 of the *Distribution Act* specifies that a “mortgage broker is a natural person who, for others and in return for remuneration that is contingent on the making of a loan secured by immovable hypothec, engages in a brokerage transaction relating to such a loan.” Therefore, in order to introduce oneself as a mortgage broker, act in this capacity, or receive remuneration contingent on the making of a loan secured by an immovable hypothec, a person must hold a mortgage broker certificate issued by the AMF. That person must therefore comply with the provisions in the *Distribution Act* and its regulations.

Mortgage brokers must comply with the general provisions set out in the *Distribution Act*, which apply to all representatives, as well as the specific provisions applicable to mortgage brokers. Moreover, to engage in a mortgage brokerage transaction, they are required to adhere to the provisions set out in the *Regulation respecting the pursuit of activities as a representative* in addition to those included in other regulations such as the *Regulation respecting the compulsory professional development of mortgage brokers* or the *Regulation respecting the issuance and renewal of representatives’ certificates*.

As explained in Chapter 5, a firm and its officers, including the responsible officer, must take reasonable steps to allow the persons authorized to act for them, such as mortgage brokers and also employees or service providers, to comply with the provisions of the *Distribution Act* and its regulations when pursuing activities on behalf of the firm.

If a mortgage broker violates a provision of the *Distribution Act* or one of its regulations, the Financial Markets Administrative Tribunal (the Tribunal) could impose significant administrative or other penalties. In fact, the Tribunal may revoke or suspend a mortgage brokerage firm’s registration or subject it to restrictions or conditions if, for example, this firm does not properly supervise the mortgage brokers attached to it. The same applies to a certificate held by a mortgage broker who violates the *Distribution Act* or its regulations. The Tribunal could also prohibit one of the firm’s directors or the responsible officer from acting in this capacity for a maximum of five years.

The Tribunal can impose a maximum administrative penalty of \$2,000,000 per offence, plus fees. Moreover, any mortgage broker who violates the rules of conduct that apply to him could face an administrative penalty imposed by the Tribunal of between \$2,000 and \$50,000 for each offence.

Where criminal provisions are concerned (when the Crown attorney or the AMF institutes proceedings), the court may impose fines upon “anyone” who violates a provision of the *Distribution Act* or one of its regulations. The mortgage broker, the responsible officer as well as the firm itself can face fines of between \$2,000 and \$150,000 in the case of a natural person (e.g., a mortgage broker, director, or responsible officer with the firm) and between \$3,000 and \$200,000 in the case of a legal person (the firm). The fines can also be imposed on individuals who encourage, order or advise someone to commit an offence.



### Legislative or other references

*Distribution Act*, s. 488

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.*

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## 6.1 Representation and client solicitation

As seen in previous chapters, mortgage brokers must follow the general rules governing representations made when meeting with clients.



### FYI

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

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### 6.1.1 Business cards

In addition, when meeting a client for the first time, a mortgage broker is required to submit a document such as a business card—in paper, digital or other format—that indicates the following information:<sup>53</sup>

1. His name;
2. His main business address, business telephone number, and electronic mail address, if any;
3. The name of the firm or independent partnership on whose behalf he is acting or the description “independent representative,” as the case may be; and
4. The titles under *An Act respecting the distribution of financial products and services* (chapter D-9.2) that he is authorized to use in respect of the firm or independent partnership on whose behalf he is acting as an independent representative, as the case may be.

This document may contain other information provided that such information does not cause confusion, is related to the pursuit of mortgage brokerage activities, and is not incompatible with those activities. For example, the mortgage broker’s education and other qualifications, as well as the person’s titles, could be provided, in addition to the person’s number of years of experience in each sector in which he is pursuing activities and a description of the products and services being offered.<sup>54</sup>

Mortgage brokers sometimes pursue activities in partnership or collaboration with others or as part of a team. Business cards can indicate this under certain conditions. The AMF has published a *Representations Guide*.<sup>55</sup> *Complying with your obligations when communicating with clients*, indicating how this information can be presented on a mortgage broker’s business card.

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53. Section 10 of the *Regulation respecting the pursuit of activities as a representative*.

54. Section 11 of the *Regulation respecting the pursuit of activities as a representative*.

55. *Representations Guide* (lautorite.qc.ca).

Responsible officers must ensure that all information included on a business card meets the regulatory requirements.

## EXAMPLE

### Jacques Untel

Mortgage broker, Independent Representative

In partnership with: XYZ – Firm in Mortgage Brokerage

999 2nd Avenue

La Pic (Québec) G1G 1G1

Tel. 000 000-0000

Fax. 000 000-0001

info@info.ca

Untel@untel.com



### N.B.

For activities not governed by the *Distribution Act* (e.g., a symposium), mortgage brokers who solicit clients must identify their title.

## 6.2 Advertising

Mortgage brokers are subject to the same rules as other representatives when advertising their services. They are also subject to the same restrictions, namely:

- They must not provide statistics in advertising materials without indicating the source.
- They are prohibited from disclosing their income or financial performance.
- They must not appear to promise results that they are unable to obtain for clients.
- They must refrain from making representations or using a trademark, slogan, or symbol that is likely to cause confusion.

They must not add qualifiers such as “emeritus,” “senior,” “expert,” or “specialist” to their professional titles.<sup>56</sup>

- Obviously, they must not make false or misleading representations.<sup>57</sup>

### EXAMPLE

Francis, a mortgage broker, 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.

### EXAMPLE

Sarah, a mortgage broker, presents a table with some very low interest rates in an advertisement on her LinkedIn and Facebook pages. To comply with the rules, she must provide the source (e.g., name of the financial institution offering these rates) in addition to the date of the offer and the eligibility criteria.

## 6.2.1 Traditional media and social media

As seen in Chapter 5, all representatives must follow the rules for newspaper, radio, or television advertisements (i.e., traditional media) or when advertising on social media (LinkedIn, Facebook, TikTok, etc.), and the responsible officer must pay close attention to the information being advertised, just like for other forms of advertising (e.g., business cards, pamphlets, newspaper advertisements, etc.) For example, a representative or firm cannot use the AMF logo on a website, just like prohibited titles or qualifiers must not be used.<sup>58</sup>

56. See examples in section 4.6 of the *Representations Guide*:  
<https://lautorite.qc.ca/fileadmin/lautorite/professionnels/obligations/guide-representations-an.pdf>.

57. Sections 13, 14 and 16.3 of the *Regulation respecting the pursuit of activities as a representative* and section 469.1 of the *Distribution Act*.

58. <https://lautorite.qc.ca/fileadmin/lautorite/professionnels/obligations/guide-representations-an.pdf>.

More specifically related to mortgage brokerage activities, section 16.2 of the *Regulation respecting the pursuit of activities as a representative* requires that mortgage brokers act with respect and integrity as well as with prudence, diligence, objectivity, and discretion. This means that the responsible officer must promote best practices within the firm, foster awareness among representatives, and ensure that statements such as the following are not made on the professional profile of a mortgage broker's social media accounts, since doing so could lead to a breach of the rules:

- Comments that are in poor taste or that can be subject to interpretation (including jokes);
- Disparaging remarks based on race, gender, sexual orientation, national origin or ethnicity, nationality, employment, or health status;
- Material that could be considered obscene, pornographic, vulgar, or offensive;
- Comments inciting someone to commit illegal acts or including links to something that is illegal;
- Comments that violate Canadian and Québec laws and regulations;
- Defamatory or potentially defamatory statements;
- Comments that show disrespect for different points of view (including political opinions and religious beliefs);
- Comments including personal information that could reveal the identity of a citizen other than the person who made the comment;
- Comments that include gratuitous or excessive swearing; and
- Comments made in a language other than English or French.

### **6.3 Rules governing mortgage brokerage transactions**

Different rules apply to mortgage brokers who are engaging in a brokerage transaction: Presenting their services, collecting information, knowing their client and proposing a mortgage loan.

Mortgage brokers engage in the activity called "mortgage brokerage," which generally consists of finding a loan secured by an immovable hypothec that is suited to the client's needs. This involves five steps:

**Step 1**

The mortgage broker must acquire good knowledge of the mortgage products that are available to clients, which includes:

- looking for available sources of mortgage financing;
- staying informed about new products that are available to clients; and
- examining and analyzing the eligibility criteria and terms and conditions required by lenders.

**Step 2**

The mortgage broker must introduce himself to the client, which includes:

- explaining what he agrees to do for the client;
- explaining how he is paid for his services; and
- providing other information as required under the regulations.

**Step 3**

The mortgage broker must know his client, which involves:

- verifying the client's identity and legal capacity;
- asking about the client's situation, determining the client's needs and gathering the necessary information; and
- analyzing and understanding the client's situation in order to be able to recommend a suitable product.

**Step 4**

The mortgage broker must properly advise his client while providing all the information and explanations needed so that an informed decision can be made before the loan is made, thereby allowing the client to:

- understand the characteristics and conditions of the proposed loan as well as the type of mortgage;
- understand the role played by the insurer, if applicable, and the eligibility criteria;
- anticipate the fees for obtaining this loan; and
- be familiar with the penalties that apply in the event of a failure to comply with the contract terms.<sup>59</sup>

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59. Sections 58.1 to 58.4 of the *Distribution Act*.

**Step 5**

The mortgage broker submits the loan application to the lender while:

- including the information needed for the loan application, according to the lender's requirements;
- helping the client to complete the forms and other documents required by the lender; and
- submitting the mortgage loan application to the lender in accordance with the client's financial situation.

The responsible officer must ensure that the mortgage broker is upholding these obligations.

**6.4 Disclosure**

In addition to explaining his services to the client, a mortgage broker must provide various information about his remuneration and the lenders with which he and his firm do business. This information is essential, allowing the client to understand the services being offered by the broker and to decide whether or not to do business with him.

Provided in writing, this information could be included in a mortgage brokerage contract or disclosed on a form separate from any other document provided to the client.

**6.4.1 Disclosure related to remuneration**

Before presenting his services, a mortgage broker must inform the client, in writing, about how he is remunerated, indicating:

- the compensation claimed for the services he renders to the client, if applicable, and the conditions on which the compensation may be claimed; and
- the remuneration or any other benefit received from the mortgage lender or any other party for services rendered, as the case may be, without being required to disclose the amount thereof.



**EXAMPLE**

Fethi, a mortgage broker, bills clients for compensation when offering a private loan. He takes a few minutes to explain the loan application and the eligibility criteria. He has gotten into the habit of informing his clients of the amount of his remuneration, explaining how and when the amount should be paid. Fethi always encourages his clients to ask questions about his remuneration, which is a best practice.

A mortgage broker must forthwith make a written disclosure to the client of any change in his method of remuneration.

When proposing a loan secured by an immovable hypothec to a client, a mortgage broker must disclose:

- the nature of the remuneration or any other benefit that he will receive if the loan is made, if applicable.
- the nature of any other remuneration or any other benefit that he may receive with respect to the proposed loan; and
- the sharing of the commission, if applicable, and the name of the person sharing the commission.

If he is guiding the client, a mortgage broker must disclose the fact that he may share the commission.

All of this information must be disclosed to the client in writing. Moreover, the broker must provide all the necessary explanations to ensure that the client clearly understands the situation.

In fact, according to the rules of ethics applicable to mortgage brokers, they must provide all the necessary explanations to clients to ensure that clients fully understand their remuneration.

In addition, if they charge clients to open a file, they must state this fact and provide all the necessary information.

## 6.4.2 Remuneration advances

A mortgage broker who charges compensation to a client may request that the amount be paid in advance, either in whole or in part, before beginning to provide the service. These conditions must be disclosed to the client in writing. The amounts must be deposited in a separate account, since they do not yet belong to the mortgage broker. In addition, the amounts must be recorded in the register for the separate account maintained by the firm.

A mortgage broker can receive this remuneration only once the services for which the advance was required have been provided.



### Legislative or other references

*Regulation respecting the pursuit of activities as a representative, s. 9.3 to 9.5, 16.11 and 16.12*

9.3 A mortgage broker must, before services are rendered, make a written disclosure of his method of remuneration to the client, indicating:

- (1) the compensation claimed for the services he renders to the client, if applicable, and the conditions on which the compensation may be claimed; and
- (2) the fact that he receives remuneration or any other benefit from the mortgage lender or any person for the services he renders to him, if applicable.

A mortgage broker must forthwith make a written disclosure to the client of any change in his method of remuneration.

9.4 When a mortgage broker proposes a loan secured by immovable hypothec to a client, he must 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; and
- (3) The fact that he intends to share his commission, if applicable, and the name of the person sharing the commission.

**Legislative or other references (continued)**

- 9.5 When a mortgage broker refers a client, he must disclose in writing to the client that he may receive a share of a commission, if applicable.
- 16.7 Mortgage brokers must be transparent in respect of their clients. They must, in particular, explain the nature and scope of their services and, if applicable, the services provided by the firm or independent partnership on behalf of which they act, to enable clients to understand and evaluate their services.
- 16.11 Mortgage brokers must provide their clients with the explanations that they need to understand their remuneration.
- 16.12 The compensation claimed by the mortgage broker must be fair and reasonable given the services rendered.

**6.4.3 Disclosures related to mortgage lenders**

A mortgage broker must disclose to the client, in writing, information about the mortgage lenders with which he does business.

First, the broker must immediately inform the client of the number of lenders that made mortgage loans resulting in a brokerage transaction within the last 12 months. He must also disclose the number of mortgage lenders with which the firm on behalf of which he acts has engaged in a mortgage brokerage transaction during this same period.

The broker must also immediately provide the client with the name of the mortgage lender that, if applicable, made more than 50% of the total number of mortgage loans or renewals, or mortgage renewals for which he engaged in a transaction in the past 12 months or for which the firm on behalf of which he acts engaged in the brokerage transaction over the past 12 months.

**FYI**

Mortgage brokers must, before proposing a loan to their client, disclose to him, in the manner determined by regulation, the names of lenders with whom their clients have entered into a loan agreement. They must also disclose other information that may be prescribed by regulation. The manner in which such disclosures should be made, as well as the related information, will be clarified by the AMF in a regulation.

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Moreover, when a mortgage broker has a business relationship with the lender that is offering a loan to his client, or when the firm on behalf of which he acts has such a relationship, the mortgage broker must disclose that relationship to his client.

A business relationships constitutes any direct or indirect interest held by a lender in the ownership of a firm or held by a firm in the ownership of a lender.

**Legislative or other references**

*Distribution Act, s. 58.3*

Mortgage brokers must, before proposing a loan to their client, disclose to him or her, in the manner determined by regulation, the names of lenders with whom their clients have entered into a loan agreement, together with the other information prescribed by regulation.

*Distribution Act, s. 58.4*

Mortgage brokers must, when they have, or when the independent partnership or firm for which they act has, a business relationship with the lender who offers a loan to their client, disclose that relationship to their client.

Any direct or indirect interest held by a lender in the ownership of a firm or held by a firm in the ownership of a lender, and the granting by a lender of any benefit or other interest determined by regulation, constitutes a business relationship.

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**Legislative or other references (continued)**

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

A mortgage broker must forthwith make a written disclosure of the following information to the client:

- (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.

As for responsible officers, they must ensure compliance with these rules (for example, by performing random inspections or spot checks or by using specialized software or tools such as client relationship management (CRM) systems). They could also make available to mortgage brokers standard forms that include the information that brokers are required to disclose to clients.

## 6.5 Knowing the client

As previously mentioned, a client's personal information must be collected in accordance with the *Act respecting the protection of personal information in the private sector*.

### 6.5.1 Verifying the client's identity and capacity

Mortgage brokers must verify the identity and capacity of their clients and the other parties involved in the proposed transaction. They are only required to verify whether a client is the person who he claims to be—not whether he is able to give consent.

However, when there are doubts as to a client’s ability to obtain a mortgage loan, a mortgage broker must be prudent and obtain information from his firm or other resources to provide proper assistance to the client.



**FYI**

A mortgage broker who sees signs of vulnerability of a client could refer to *A practical guide for the financial services industry: Protecting vulnerable clients*.<sup>60</sup> The broker and the responsible officer must also take training on financial and material mistreatment, which will also give them 1 PDU for fraud prevention.



60. *Practical guide for the financial services industry* (lautorite.qc.ca).

Information about a borrower's identity must be included in the client record. If a mortgage broker does not meet with the borrower in person, he must include, in the client record, the documents that made it possible to verify the borrower's identity.

All of these verifications must be properly documented in the client record.



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### Legislative or other references

#### *Regulation respecting the pursuit of activities as a representative*

9.8 A mortgage broker must identify and ascertain the identity of the borrower, the mortgage lender and, if applicable, of the surety and other parties to the proposed transaction.

He must record the information relating to the identity of the borrower.

9.9 A mortgage broker must verify and ascertain the legal capacity of the borrower or the borrower's representative to enter into the proposed transaction and the legal capacity of the mortgage lender and, if applicable, of the surety and other parties to the transaction.

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

[...]

The client records that must be kept by firms, independent representatives or independent partnerships registered in the sector of mortgage brokerage in respect of each of their clients in the pursuit of their activities must include the following information:

[...]

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**Legislative or other references (continued)**

- 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;

[...]

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.

**6.5.2 Collecting information on the client's situation and needs**

Mortgage brokers must ask about a client's situation to assess his needs. They must ask all questions that they believe to be relevant with regard to the client, his situation, and his financial knowledge.

Among other things, they must know for which immovable property the loan is being sought, the amount that the client would like to borrow, and the other loan characteristics and terms and conditions. Mortgage brokers must gather information about the client's financial situation, notably his income, credit history, and ability to repay the loan.

All of this information must be included in a document that is dated and included in the client record.

Mortgage brokers must know their client and his needs to provide proper advice and propose a loan that is suited to the client's situation and needs.





### Legislative or other references

*Distribution Act, s. 58.1*

Mortgage brokers must inquire into their clients' situation to assess their needs, be sure to appropriately advise their clients and, if they can, propose to their clients a loan that meets their needs.

*Regulation respecting the pursuit of activities as a representative, s. 9.7*

A mortgage broker must, before proposing a loan secured by immovable hypothec, collect and record in a dated document the information pertaining to the identification of the client's needs and the client's financial situation, including, in particular, the characteristics and terms and conditions of the proposed loan, the immovable that will be charged with the hypothec and the client's credit history, income, ability to repay the loan and level of financial knowledge.

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

The client records that must be kept by firms, independent representatives or independent partnerships registered in the sector of mortgage brokerage in respect of each of their clients in the pursuit of their activities must include the following information:

[...]

9° a copy of:

[...]

- 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*;

[...]

*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.*

### 6.5.3 Recommending a mortgage loan

After collecting a client's information, a mortgage broker must analyze this information, the needs identified, and the client's situation in order to propose a suitable loan. Of course, the client must have provided the broker with all the necessary information for this analysis. The mortgage broker must then inform the client of the various options that are available.

When proposing a mortgage loan, the broker must ensure that this loan is suited to the client's situation and needs.

The mortgage broker must also properly advise his client throughout their relationship.

The AMF considers "mortgage brokerage advice" to include proposing a loan to a client, recommending to a client that he not take out a loan, and describing the proposed loan to a client in relation to the needs identified and the client's situation. Recommending one lender over another also constitutes mortgage brokerage advice.<sup>61</sup>

Mortgage brokers must explain their recommendations to the client. While it is not mandatory to provide the client with a written report of their recommendations, the recommendations must be inscribed in the client record as they constitute information concerning the services rendered to the client.

Mortgage brokers must explain to the clients the nature of the fees associated with the proposed loan secured by immovable hypothec and the nature, characteristics, advantages, and disadvantages of the loan secured by immovable hypothec that are being proposed to the client, including the penalties applicable in the event of failure to comply with the terms of the loan agreement.

Brokers must provide their clients with sufficient information to enable them to anticipate the costs related to the loan being sought. Mortgage brokers must inform their clients that fees other than interest or amounts otherwise required to obtain the loan being sought, such as the mortgage insurance or title insurance premium, may be charged by the mortgage lender. Mortgage brokers should also inform clients that they may have to pay land surveyor fees, if a certificate of location is required, and notary fees to have the mortgage registered in the Land Register.

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61. *Governance and Compliance Guide for Registrants: Notice relating to the regulatory framework applicable to mortgage brokerage.*

This information must provide the client with an idea of the actual costs and inform him of the penalties that would apply if the loan terms and conditions are not met.

Lastly, the mortgage brokers must also describe the loan being proposed to the client in relation to the needs identified in addition to clarifying the loan conditions and the nature of the mortgage being provided under the mortgage loan agreement.

Once again, responsible officers must ensure that the client receives sufficient and proper information.



### Legislative or other references

*Distribution Act, s. 58.1*

Mortgage brokers must inquire into their clients' situation to assess their needs, be sure to appropriately advise their clients and, if they can, propose to their clients a loan that meets their needs.

*Distribution Act, s. 58.2*

Mortgage brokers must describe to the client the loan offered to him or her in relation to the needs identified and specify the conditions of the loan offered and the nature of the hypothec before the client enters into a loan agreement.

*Regulation respecting the pursuit of activities as a representative, s. 16.8 and 16.9*

16.8 Mortgage brokers must appropriately advise their clients and give them all such information as may be necessary or useful.

They must explain to their clients the nature of the fees associated with the proposed loans secured by immovable hypothec and the nature, characteristics, advantages and disadvantages of the loans secured by immovable hypothec that they propose to their clients, including the penalties applicable in the event of failure to comply with the terms of the loan agreement.

16.9 Mortgage brokers must ensure that the loan secured by immovable hypothec that they propose is suited to the client's situation and needs.

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**EXAMPLE**

Joanne meets with Andrew, her mortgage broker, to obtain a loan on a new home that she is planning to buy. The amount being requested is very high, and Joanne barely earns enough to cover the payments. Andrew must explain the type of loan being proposed, the particularities of this type of loan as well as the pros and cons of having a loan secured by an immovable hypothec, which include penalties if the contract terms are not met.

**FYI**

In addition, as set out in section 16.14, mortgage brokers must not advise or encourage the commission of an illegal or fraudulent act to their clients, such as the illegal pursuit of activities as a mortgage broker or mortgage fraud.

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

**EXAMPLE**

Nick, a client, asks Alain, his mortgage broker, to obtain a loan based on misleading representations. In this case, Alain must cease to represent Nick.

The responsible officer's role is therefore to ensure that clients receive the necessary information (e.g., an explanatory document) and that their mortgage brokers provide appropriate advice. Random spot checks could help him to ensure that these regulatory requirements are being met.

## 6.6 Rules of professional conduct for mortgage brokers

As seen in Chapter 5, all representatives have a duty of honesty and loyalty towards their clients. They must act with competence and professional integrity and must demonstrate availability and diligence in the pursuit of their activities.



### Legislative or other references

*Distribution Act*, s. 16

All representatives are bound to act with honesty and loyalty in their dealings with clients.

They must act with competence and professional integrity.

*Regulation respecting the pursuit of activities as a representative*, s. 4

4. During the period of validity of his certificate, a representative must comply with the following conditions governing the pursuit of activities:

(1) he must demonstrate availability and diligence;

[...]

In addition to these rules, each sector governed by the *Distribution Act* is subject to specific ethical rules of conduct. The AMF ensures that mortgage brokers adhere to their rules of ethical conduct, whereas in other sectors, this role is performed by self-regulating agencies (such as the *Chambre de la sécurité financière* for personal insurance representatives and financial planners, and such as the *Chambre de l'assurance de dommages* for agents and brokers providing property and casualty insurance, as well as claims adjusters).

This section presents the rules of ethical conduct not examined in previous sections.

#### 6.6.1 Acting with honesty

In addition to the duty to act with honesty, mortgage brokers must not make false or misleading representations (e.g., with regard to their services, remuneration, the mortgage lenders with whom they do business, or the loan being proposed to the client).

#### EXAMPLE

Aya, a mortgage broker, tells clients that her services are free while failing to mention that her remuneration is added to the amount of the mortgage loan. In so doing, she is falsely leading clients to believe that her services are free, which is not the case. She is violating the rules of ethical conduct.

Mortgage brokers must not advise or encourage an illegal or fraudulent act. For example, they must not encourage a person to illegally carry on activities of a mortgage broker by engaging in a mortgage brokerage transaction in collaboration with someone who does not hold a representative's certificate in this sector.

Equally, they must not advise or encourage mortgage fraud, e.g., by submitting false documents to the mortgage lender or allowing such documents to be submitted.

### EXAMPLE

Chet is a client of Sylvie, his mortgage broker. Chet lets it slip that his friend signed his confirmation of employment, even though he hasn't worked for him for two years. He begs Sylvie not to mention this fact to the mortgage lender.

Sylvie must inform Chet that he cannot falsely claim to be working. If he insists, she must withdraw from the file.



#### Legislative or other references

*Regulation respecting the pursuit of activities as a representative,*  
s. 16.13 and 16.14

16.13. Mortgage brokers must not make any false or misleading representations.

16.14. Mortgage brokers must not advise, encourage, or in any way assist in the commission of an illegal or fraudulent act such as the illegal pursuit of activities as a mortgage broker or mortgage fraud.

They must cease to act on behalf of a client when the client asks them to take an action that is in contravention of this rule.

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### 6.6.2 Acting with 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, integrity, prudence, diligence, objectivity, and discretion.

These obligations apply to any person with whom a mortgage broker interacts in the pursuit of his activities, including the borrower but also the mortgage lender and other mortgage brokers.

While the concepts of respect, integrity, and prudence speak for themselves, the concept of diligence warrants some explanation. Diligence involves the timely and effective performance of a task. As a result, mortgage brokers working alone must assess their availability before taking on a large transaction knowing that doing so could prevent them from carrying out other mandates. Moreover, mortgage brokers who work part time or who are engaged in other activities must be able to serve their clients within a reasonable time.

The duty of diligence also requires mortgage brokers to provide clients with all the necessary information and documents related to their client record within a reasonable time.

#### EXAMPLE

**Sandy is a very ambitious mortgage broker. She has taken on too many clients at the same time and is failing to return their calls in a timely manner. She is not working diligently.**

Responsible officers can use a variety of measures to ensure that mortgage brokers are working diligently. These measures include having a selection process that helps to recruit mortgage brokers who are able to perform their duties promptly and providing tools that help mortgage brokers be available to their clients.

In addition, it is important that, at all times during business hours, clients calling a firm can obtain the necessary assistance in a timely manner. To do so, the firm may, for example, set up a telephone call tracking system.



### Legislative or other references

*Regulation respecting the pursuit of activities as a representative,*  
s. 16.2

Mortgage brokers must act with respect and integrity.

They must also act with prudence, diligence, objectivity and discretion.

Section 16.2 requires that mortgage brokers act with objectivity. They must be able to reach decisions without being influenced by their own interests and personal opinions. As a result, mortgage brokers must 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 such cases, the responsible officer could be consulted to determine the best way to deal with the situation.

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 that brokers also refrain from applying undue pressure.

### EXAMPLE

**Kanak, a mortgage broker, cannot let his opinion of a mortgage lender influence his recommendation as to whether or not to propose this lender.**

Acting with discretion means ensuring the confidentiality required in the pursuit of activities as a mortgage broker, notably in mandates being undertaken or for information provided by clients. For example, clients must be able to rely at all times on the discretion of their mortgage broker. Mortgage brokers must not reveal to third parties any information about their clients or the future transactions of said clients. This duty of discretion also applies to a client's personal business even when unrelated to the mortgage transaction in question.

### EXAMPLE

**Anne-Marie, a mortgage broker, cannot 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 the broker's employees and mandataries.**



Mortgage brokers cannot make false or misleading representations, e.g., about their services, remuneration, the mortgage lenders with whom they do business, or the loan being proposed to the client.

Moreover, they must not advise or encourage the commission of an illegal or fraudulent act. For example, they must not encourage a person to illegally carry on activities of a mortgage broker, e.g., by engaging in a mortgage brokerage transaction in collaboration with someone who does not hold a representative's certificate in this sector. They also must not advise or encourage mortgage fraud.



### Legislative or other references

*Regulation respecting the pursuit of activities as a representative;*

16.13. Mortgage brokers must not make any false or misleading representations.

16.14. Mortgage brokers must not advise, encourage or in any way assist in the commission of an illegal or fraudulent act, such as the illegal pursuit of activities as a mortgage broker or mortgage fraud.

They must cease to act on behalf of a client when the client asks them to take an action that is in contravention of this rule.

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### 6.6.3 Respecting the confidentiality of a client's information

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. This information can be used only for this purpose.

This obligation applies as soon as a mortgage broker asks his client for information while having access thereto in the performance of his duties. It applies to all information collected about a client, whether or not this information is subject to the rules under the *Act respecting the protection of personal information in the private sector*.

Mortgage brokers must ensure that this information remains confidential when transferring it to their firm in accordance with section 23 of the *Distribution Act*.



### Legislative or other references

*Distribution Act, s. 23*

Representatives shall disclose all the information they gather about clients to the establishment to which they are attached.

Representatives acting for several firms shall disclose such information to the establishment of the firm for which they are acting at the time.

They may disclose such information only to a person authorized by law.

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Moreover, mortgage brokers must use information about a client only for the intended purposes. They should never use this information for their own purposes.

Mortgage brokers can be released from these obligations only with the client's consent or if doing so is permitted under a provision of the law or a court order.

As for the confidentiality of client information held by a mortgage brokerage firm, the responsible officer ensures that policies and procedures guaranteeing such confidentiality are adopted and implemented, and he reminds mortgage brokers attached to the firm, as well as personnel, of best practices, ethical obligations as well as other legislative and regulatory obligations that apply.

Responsible officers must also ensure that mortgage brokers have access only to the information that they need for their work.



### Legislative or other references

*Distribution Act, s. 91*

Each firm must ensure that its representatives have access only to the information necessary for the pursuit of their activities.

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

*Regulation respecting the pursuit of activities as a representative*

16.10 Mortgage brokers must respect and ensure the confidentiality of all information obtained about their clients.

They must use the information only for the purposes for which it was obtained and may not use it for personal purposes.

Mortgage brokers may not be relieved of these obligations without the client's consent or unless otherwise permitted by a provision of a law or an order of a court.

### EXAMPLE

Samuel, a mortgage broker, knows that he has an obligation to ensure that client information remains confidential. He therefore always speaks with clients or discusses client files at a discreet location where nobody else can hear.

For example, he does not discuss client matters in an elevator full of people.

### 6.6.4 Acting with 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 means that mortgage brokers must keep their knowledge of the mortgage sector and applicable regulations up to date and further develop their skills by, for example, taking training, attending conferences, or reading specialized material.

Mortgage brokers must also consider 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.

Consequently, even at a client's request, novice mortgage brokers or those entering a new area of practice should not engage in transactions when they do not have the necessary knowledge and experience and if they are uncertain that they can provide proper service to the client. Responsible officers should be on the lookout for these types of situations. To prevent such situations, responsible officers could assign more complex tasks or files to more experienced brokers or brokers with specific competencies (e.g., commercial versus residential mortgages) or ensure that a less experienced broker is assisted by a more seasoned colleague.

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



### Legislative or other references

*Regulation respecting the pursuit of activities as a representative*

- 16.3. Mortgage brokers must act with competence. They must therefore develop and maintain their knowledge and abilities.
- 16.4. Mortgage brokers must 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 without obtaining the appropriate assistance.

### EXAMPLE

Antoine, a mortgage broker, only does multi-unit loan transactions. He should not engage in commercial loan transactions without upgrading his knowledge in this sector or without appropriate assistance from another broker with the requisite skills.

### 6.6.5 Independence and conflicts of interest

The previous chapter addressed the concept of conflict of interest and steps taken by the AMF, which include the adoption of rules (e.g., for managing incentives) to ensure independence and minimize conflicts of interest. Sections 16.5 and 16.6 of the *Regulation to amend the Regulation respecting the pursuit of activities as a representative*, which apply specifically to mortgage brokers, require that they act with independence and in their clients' best interests and that they not place themselves in a conflict of interest. Mortgage brokers must preserve a client's interests, which take precedence over their own. In this particular context, a broker should never recommend a mortgage product solely for his own personal gain. The client's interests are paramount in any transaction.



### Legislative or other references

*Regulation respecting the pursuit of activities as a representative*

16.5. Mortgage brokers must act with independence in respect of their clients and in their clients' best interests.

To that end, they must subordinate their personal interests and the interests of any other person or company to their clients' interests and must not let their judgment be subject to any pressure whatsoever.

16.6. Mortgage brokers must not place themselves in a conflict of interest.

Below are a few examples of situations that could influence a mortgage broker's choice and place him in a conflict of interest.

#### EXAMPLE

A contest or promotion based on the sale of specific products can create a conflict of interest. In such a situation, Rose, a responsible officer, might encourage her team of mortgage brokers to advise clients to obtain a particular type of loan when another loan would be better suited to the needs expressed. Rose's encouragement is prohibited.

#### EXAMPLES

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

- A product whose higher commission leads the registrant to recommend its sale without that product being best suited to a client's needs; and
- A bonus contest or program that influences a registrant's choice of product 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 constitutes a conflict of interest for the firm. In fact, executive officers or managers should not offer this service if it is not relevant for the firm's clients for the purpose of meeting supplier-imposed quotas. In such circumstances, the responsible officer is responsible to dissuade them.

As seen in Chapter 5, representatives may not engage in personal financial transactions with clients if such transactions place them in a conflict of interest (for example, mortgage brokers cannot lend money to clients).

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 investment.

As part of their obligations, responsible officers must 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;<sup>62</sup>
- establish clear guidelines or standards for these at-risk activities; and
- ensure brokers and representatives comply with these standards and guidelines in the pursuit of their activities.

For example, responsible officers can determine a maximum amount to be offered as a financial incentive.

Responsible officers must 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;

62. See Chapter 5 regarding outside activities.

- 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 implemented policies and procedures; and
- The promotion of best practices to be adopted.

### 6.6.6 Cooperating with the AMF

Mortgage brokers must cooperate with the AMF in a transparent and diligent manner, particularly when the AMF is conducting an investigation. They must answer all of the investigator’s questions and provide any documents being requested.

For example, a mortgage broker must answer an inspector’s questions, particularly during an interview, and provide all the requested documents.

Moreover, mortgage brokers who are informed of a complaint about their conduct or of an investigation conducted by the AMF must not communicate with the complainant or the person who requested the investigation. They should in no way attempt to influence or dissuade the person from pursuing the complaint.



#### Legislative or other references

*Regulation respecting the pursuit of activities as a representative*

16.15. Mortgage brokers must cooperate with the Authority in a transparent and diligent manner and must not mislead it.

Mortgage brokers must not encourage a person to not cooperate with or to mislead the Authority.

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.

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## 6.7 Outside activities carried out by mortgage brokers

A firm must also ensure that mortgage brokers acting on its behalf declare all of their outside activities and, when applicable, create a file. They must ensure that these activities are being carried out in accordance with the *Distribution Act* and its regulations.

An outside activity is any activity, duty, or occupation, other than the activity of mortgage broker, that involves the public, is remunerated or not, is full-time or part-time, and lasts for a specified or unspecified period.

Mortgage brokers cannot carry on an outside activity that could cause confusion with their conduct of mortgage brokerage activities.

The same requirements apply to trainees during their probationary period.

### 6.7.1 Exercise of an outside activity by a mortgage broker

Mortgage brokers must declare all outside activities in writing to their firm.

To ensure that a mortgage broker fully meets this obligation, the firm must establish policies and procedures whereby it can:

- notify mortgage brokers of the rules applicable to outside activities;
- maintain a file for outside activities carried on by its mortgage brokers; and
- determine the appropriate action to take to ensure that each broker carrying on an outside activity acts in accordance with the *Distribution Act* and its regulations.

These policies and procedures must include training for mortgage brokers on outside activities as well as periodic follow-ups with them to confirm that the activities declared continue to be carried on or verify whether new outside activities should be reported to the responsible officer. Email reminders and forms used to declare outside activities could help mortgage brokers to declare their outside activities while facilitating follow-up by the firm.



The policies and procedures must also include measures ensuring that:

- outside activities carried out by a mortgage broker cannot be confused with the activities they carry out as a mortgage broker;
- mortgage brokers are available to their clients and act diligently;
- any outside activities do not place a mortgage broker in a conflict of interest or a situation where he cannot maintain his independence; and
- mortgage brokers adhere to the measures put in place by their firm.

The policies and procedures must also include measures that help the responsible officer to verify that a mortgage broker is using client information in accordance with the *Distribution Act* and its regulations.<sup>63</sup> In fact, a mortgage broker must obtain written consent from his client in order to use, for the purposes of mortgage brokerage activities, a client's private and confidential information obtained as part of an outside activity. Conversely, he must obtain his client's consent when he would like to use, for the purpose of his outside activity, information gathered as part of the mortgage brokerage activity. In all cases, this consent must be included in the client record.

**FYI**

The AMF has released an analysis tool to help firms provide adequate supervision for a mortgage broker's outside activities (Outside activities of representatives and trainees – Analysis tool).<sup>64</sup>

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If a mortgage broker's outside activities require him to separate his clientele according to the regulations, the responsible officer must ensure that the mortgage broker is not offering mortgage brokerage services to clients for whom he is engaged in outside activities.

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63. The responsible officer must also ensure that a client's personal information is used in accordance with the firm's privacy policy and the *Act respecting the protection of personal information in the private sector*.

64. Outside activities of representatives and trainees – Analysis tool (lautorite.ca).

### 6.7.2 Separation of clientele

Certain outside activities, when conducted by a mortgage broker, require the clientele to be separated. Meaning, a mortgage broker cannot offer mortgage brokerage services to natural persons for whom he is pursuing an outside activity, and vice versa.

This rule also applies to natural persons that the mortgage broker knows is part of a client's family, including the individual's spouse, the individual's child, the spouse's child, the individual's mother, father, brother or sister, the spouse of the individual's father or mother, the father or mother of the individual's spouse, or the spouse of the individual's child.

The following outside activities require mortgage brokers to separate their clientele:

- Judge or police officer;
- Minister of religion or leader of a religious organization;
- Member of the *Ordre professionnel des avocats du Québec*;
- Member of the *Ordre professionnel des notaires du Québec*;
- Teacher in an educational institution at the secondary, college, or university level;
- Immigration or citizenship consultant;
- Trustee in bankruptcy;
- Member of management or employee of a syndicate, other than a syndicate formed or representatives, or a professional association; and
- Member of the *Ordre des comptables professionnels agréés*, to the extent that conducting that activity requires the representative to hold a public accountancy permit.

Certain mortgage market activities also require clientele to be separated:

- Money lender;
- Loan administrator, except if he acts on behalf of a natural person who wants to take out or has taken out a loan secured by immovable hypothec;
- Member of the *Ordre professionnel des évaluateurs agréés du Québec*; and
- Building inspector.

Responsible officers must ensure that appropriate measures are put in place to ensure that mortgage brokers are separating their clientele, as required. This applies to independent representatives, adapting the measures as necessary.

### **6.7.3 Reporting certain outside activities to the AMF**

Certain outside activities must also be reported to the AMF.

Responsible officers must therefore ensure that a mortgage broker reports all outside activities requiring separation of clientele to the AMF.

Responsible officers must also ensure that outside activities that constitute a provision of finance-related services are reported to the AMF. These activities are detailed on the AMF's website and notably include:

- accepting deposits of money;
- providing oversight or independent review or expert opinion on the management of an entity's financial assets;
- operating a money services business offering, among other things, currency exchange services, fund transfer services, or issuance and cashing money orders, traveller's cheques or similar instruments;
- providing loan or deposit products or services or other banking products or services;
- providing accountancy or bookkeeping services;
- providing advisory services in credit or debt restructuring;
- advising on mergers and acquisitions;
- providing corporate finance services as a controller, treasurer, or chief financial officer; and
- providing tax services, including tax returns, or tax advice.

The declaration must be transmitted to the AMF:

- when requesting authorization for the probationary period; and
- within 30 days of commencing the outside activity.

Any change in the information provided in the declaration submitted to the AMF must be reported within 30 days.



### Legislative or other references

#### *Regulation respecting the pursuit of activities as a representative*

5.1 A representative may pursue an outside activity only in the following circumstances:

- (1) the outside activity is unlikely to be confused with the activities of a representative;
- (2) if applicable, the representative has reported the outside activity in writing to the firm or independent partnership on whose behalf he acts.

For purposes of this subdivision, “outside activity” means any occupation, function, or activity, other than the activity of representative, that involves dealing with the public.

5.2 [...]

For the purposes of the first paragraph, a representative in insurance of persons is considered to be in a position of influence when he has a relationship with a person referred to in that paragraph that arises from an outside activity as a member of the *Ordre des comptables professionnels agréés*, to the extent that pursuing that activity requires him to hold a public accountancy permit. Moreover, a representative in insurance of persons or a financial planner is considered to be in a position of influence when he has a relationship with a person referred to in that paragraph that arises from the outside activity of:

- (1) judge or police officer;
- (2) minister of religion or leader of a religious organization;

[...]

- (5) teacher in an educational institution at the secondary, college or university level;

[...]



### Legislative or other references (continued)

- (7) immigration and citizenship consultant;
- (8) bankruptcy trustee;
- (9) management of a union, other than a union formed of representatives, or management of a professional association, or employee of any such organization;

[...]

5.3 Despite section 5.1, a financial product or service may not be offered to a natural person or to a person who the representative knows is such natural person's spouse or child, the spouse's child, the natural person's mother, father, brother or sister, the spouse of the natural person's father or mother, the father or mother of the natural person's spouse or the spouse of the natural person's child in the following circumstance:

- (1) when a mortgage broker, representative in group insurance, damage insurance agent, damage insurance broker or claims adjuster has a relationship with that person that arises from an outside activity referred to in subparagraphs 1, 2, 5 and 7 to 9 of the second paragraph of section 5.2;
- (2) when a mortgage broker, representative in group insurance, damage insurance agent or damage insurance broker has a relationship with that person arising from an outside activity as a member of the *Ordre des comptables professionnels agréés*, to the extent that pursuing that activity requires him to hold a public accountancy permit, or as a member of the *Ordre professionnel des avocats du Québec* or the *Ordre professionnel des notaires du Québec*;

[...]

5.4 Representatives who pursue an outside activity may not use privileged or confidential information to which they have access in the course of the outside activity, unless the person concerned has consented in writing to such use.

**Legislative or other references (continued)**

5.5 Subparagraph 1 of the first paragraph of section 5.1 and sections 5.2 and 5.3 do not apply to a representative whose outside activity is that of acting as a representative of a person registered as a dealer or adviser under the *Derivatives Act* (chapter I-14.01) or the *Securities Act* (chapter V-1.1).

*Regulation respecting the issuance and renewal of representatives' certificates*

37. The trainee must notify the Authority of any change to the information or a document that he has furnished to the Authority within 5 days of such change, or where such change occurs during the probationary period.

If, as a result of the change, the trainee no longer satisfies the conditions of probationary period eligibility, the Authority withdraws the probationary certificate.

62. The holder of a representative's certificate must notify the Authority of any change to the information or a document that he has furnished to the Authority within 5 days of such change.

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This completes the chapter on the supervision of mortgage broker activities.

# CHAPTER 7

## Regulation of the mortgage loan market in Canada

### Competency components

- Understand the legal framework for mortgage brokerage
- Integrate into professional practice the rules governing the activities of responsible officers
- Supervise the professional activities of a mortgage brokerage firm

### Competency subcomponents

- Distinguish among the other sources of law that apply to responsible officers in mortgage brokerage firms
- Understand the role of mortgage brokerage regulatory bodies
- Oversee the professional activities of mortgage brokers



## Regulation of the mortgage loan market in Canada

Each provincial regulator regulates mortgage brokerage. In most provinces, the organization that deals with this sector is also the one that regulates and oversees other financial services. Here are the various provincial organizations that provide a legal framework for mortgage brokerage in Canada:<sup>65</sup>

**TABLE 7.1**

### Provincial organizations that govern mortgage brokerage

Province	Regulator
British Columbia	British Columbia Financial Services Authority
Alberta	Real Estate Council of Alberta
Saskatchewan	Financial and Consumer Affairs Authority of Saskatchewan
Manitoba	Manitoba Securities Commission
Ontario	Financial Services Regulatory Authority of Ontario
Québec	Autorité des marchés financiers
New Brunswick	New Brunswick Financial and Consumer Services Commission
Nova Scotia	Service Nova Scotia
Newfoundland & Labrador	Digital Government and Services NL

65. See Mortgage Broker Regulators' Council of Canada, *Licensing Information Tool*.  
<https://www.mbrcc.ca/LicensingInformationTool>.



## 7.1 Autorité des marchés financiers (AMF) – the Québec mortgage broker regulator

As previously mentioned, the AMF regulates mortgage brokerage in Québec. In fact, since May 1, 2020, the activity of mortgage brokerage, which until that date was subject to the *Real Estate Brokerage Act* as well as the regulations and oversight of the *Organisme d'autoréglementation du courtage immobilier du Québec* (OACIQ), has become a sector of the *Distribution Act*,<sup>66</sup> which is now governed by the AMF. Chapter 8 will present more details on the AMF's role, functions, and powers. This chapter covers those of mortgage brokerage.

### 7.1.1 Mission

Section 4 of the *Act respecting the regulation of the financial sector* (ARFS) permits the AMF to fulfill its mission in the area of mortgage brokerage, in particular to:

- ensure that mortgage brokerage registrants (firms, independent partnerships, mortgage brokers registered as independent representatives) and natural persons attached to firms (mortgage brokers) comply with their legal obligations:
  - inform consumers about consumption and financial products and services, including mortgage financing;
  - ensure that complaints received from consumers are processed and give them access to dispute-resolution services;
  - administer the rules for eligibility and the pursuit of mortgage loan brokerage activities in Québec; and
  - ensure the implementation of protection and compensation programs for consumers and ensure the administration thereof, including the Financial Services Compensation Fund.<sup>67</sup>

In addition to the above-mentioned actions and tasks, the AMF must create the administrative structures needed to ensure the pursuit of its mission.<sup>68</sup>

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66. Sections 1, 11.1, 11.2, 13, 58.1 to 58.4., 70, 70.1, 115, 208 and 216 of the *Distribution Act*, CQLR, c. D-9.1.

67. Section 4 of the ARFS.

68. Section 6 of the ARFS.

### 7.1.2 Functions and powers

To carry out its mortgage brokerage mission, the AMF exercises its regulatory functions and powers in a manner that:

- fosters consumer confidence in mortgage brokerage registrants and the mortgage brokers attached to them;
- promotes the availability of high-quality, competitively priced financial products and services;
- sees to the establishment of an effective regulatory framework that promotes the development of the financial sector and facilitates innovative management and commercial practices;
- provides individuals and businesses with access to reliable, accurate, and complete information on firms, independent partnerships, and mortgage brokers and on the financial products and services offered;
- protects consumers against unethical, abusive, or fraudulent practices and gives individuals and enterprises access to various dispute-resolution mechanisms; and<sup>69</sup>
- acts as an information and reference centre in all fields of the financial sector, including mortgage brokerage.<sup>70</sup>

## 7.2 Stakeholders

The stakeholders described below ultimately serve a client, the borrower, who agrees to give as security, in exchange for a loan granted by a lender, an immovable generally purchased or refinanced using this loan.

### 7.2.1 Being a mortgage broker

A mortgage broker is a representative within the meaning of the *Distribution Act*, in the same way as an insurance representative, claims adjuster, or financial planner. As is the case for all of these financial services professionals, the role of the mortgage broker is to advise clients and act as an intermediary between, in this case, clients and mortgage lenders.<sup>71</sup> Section 11.1 of the *Distribution Act* describes a mortgage broker as “a natural person who, for others and in return for remuneration that is contingent on the making of a loan secured by immovable hypothec, engages in a brokerage transaction relating to such a loan.”

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69. Section 8 of the ARFS.

70. Section 7 of the ARFS.

71. Section 1 of the *Distribution Act*.

**FYI**

In the below-listed circumstances, certain persons may engage in a mortgage brokerage transaction without holding a representative certificate registered in the mortgage brokerage sector, as set out in section 11.2 of the *Distribution Act*:

- advocates, notaries, chartered appraisers, liquidators, sequestrators, trustees in bankruptcy and trustees, provided they engage in such a transaction in the exercise of their functions;
- members in good standing of the *Ordre professionnel des comptables professionnels agréés du Québec*;
- a person who is a member in good standing of a professional order or who is governed by an Act administered by the *Autorité des marchés financiers* who only gives a client the name and contact information of a person or partnership offering loans secured by immovable hypothec or otherwise merely puts them in contact with each other, provided the member or person does so as an ancillary activity;
- persons employed by or acting for a hypothecary creditor, provided they engage in such a transaction only for that creditor or for a financial institution that belongs to the same financial group as that creditor.

Mortgage brokers are attached to a mortgage brokerage firm or an independent mortgage brokerage partnership; if not, they must register with the AMF as an independent representative.

**N.B.**

A mortgage broker who already holds a representative certificate issued by the AMF and who is registered as an independent representative in another sector covered by the *Distribution Act* cannot also be attached to a firm, since the law does not allow a representative to be both registered as an independent representative and to act on behalf of a firm;

The mortgage broker can, however, be registered both as a mortgage broker and a representative in another sector of the *Distribution Act* (insurance, financial planner, etc.) as an independent representative.

## 7.2.2 Lenders

The lenders with whom a mortgage broker does business are generally financial institutions such as banks or financial services cooperatives, but they may also be entities such as private lenders, as discussed below.

Aside from exceptions set out in the *Distribution Act*, only mortgage brokers can present themselves or act as a mortgage broker and receive remuneration based on a loan secured by an immovable hypothec.

Mortgage lenders are natural or legal persons who provide funds and agree to lend a sum of money for the acquisition of an immovable on the condition of obtaining a mortgage guarantee on that immovable. The lender is often called the “hypothecary creditor.” Some lenders offer their mortgage services directly to their clients, while others also use or exclusively use the services of a mortgage broker.

### 7.2.2.1 Regulation of mortgage lenders

Canadian lenders are incorporated (or continued) and governed mainly by the following acts and regulations, which determine their powers, duties and obligations, constitutive formalities, operation and organization as well as their administrative rules. These laws also prescribe the regulators who monitor these lenders and control their affairs.

**Banks:** *Bank Act* (federal).

**Financial services cooperatives:** *Cooperative Credit Associations Act* (federal), *Act respecting financial services cooperatives* (Québec) or any other similar provincial act.

**Trust companies:** *Trust and Loan Companies Act* (federal), *Trust Companies and Savings Companies Act* (Québec) or any other similar provincial act.

**Savings companies:** *Trust and Loan Companies Act* (federal), *Trust Companies and Savings Companies Act* (Québec) or any other similar provincial act.

**Insurers:** *Insurance Companies Act* (federal), *Insurers Act* (Québec) or any other similar provincial act.

Note that federally incorporated insurers are also governed by the *Insurance Act* applicable in the provinces and territories where they carry out activities.

**Mortgage financing companies:** Laws administered by the Office of the Superintendent of Financial Institutions (OSFI) or those administered by the AMF do not apply to these entities. However, to be considered an “approved lender” and thus allow borrowers to obtain a loan insured by the Canada Mortgage and Housing Corporation (CMHC), a mortgage financing company must meet strict regulatory criteria and enter into an agreement with the CMHC. In addition, the company must comply with OSFI Guideline B-21, which establishes its expectations (similar to those of banks) for underwriting mortgage loan insurance. Although this guideline only applies to federal mortgage insurers, it indirectly applies to mortgage financing companies who are also seeking insurance.

**Private lenders:** They are not subject to the supervision of a federal regulator, as in the case of banks, or to the supervision of a provincial regulator, as is the case for financial services cooperatives.

The laws set out above are relevant to the responsible officer of a mortgage brokerage firm, as the brokers attached thereto must know the rules of the various lending entities and understand the distinct regulations that apply to each of them.

### 7.2.3 Mortgage loan insurer

Mortgage insurance protects lenders should a borrower default on payment (not to be confused with the group life or health insurance of debtors offered by lenders to borrowers). Therefore, if a lender seizes a property because the borrower is not meeting the mortgage payment commitments, that lender can claim the losses incurred from the mortgage loan insurer.

The borrower pays the mortgage insurance premium, which is generally added to the mortgage loan. Therefore, a mortgage broker must take this into account and explain the situation to his client.

## 7.3 Mortgage brokerage regulation and supervision

In Canada and Québec, several entities are authorized to govern or sanction mortgage brokerage firms, brokers, or people who conduct mortgage brokerage activities without a licence or certificate.

### 7.3.1 Financial Markets Administrative Tribunal (Tribunal)

The Financial Markets Administrative Tribunal (Tribunal) is a forum that hears most requests relating to mortgage brokerage. The Tribunal hears:

- requests from the AMF about the powers conferred on it (notably by the ARFS and the *Distribution Act*);<sup>72</sup>
- requests from any interested person under the powers set out in the various enactments under its purview; and
- requests for review of administrative decisions, in particular those issued by the AMF.<sup>73</sup>

72. Example of proceedings, see *Autorité des marchés financiers c. Cousineau-Claveau*, 2021 QCTMF 59; *Autorité des marchés financiers c. Soucy*, 2022 QCTMF 75.

73. See <https://tmf.gouv.qc.ca/en/about-the-tribunal/history-and-role>.

As such, if a registrant violates a provision of the *Distribution Act*, the Tribunal may, as the case may be, cancel, revoke or suspend the registrant’s registration or certificate or subject it to restrictions or conditions. It may also impose an administrative penalty not exceeding \$2,000,000.<sup>74</sup>

### 7.3.2 Common law courts

During a legal proceeding (for example when a client sues a mortgage brokerage firm or a mortgage broker to obtain money for a fault committed by a mortgage broker in the course of his duties), a judge from the Court of Québec or the Superior Court (depending on the amount in dispute) hears the case and renders a decision.<sup>75</sup> These courts have the power to award damages to the plaintiff or to order something to be done or not done when there is a request for an injunction. The case can be appealed in front of the Court of Appeal.

### 7.3.3 Court of Québec — Criminal and Penal Division

The Attorney General or the AMF (previously OACIQ) may initiate proceedings against mortgage brokers who commit criminal or penal offences. The proceedings may involve, for example, fraud, theft of money, or the illegal pursuit of mortgage brokerage activities.<sup>76</sup>

### 7.3.4 Office of the Superintendent of Financial Institutions (OSFI)

OSFI is an independent federal agency of the government. It was created in 1987 to contribute to the safety and soundness of the Canadian financial system. It regulates and supervises approximately 400 federal financial institutions, including banks, federally chartered trust and loan companies, federally chartered insurance companies, federally chartered credit cooperatives, and approximately 1,200 private pension plans in Canada.<sup>77</sup> OSFI reports on its activities to Parliament through the Department of Finance Canada.

74. As mentioned in Chapter 6, unlike insurance representatives, claims adjusters, and financial planners, it is neither the trustee of the *Chambre de la sécurité financière* (CSF) nor that of the *Chambre de l’assurance de dommages* (ChAD) who are responsible for the mortgage broker sector, but rather the AMF, which is responsible for investigative proceedings and complaint submission. In addition, the court that hears these disciplinary cases is the Financial Markets Administrative Tribunal, and not the CSF or ChAD. Finally, unlike insurance representatives and claims adjusters, mortgage brokers do not have their own code of ethics. Instead, they are governed by sections 16.1 to 16.16 of the *Regulation respecting the pursuit of activities as a representative*. See *Autorité des marchés financiers*, Rules of conduct and rules governing the pursuit of activities as a representative: Mortgage brokerage; *Autorité des marchés financiers*, Notice relating to the regulatory framework applicable to mortgage brokerage.

75. *Sanscartier c. 9028-2666 Québec inc.* 2022 QCCS 4626.

76. *R. c. Dupuis*, 2015 QCCQ 485; *Association des courtiers et agents immobiliers du Québec c. Markakis*, 2006 QCCQ 23192; *Organisme d’autoréglementation du courtage immobilier du Québec c. Belley*, 2022 QCCQ 2021.

77. *Office of the Superintendent of Financial Institutions Act*, R.S.C. 1985, c. 18 (3<sup>rd</sup> Supp.) and see details: <https://www.osfi-bsif.gc.ca/en/about-osfi>.

OSFI does not have jurisdiction over Québec-chartered insurers or the distribution of financial products and services in the provinces and territories. Nor does it have jurisdiction over supplemental pension plans in Québec or in the other provinces.

OSFI helps develop and interpret legislation and regulations and issues guidelines. It is also responsible for monitoring the safety and soundness of federally regulated financial institutions and federally regulated private pension plans. Moreover, it assesses the risks of financial institutions and the quality of their risk management and governance practices.

OSFI is funded through contributions paid by financial institutions and private pension plans that OSFI regulates and supervises.

### **7.3.5 Financial Consumer Agency of Canada (FCAC)**

The Financial Consumer Agency of Canada (FCAC) was created in 2001 to protect the rights and interests of consumers of financial products and services. It oversees federal financial institutions, such as banks, and helps to strengthen the financial literacy of Canadians.

As part of its mandate to oversee federal financial institutions, it ensures that the activities of banks and other federal financial institutions comply with the laws applicable to them. It develops, among other things, guidelines in which it sets out the practices that financial institutions should incorporate into their commercial activities. Public consultations are part of the guideline development process.



**FYI**

The FCAC has published certain guidelines addressing consumer protection, including:

- *Guideline on Existing Consumer Mortgage Loans in Exceptional Circumstances*,<sup>78</sup>
- *Guideline on Appropriate Products and Services for Banks and Authorized Foreign Banks*; and<sup>79</sup>
- *Guideline on Complaint-Handling Procedures for Banks and Authorized Foreign Banks*.<sup>80</sup>

The FCAC also oversees external complaint bodies, including the Ombudsman for Banking Services and Investments (OBSI) and ADR Chambers Banking Ombuds Office. These organizations offer a free, impartial review service for consumer complaints about banking products and services. These services are offered to people who have been dissatisfied with how their complaint was resolved by a bank. More information on the bank complaint process is available on the FCAC website. (How to file a complaint with your financial institution – Canada.ca).

**FYI**

On November 1, 2024, the Ombudsman for Banking Services and Investments will become the sole external complaint processing body for the banking sector in Canada.

78. See <https://www.canada.ca/en/financial-consumer-agency/services/industry/commissioner-guidance/mortgage-loans-exceptional-circumstances.html>.

79. See <https://www.canada.ca/en/financial-consumer-agency/services/industry/commissioner-guidance/guideline-appropriate-products-services-banks.html>.

80. See <https://www.canada.ca/en/financial-consumer-agency/services/industry/commissioner-guidance/complaint-handling-procedures-banks.html>.

### 7.3.6 Mortgage Broker Regulators' Council of Canada (MBRCC)

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. It brings together the organizations mentioned at the beginning of this chapter. This association cannot adopt regulations or impose sanctions. Its mission is to improve and promote harmonization of mortgage broker regulatory practices across Canada to serve the public interest.

This completes the chapter on the regulation of the mortgage loan market in Canada.



## CHAPTER 8

### **Regulation and supervision by the Autorité des marchés financiers**

#### Competency components

- Integrate into professional practice the rules governing the activities of responsible officers
- Supervise the professional activities of a mortgage brokerage firm

#### Competency subcomponents

- Understand the role of mortgage brokerage regulatory bodies
- Understand the role of mortgage brokerage inspectors and investigators
- Oversee the professional activities of mortgage brokers
- Monitor complaint examination process
- Validate a mortgage brokerage firm's right to operate

## Regulation and supervision by the Autorité des marchés financiers

Established on February 1, 2004 under the *Act respecting the Autorité des marchés financiers*, now the *Act respecting the regulation of the financial sector*, the Autorité des marchés financiers (the Authority or AMF) is a body mandated by the Government of Québec to regulate Québec's financial markets and assist consumers of financial products and services. The AMF ensures that it is financially self-sufficient thanks to the contributions and fees paid by its registrants.

The AMF is unique from other Canadian regulators in that it oversees, in an integrated manner, the areas of insurance, securities, derivatives, deposit institutions—other than banks—and the distribution of financial products and services, including mortgage brokerage and the activities of credit assessment agents.

### 8.1 Mission

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 consumer-oriented educational programs on financial products and services, processing complaints filed by consumers, and giving consumers access to dispute-resolution services;
- ensure that the financial institutions and other regulated entities of the financial sector comply with the solvency standards applicable to them as well as with the obligations imposed on them by law with a view to protecting the interests of consumers of financial products and services, and take any measure provided by law for those purposes;
- supervise the activities connected with the distribution of financial products and services, administer the rules governing eligibility for and the carrying on of those activities, and take any measure provided by law for those purposes;
- ensure the implementation of protection and compensation programs for consumers of financial products and services and administer the compensation funds set up by law;<sup>81</sup> and
- create the appropriate administrative structures to pursue its mission.<sup>82</sup>

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81. Section 4 of the ARFS.

82. Section 6 of the ARFS.

## 8.2 Functions and powers

To carry out this mission, the AMF has functions and powers to:

- foster confidence among the public and business community regarding financial institutions and practitioners in the financial sector and their solvency and the competence of agents, advisers, brokers, representatives, and other practitioners in the financial sector, as well as foster public confidence in the solvency and competence of practitioners in the financial sector;
- promote the availability of high-quality, competitively priced financial products and services for individuals and enterprises in all regions of Québec;
- 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 and business community access to reliable, accurate and complete information on the financial institutions and other practitioners in the financial sector and on the financial products and services offered; and
- protect consumers against unethical, abusive, or fraudulent practices and give individuals and enterprises access to various dispute-resolution mechanisms.

### 8.2.1 Assistance to clientele

The AMF assists clients in a number of ways:

- It maintains public registers of firms and individuals who are authorized to practise.
- Call centre agents answer questions from the public and members of the business community seeking information on a particular product or service. Interactions occur over the phone or online. A form can also be submitted to request general information, and the AMF offers the possibility to arrange phone appointments.
- A telephone service is available to the public so people can receive assistance when making a complaint against an enterprise or representative. This service can also be used to report a situation.
- Clients are able to state when they are dissatisfied with the AMF's practices or services.

#### 8.2.1.1 Holding of public registers

The AMF performs its functions and exercises its powers to grant the public and the business community access to reliable, accurate, and complete information on the financial institutions and practitioners in the financial sector and on the financial products and services offered.

The AMF also makes registers available to the public, including the register of enterprises and individuals who are authorized to practise in Québec, which allows consumers to confirm whether an individual or enterprise being presented as a firm or representative is authorized to practise.<sup>83</sup>

### 8.2.1.2 Publications of the AMF

The AMF regularly publishes information written for consumers and the various practitioners in the financial sector, including registrants and representatives.

The AMF's *Le Bulletin*<sup>84</sup> is a weekly publication. It is a reference tool that contains the information required to be published under the laws administered by the AMF. In particular, *Le Bulletin* documents the AMF's draft regulations and regulations, decisions rendered by the Financial Markets Administrative Tribunal, and disciplinary decisions issued by self-regulatory organizations.

The AMF also publishes information documents for target clientele.

## TABLE 8.1

### Publications intended for target clientele

<b>AMF Newsletter</b> <sup>85</sup>	The AMF provides the general public with objective information on a variety of topics such as personal finance, insurance, retirement planning, and its own activities.
<b>Info-Conformité</b> <sup>86</sup>	This quarterly publication informs insurance and securities registrants about the AMF's inspection activities.
<b>Info-Qualification</b> <sup>87</sup>	This publication is for trainers, recruiters, and future professionals in the financial products and services industry. It covers such key topics as minimum training requirements, examinations, and the probationary period.

83. Registers | AMF (lautorite.qc.ca).

84. AMF *Le Bulletin* | AMF (lautorite.qc.ca).

85. AMF Newsletter archives | AMF (lautorite.qc.ca).

86. *Info-Conformité* | AMF (lautorite.qc.ca).

87. For future professionals | AMF (lautorite.qc.ca).

The AMF also issues investor warnings whenever investors are at risk of becoming victims of a fraud scheme, publications such as its annual report or strategic plan, and a quarterly economic and financial review.<sup>88</sup>

### 8.2.1.3 Consumers

In addition to the above-mentioned services, the AMF provides assistance to consumers of financial products and services, notably by:

- helping consumers process their complaints and claims and by giving them access to dispute-resolution services;
- implementing protection and compensation programs covering financial products and services and administering the compensation funds set up by the law, such as the Financial Services Compensation Fund; and



#### FYI

The Financial Services Compensation Fund may compensate people who have been victims of fraud when conducting business with insurance, mutual fund, or scholarship plan representatives; claims adjusters; financial planners; or mortgage brokers. For more information, please visit the AMF website.<sup>89</sup>

- creating educational programs addressing the consumption of financial products and services, including insurance, investing, personal finance, and fraud prevention.

## EXAMPLES

Here are a few examples of content on the AMF website:

- **Credit report;**<sup>90</sup>
- **Mortgage loans;**<sup>91</sup> and
- **Reverse mortgages.**<sup>92</sup>

88. Subscription to E-mail Info | AMF (lautorite.qc.ca).

89. Compensation fund | AMF (lautorite.qc.ca).

90. Credit report | AMF (lautorite.qc.ca).

91. Mortgages: It pays to do your homework! | AMF (lautorite.qc.ca).

92. Reverse mortgages: Advantages and disadvantages | AMF (lautorite.qc.ca).

#### 8.2.1.4 Assistance and complaints

The AMF offers assistance to consumers who wish to file a complaint against an individual or enterprise, helping them to:

- contest the amount of compensation being offered by an insurer;
- contest service charges charged by a financial institution; and
- report a credit agency that failed to respond to a request for changes to a credit report.

The AMF treats all complaint-related information that it receives confidentially, as required by the *Act respecting Access to documents held by public bodies and the Protection of personal information*.

#### 8.2.1.5 Assistance and information for registrants and representatives

The AMF supports firms, independent representatives, independent partnerships as well as representatives in different ways. In addition to offering a call centre to answer their questions, it publishes information addressed specifically to them.

One of the key sources of information is the AMF website, which provides useful information for firms, independent partnerships, independent representatives, and other representatives about their obligations. This website also has a link to the *Distribution Act*, including regulations that apply to registrants and representatives as well as notices published by the AMF on a host of topics over the years, notably mortgage brokerage activities.

The AMF website also answers many other questions, including the requirements for products and services offered via the Internet,<sup>93</sup> the rules of conduct and ethics applicable to mortgage brokers<sup>94</sup> as well as the requirements for compulsory professional development for mortgage brokers.<sup>95</sup>

The AMF also publishes various guides outlining best practices to be followed by registrants and representatives.

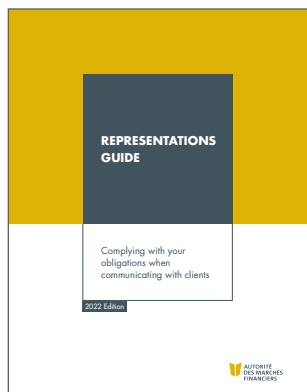
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93. Products and services offered via the Internet – Digital transaction space | AMF ([lautorite.qc.ca](http://autorite.qc.ca)).

94. Rules of conduct and rules governing the pursuit of activities as a representative: Mortgage brokerage | AMF ([lautorite.qc.ca](http://autorite.qc.ca)).

95. Mortgage brokerage: Professional Development Units – PDUs | AMF ([lautorite.qc.ca](http://autorite.qc.ca)).

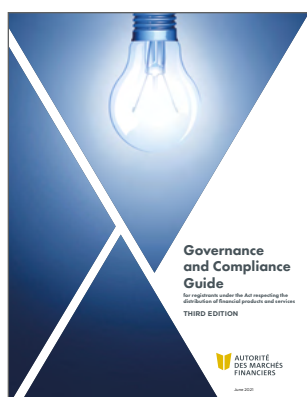




### Representations Guide

This guide sets out the main representation rules for practitioners in the financial sector governed by the Act respecting the distribution of financial products and services.

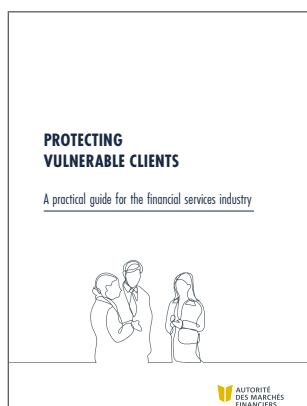
**Representations Guide** (pdf – 4 MB)



### Governance and Compliance Guide for Registrants, 3rd edition

This reference tool is used to support registrants.

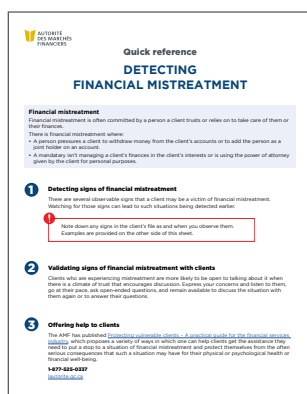
**Governance and Compliance Guide for Registrants** (pdf – 25 MB)



### Protecting Vulnerable Clients

This practical guide for the financial services industry proposes possible courses of action to protect vulnerable clients.

**Protecting Vulnerable Clients – May 2023** (pdf – 745 KB)



### Quick reference – Detecting financial mistreatment

This quick reference guide can be used to detect financial mistreatment.

**Quick reference – Detecting financial mistreatment** (pdf – 90 KB)

The AMF also organizes various events during the year, such as the *Rendez-vous avec l’Autorité*,<sup>96</sup> which offers training to registrants and representatives about AMF services or the oversight that it provides according to the *Distribution Act*.



**FYI**

The AMF has helped to develop training material to help prevent financial and material mistreatment of the elderly. Representatives can acquire one professional development unit upon successful completion of this training activity.<sup>97</sup>

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96. *Rendez-vous avec l’Autorité* | AMF ([lautorite.qc.ca](http://lautorite.qc.ca)).

97. Financial Mistreatment training | Helpline – Elderly ([aideabusaines.ca](http://aideabusaines.ca)).

### 8.2.1.6 Overseeing initial and ongoing training for mortgage brokers and responsible officers

The AMF provides the necessary framework for the activities of mortgage brokers and mortgage brokerage responsible officers governed by the *Act respecting the distribution of financial products and services*.

For the mortgage brokerage sector, and more specifically for brokerage activities, the AMF:

- develops compulsory initial training for mortgage brokers;



#### FYI

The initial training is based on the **MBQP Training Curriculum** (pdf – 967 KB)

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- recognizes training providers;
- ensures future mortgage brokers acquire the necessary skills by administering exams specific to the mortgage brokerage sector;
- administers the rules governing eligibility (e.g., the probationary period) and the renewal of certificates;
- ensures mortgage brokers acquire the compulsory professional development units by reference period; and
- sets the requirements to pursue activities as a representative within the sector, including the rules of ethical conduct of mortgage brokers.

## 8.2.2 Overseeing practices to foster public trust

The AMF must protect consumers against unethical, abusive, or fraudulent practices while ensuring that practitioners in the financial sector that it oversees have the required competencies.

To perform these duties adequately, the AMF ensures that each responsible officer in charge of a firm's compliance will properly assume his role as set out in the Act, i.e., will ensure that employees and representatives attached to the firm act in accordance with the *Distribution Act* and its regulations.

### 8.2.2.1 Regulations

The AMF has the power to adopt new regulations or modify existing regulations. This power, as set out in the *Distribution Act*, covers various activities of registrants and their representatives.



#### FYI

A draft regulation is initially published for public consultation. Draft regulations are published in the AMF's *Le Bulletin* and on the AMF website under "Public consultations."<sup>98</sup> Any interested party can submit comments during the allotted period. Unless indicated otherwise, these comments are generally published on the AMF website. When the consultation process is over, the AMF publishes the final version of the regulation in *Le Bulletin* and on its website and identifies its effective date.

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### 8.2.2.2 Whistleblower program

The AMF has set up a secure portal for whistleblowers. Whistleblower reports are dealt with thoroughly and in strict confidence by a specialized team.<sup>99</sup>

Specifically, the AMF has created a secure e-mail account whereby a person and the AMF can exchange information and documents. To gain access, the person must have previously submitted a disclosure online.

### 8.2.2.3 Application of laws

As a regulator, the AMF must ensure that all registrants uphold the legislation and regulations in their practice. To ensure this, it uses two control mechanisms, inspections and investigations, which will be seen in detail below.

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.

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98. Public consultations | AMF ([lautorite.qc.ca](http://lautorite.qc.ca)).

99. Whistleblower Program | AMF ([lautorite.qc.ca](http://lautorite.qc.ca)).

## 8.3 Inspections and investigations

Inspections are typically carried out before irregularities happen, i.e., they play a more preventive role, whereas investigations take place with a more punitive approach, as they are launched following a trigger event. Thanks to both of these mechanisms, the AMF strengthens public confidence in it and in sectors it supervises.<sup>100</sup>

For both inspections and investigations, the responsible officer is the main contact between a firm and the AMF's employees. As a result, responsible officers must cooperate with inspectors and investigators and be available to respond to their requests. During an inspection, they must ensure that a responsible person is available throughout the intervention to answer their questions and fulfill their requests.

### 8.3.1 Inspections

The AMF can carry out inspections to verify whether the *Distribution Act* is being applied. Generally, the purpose of inspections is to verify, validate, and analyze the registrant's work practices.

Inspections are preventive verification procedures and notably consist of ensuring that practitioners in the financial sector comply with their legal and regulatory requirements to protect the interests of consumers of financial products and services. The inspection process, which is conducted in cooperation with registrants, helps to improve their professional practices.

Since inspections are preventive in nature, they may be directed at any AMF registrant, i.e., a firm or an independent representative. Registrants cannot refuse to undergo an inspection and must collaborate fully with the process. The AMF follows a risk-based approach, relying on quantitative and qualitative selection criteria such as the type of professional activities, notably the sale of products considered to be risky, the registrant's financial situation, the existence of non-compliance, or situations reported by a whistleblower, the number and type of complaints received, the size of enterprise, or the number of brokers/representatives attached to the firm, as well as holders of a certificate that are subject to conditions or restrictions.

There are mainly three types of inspection: a regular inspection, a targeted inspection and the self-assessment questionnaire (remote inspection).

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100. See also General information – Inspection | AMF ([lautorite.qc.ca](http://lautorite.qc.ca)).

- **Regular inspections**

Regular inspections encompass most firm activities, notably supervision—including probationary periods, ethics, the suitability of transactions, record-keeping, complaints processing, IT security, privacy protection, advertising and representations, financial position, the sharing of commissions, and referral agreements.

They can be carried out on site or remotely. Regular inspections are generally announced ahead of time but can also be initiated without advance notice.

- **Targeted inspections**

As the name indicates, targeted inspections are more focussed in scope. This type of inspection could be performed following an initial inspection or if a situation is reported by a whistleblower.

If this is a follow-up inspection, it would be performed to confirm that the registrant has taken the appropriate remedial action and is complying with the recommendations made by the inspectors in the wake of the previous inspection that identified deficiencies.

If a situation was reported by a whistleblower, the objective is to verify the specifics of the situation.

### **EXAMPLE**

The AMF's Inspection Department is notified by another AMF team that several complaints have been filed against Michel, a trainee with ABC firm. A targeted inspection is then initiated for that firm. The inspectors will focus their attention on transactions that Michel carried out and how the firm is fulfilling its duty to supervise him during probationary periods.

Like regular inspections, targeted inspections can be performed on site or remotely and are normally announced ahead of time.

- **Self-assessment questionnaire (or remote inspection)**

When an inspection is performed remotely, the registrants receive a questionnaire that they must complete by providing clarifications on certain aspects of their practice. The purpose of the questionnaire is to have the registrant reflect about compliance. Based on the answers provided, a more personalized follow-up may be needed in order to stipulate the remedial action to be taken so that the registrant is in compliance with the law and its regulations.

### 8.3.1.1 The inspection process

Unless an inspection is not announced ahead of time, an inspector will start by contacting the responsible officer to inform him that he will be undergoing an inspection. The inspector explains the process and they agree on a date for an interview, which will focus on the registrant's practice. The number of inspectors involved in an inspection will vary depending on the anticipated scope of work. Only highly targeted inspections will involve one inspector. Inspectors control the inspection process.

Before the interview, one of the inspectors can ask the registrant to send him documents (e.g., a questionnaire on the firm's practices and IT security, the policies and procedures handbook, the list of sales and transactions, etc). During the actual interview (which takes place on site or via video conference), the person (or persons) representing the registrant (generally the responsible officer) may be questioned on his (or their) knowledge, the firm's management, his supervision of representatives, and all other matters pertaining to the practice of professional activities. The responsible officer may be accompanied by any person to whom compliance-related tasks were delegated.

Inspectors can ask for additional information and documents throughout the inspection process. They could also demand to have access to IT equipment and the database used by representatives in performing their duties or to meet with the firm's representatives and employees. The inspectors will then go visit the location where they are analyzing the files, books, and records considered relevant to the inspection. Inspectors may then conduct interviews with the registrant's representatives and employees.

Following an inspection, the registrant receives an inspection report. Inspection findings are presented verbally and the expected improvements are clearly set out. In nearly all cases, the registrant must commit to take the expected remedial action within a reasonable timeframe. 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. In the most serious cases, the file could also be transferred to the AMF's legal or investigation services, which could result in legal or administrative action.

Needly to say, the registrant—and mainly the responsible officer—will need to follow up very carefully when the inspection report has been received. Moreover, the executive officers—especially the responsible officer—as well as the registrant's representatives and employees, must provide full cooperation during the inspection process. By being open and transparent, the registrant plays a role in protecting the public by improving its own compliance culture.

### Examples of breaches commonly seen by inspectors

- The inspectors observe that a firm's representatives do not have access to a policies and procedures handbook to help them follow best practices. When questioned by inspectors, the representatives admit that transactions carried out for clients are not verified. The inspectors make note of this in their report and explain to the responsible officer that the firm must put in place policies and procedures to oversee work done by representatives. The inspectors also specify that the firm must randomly audit client records to ensure that representatives are meeting legal requirements when they sell financial products or services.
- Upon auditing client records, the inspectors notice that one representative has not analyzed a customer's financial needs before proposing a loan secured by an immovable hypothec. This is noted in the inspection report to remind the registrant that the mortgage broker must always keep a written copy of all information relating to a customer's needs and financial situation in the client record, including his credit history, income, ability to repay the loan, and level of financial knowledge.
- During the interview, the inspectors learn that the firm shares commissions with another firm. However, the responsible officer explains that he does not keep a record of these transactions. The inspectors therefore note in their report that there is no record for commissions earned on transactions or shared with another firm. They also indicate a breach relating to the fact that the registrant did not declare the business relationship to the AMF, as required under the regulations.

**N.B.**

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

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### 8.3.1.2 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.

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#### 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 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.

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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.<sup>101</sup>

Inspectors cannot demand the communication, examination, copying, or seizure of a document or information protected by the professional secrecy binding a member of a professional order other than a chartered professional accountant.<sup>102</sup>

## 8.3.2 Investigations

Unlike inspections, investigations are conducted if the AMF has reasonable grounds to believe there has been a contravention of any act or regulation it applies. Since investigations are held *in camera*, they are confidential.<sup>103</sup> In other words, there is no publicity, and no person who is not part of the group in question (officers or persons attached to the firm, representatives, etc.), other than an attorney, can be in attendance. Given the repressive and dissuasive effect, it is related to one or more offences.

The investigation may apply to both registrants and non-registrants.

### 8.3.2.1 The investigation process

As a general rule, the AMF can, upon its own initiative or upon request, conduct any investigation if it has reasonable grounds to believe that there has been a breach of the *Distribution Act* or its regulations. Each person who has written authorization from the AMF to act as an investigator will arrive at the registrant's offices, or at any other location targeted by the investigation, unannounced and at any reasonable time. The number of investigators involved will vary depending on the anticipated scope of work.

The investigators collect the necessary documentary and testimonial evidence to reconstitute the facts reported by the complainant, examine the registrant's premises, and demand to see and obtain a copy of documents such as books, registers, accounts, contracts, and records, if necessary.

In fact, the investigators can demand that the responsible officer provide all information and documents deemed necessary for their investigation.

The responsible officer is required to collaborate with the AMF and to provide all information and documents requested in the format and within the timelines required by the investigators.

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101. Section 11 of the ARFS.

102. Section 15.1 of the ARFS.

103. Section 12 of the ARFS.

If the evidence is conclusive and demonstrates that an offence was committed involving any of the legislation administered by the AMF, the investigators will submit the file to the AMF's legal department, which will determine whether the evidence warrants legal action against the offender before the Financial Markets Administrative Tribunal or the Court of Québec.

### 8.3.2.2 Powers and obligations of investigators

Each investigator authorized by the AMF to conduct an investigation is vested with the powers and immunity of a commissioner, except the power to order imprisonment.<sup>104</sup> Their mission is to seek evidence relating to an offence. Often, their work consists in verifying the merits of a complaint submitted against the registrant.

Like inspectors, investigators are obliged to produce identification on request. They therefore present the document issued by the AMF that authorizes them to conduct the investigation.

Investigators have access to any of the registrant's establishments. 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. It can search for any key information.

Investigators can therefore demand that the chartered professional accountant representing the registrant or any other person provide any information and documents relating to the investigation, but not information that is protected by professional secrecy binding a member of a professional order other than a chartered professional accountant.<sup>105</sup>

As with the work of inspectors, it is prohibited to hinder the work of investigators or mislead them.



#### **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.

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104. Section 14 of the ARFS.

105. Section 15 of the ARFS.



### Legislative or other references

ARFS, s. 19.0.1.

Anyone who

- (1) hinders or attempts to hinder the action of an inspector or investigator in the exercise of inspection or investigation functions or powers or who hides, destroys or refuses to provide information, a document or a thing the inspector or investigator is entitled to require or examine when exercising those functions or powers, or
- (2) fails to appear after summons or refuses to testify in connection with an inspection or investigation,

is guilty of an offence and is liable to a fine of \$5,000 to \$50,000 in the case of a natural person and \$15,000 to \$150,000 in all other cases.

The minimum and maximum fines are doubled for a second offence and tripled for a subsequent offence.



### N.B.

Where a representative has been informed of an investigation or a complaint concerning him, he must not communicate with the complainant.<sup>106</sup>



### 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;
- (3) to order any other person or entity not to dispose of funds, securities or other property referred to in subparagraph 2.

106. Section 16.16 of the *Regulation respecting the pursuit of activities as a representative*; Section 46 of the *Code of ethics of the Chambre de la sécurité financière*; Section 36 of the *Code of ethics of damage insurance representatives*; Section 57 of the *Code of ethics of claims adjusters*.

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 make a ruling 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.

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

As seen above, violating a provision of the *Distribution Act* or one of its regulations constitutes an offence that could lead to significant sanctions or penalties for a firm, its attached representatives, as well as the employees or other individuals who engage in acts that are reserved for certified representatives. Consequently, the responsible officer, like other officers and directors of a firm, must take reasonable steps to ensure that persons authorized to act on behalf of the firm, such as its employees or attached representatives, comply with *Distribution Act* and its regulations.



#### **N.B.**

Section 488 of the *Distribution Act* stipulates that “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.”

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This completes the chapter on the regulation and supervision by the Autorité des marchés financiers.

# CHAPTER 9

## Other laws governing registrants

### Competency components

- Understand the legal framework for mortgage brokerage
- Integrate into professional practice the rules governing the activities of responsible officers
- Supervise the professional activities of a mortgage brokerage firm

### Competency subcomponents

- Distinguish among the provisions of the *Civil Code of Québec (C.C.Q.)* that apply to the responsible officers in mortgage brokerage firms
- Distinguish the other sources of law that apply to the responsible officers of mortgage brokerage firms
- Integrate into professional practice the other obligations and duties of responsible officers that apply to their practice
- Oversee the work of clerical and support staff
- Oversee the professional activities of mortgage brokers



## Other laws governing registrants

The previous chapters covered the main regulations of the *Act respecting the distribution of financial products and services* (the *Distribution Act*) and its regulations that apply to registrants and persons acting on their behalf. Financial service enterprises must also comply with other regulations. This chapter presents the following laws and regulations:

- *Act respecting the protection of personal information in the private sector (Québec) (APPIPS)*;
- *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules – National Do Not Call List (DNCL)*;
- *Canada’s Anti-Spam Legislation*;
- *Competition Act*; and
- *Civil Code of Québec (C.C.Q.)*.

### **9.1 Respect for privacy: Charter of Human Rights and Freedoms (Québec), Act respecting the protection of personal information in the private sector and the Civil Code of Québec**

In Québec, as in the other Canadian provinces and most industrialized Western nations, respect for privacy is a fundamental value. The Québec legislator has integrated it into a number of laws, including the *Charter of Human Rights and Freedoms*. In sections 4 and 5 of the Charter, which has quasi-constitutional value,<sup>107</sup> individuals have the right to protect their dignity, honour, and reputation and a right to respect for their private life.

During the revamp of the *Civil Code of Québec*, adopted in 1991 (and came into force on January 1, 1994), the legislator dedicated an entire chapter to the topic of privacy, entitling it “Respect of Reputation and Privacy” (Chapter III of Book One, sections 36 to 41).

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107. Pierre Bosset, *La Charte des droits et libertés de la personne dans l’ordre constitutionnel québécois: évolution et perspectives*, 27 juin 2005. Refer to section 52 of the *Charter of Human Rights and Freedoms*.



### 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.

#### Art. 36 C.C.Q.

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

- (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 are particularly relevant for responsible officers. They work under circumstances where they may have to create a file about a person. Article 37 states:*

#### Art. 37 C.C.Q.

Every person who establishes a file on another person shall have a serious and legitimate reason for doing so. He may gather only information which is relevant to the stated objective of the file, and may not, without the consent of the person concerned or authorization by law, communicate such information to third persons or use it for purposes that are inconsistent with the purposes for which the file was established. In addition, he may not, when establishing or using the file, otherwise invade the privacy or injure the reputation of the person concerned.

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Three years later, on September 1, 1994, the *Act respecting the protection of personal information in the private sector* (APPIPS) came into force. The purpose of this law is to establish specific rules about the personal information that a person operating an enterprise in Québec may collect, hold, use, or communicate to third persons.

The APPIPS revisits several principles embedded in the *Civil Code of Québec* and adds other obligations. It provides a framework for the collection of personal information, how to protect it, the people or organizations that can access it, as well as the right to access this information by the person concerned. The APPIPS also sets out rules for rectifying the personal information of the person concerned.

In section 1 of the APPIPS, the phrase “particular rules with respect to personal information relating to other persons which a person collects, holds, uses or communicates to third persons in the course of carrying on an enterprise” refers to a paragraph in article 1525 of the C. C. Q., which stipulates:

The **carrying on by one or more persons of an organized economic activity**, whether or not it is commercial in nature, consisting of producing, administering or alienating property, **or providing a service**, constitutes the operation of an enterprise.

**N.B.**

As registrants (firms and independent representatives) are natural or legal persons who carry on a services enterprise within the meaning of article 1525 of the C.C.Q., the APPIPS applies to them.

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On September 22, 2021, the APPIPS was the subject of a major revision. The Québec legislator removed and added several sections that progressively came into force from September 22, 2022 until September 22, 2024.<sup>108</sup> They are examined in greater detail in this chapter.

Representatives attached to a registrant, although not directly targeted by the APPIPS, are subject to codes of ethics that have several similar objectives.

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108. See *Chambre de la sécurité financière, What you need to know about Quebec’s Bill 25*, November 22, 2022. See also *Commission d’accès à l’information, Principales modifications législatives*.



### Legislative or other references

*Regulation respecting the pursuit of activities as a representative;*

16.10 Mortgage brokers must respect and ensure the confidentiality of all information obtained about their clients.

They must use the information only for the purposes for which it was obtained and may not use it for personal purposes.

Mortgage brokers may not be relieved of these obligations without the client's consent or unless otherwise permitted by a provision of a law or an order of a court.

*The Code of ethics of the Chambre de la sécurité financière (CECSF)*

27. A representative must not disclose personal or confidential information that he obtained, except in accordance with the provisions of the Act, and must not use that information to the detriment of his client or to obtain an advantage for himself or for another person.

*The Code of ethics of claims adjusters (ChAD)*

22. Claims adjusters must respect the confidentiality of all personal information obtained about a client and use the information for the purposes for which it was obtained, unless relieved of that obligation by a provision of a law or an order of a competent court.

23. Claims adjusters must not disclose, other than in accordance with the law, personal or confidential information obtained nor use such information to the detriment of one of the parties involved or with a view to obtaining a benefit for themselves or another person.

24. Claims adjusters must not accept or continue a mandate if it involves or may involve disclosing or using confidential information or documents obtained from another claimant, unless that claimant consents thereto.



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

#### *Code of ethics of damage insurance representatives (ChAD)*

24. A damage insurance representative must not disclose personal or confidential information he has obtained, other than in accordance with the Act, and he must not use such information to the detriment of his client or with a view to obtaining a benefit for himself or for another person.

These ethical rules help self-regulatory organizations (CSF, ChAD) and the AMF to intervene should a certified representative violate the rules indicated above.

In the mortgage brokerage sector, the codes of ethics were written as a complement to the APPIPS, and they enable the AMF to reprimand mortgage brokers who do not comply with the principles governing the protection of personal information.

Moreover, the law enables AMF inspectors to report, to the *Commission d'accès à l'information*, their findings about how a firm is protecting the personal information of its clients.<sup>109</sup>

Consequently, firms must ensure that their employees, attached representatives, and suppliers respect the regulations governing the protection of personal information in the pursuit of their activities. As seen in Chapter 4, doing so may entail developing policies and procedures to protect such information and implementing an internal control mechanism for representatives.

Personal information is a large portion of the information for which a registrant must ensure confidentiality, and the protection thereof is also covered by the concept of care and competency expected from a firm. It is also in line with security practices aimed at protecting a firm in connection with its IT processes subject to cybersecurity rules.

The *Commission d'accès à l'information* is the regulator responsible for applying the APPIPS and its regulations.<sup>110</sup>

109. Section 113 of the *Distribution Act*.

110. Section 103 of the *Act respecting access to documents held by public bodies and the Protection of personal information*, CQLR, c A-2.1.

### 9.1.1 Personal information

The APPIPS defines personal information as information about a natural person that may be used, directly or indirectly, to identify them. The provisions of the APPIPS therefore protect only the personal information about a natural person. Such protection does not apply to corporations or legal persons.



#### N.B.

Still, in line with best practices, responsible officers must implement sufficient protection over the information belonging to natural or legal persons that is entrusted or communicated to them, notably information about employees, prospective and actual clients, and business partners. Generally, contracts between enterprises include an obligation to protect confidential information that is exchanged in the normal course of business (prices, negotiations, commercial practices, etc.), even if such information is not personal.

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Most of the time, personal information means a first name, last name, mailing address, email address, or telephone number. However, case law has also expanded this concept to “pieces of information that, once assembled, like the pieces of a puzzle, help to reconstruct an image that leads to the identification of a person.”<sup>111</sup>

### 9.1.2 Collection of personal information

Before the collection stage, the APPIPS imposes a series of obligations on registrants who intend to collect personal information online or through employees, service providers, or attached representatives.

Specific rules govern the protection of personal information, notably the keeping of client records and access to records and the information they contain. Specifically, registrants can create a record on a natural person if:

- there is a **serious and legitimate** reason for doing so;<sup>112</sup>
- they have determined, **before the collection**, the purposes for doing so;<sup>113</sup>

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111. *Norton Rose Fulbright c. Québec (Ministère de la Santé et des Services sociaux)*, 2015 QCCA 292 CanLII; Commission scolaire de la Seigneurie-des-Mille-Îles et Syndicat de l'enseignement des Basses-Laurentides, M<sup>e</sup> Jean-Guy Ménard, SAE 9407, 25 septembre 2019.

112. Section 4 of the APPIPS.

113. Section 4 of the APPIPS.

- they collect only the **information necessary** for the purposes determined before collection;<sup>114</sup>
- they collect it by **lawful means**; and<sup>115</sup>
- they collect the information only from the person concerned, unless that person consents to collection from third parties (or if authorized by the APPIPS):<sup>116</sup>
  - if the third person is an enterprise and the client so requests, a registrant must inform the client of the source of such information.



**N.B.**

On its website, the *Commission d'accès à l'information* describes **necessary information** as follows:

"The criteria of necessity is a fundamental principle whose aim is to reduce invasions of privacy of concerned persons when information is collected by private enterprises and public organizations. No derogation from this principle is permitted, even with the consent of the person concerned. This principle must be interpreted by examining the end use sought by the private enterprise or public organization. Personal information is necessary if the end use is legitimate, important, urgent, and real and if the invasion of privacy subsequent to the collection, communication or preservation of each piece of information is proportional to that end use (*i.e.*, is the collection of information rationally tied to objectives? Is the privacy breach minimized and disclosure of the required information clearly more useful to the enterprise than it is harmful to the person concerned?). In the private sector, in case of doubt, personal information is deemed to be unnecessary."<sup>117</sup>

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If a registrant, a member of its staff, or an attached representative asks a client for personal information not needed for the purpose of the client record or for the representative's work, the client may forward a complaint to the *Commission d'accès à l'information*.

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114. Section 5 of the APPIPS.

115. Section 5 of the APPIPS.

116. Section 6 of the APPIPS.

117. See <https://www.cai.gouv.qc.ca/>.

At the time of the collection, and subsequently upon request, a registrant must notify and inform the person from whom he plans to collect personal information (in general, the client):

- of the purposes for which the information is being collected;
- of the means by which the information is being collected;
- of the rights of access and rectification provided by law; and
- of the person's right to withdraw consent to the communication or use of the information collected.<sup>118</sup>

If a registrant uses the services of a third person to collect the personal information of a client (for example, a telemarketing firm), it must ensure that, at the time of collection, the client is informed of:

- the name of the enterprise doing the collection (e.g., the name of the telemarketing firm);
- the fact that the collection is being done for the registrant;
- the possibility of the information being communicated outside of Québec, if that is the case; and
- the fact that, upon request, other information may be provided to the client (categories of people having access to the information in the enterprise, the duration of conservation, the contact information of the person responsible for protecting the personal information).

When a person—most often the client of a registrant—provides personal information after having been informed of his rights, that person is deemed to have given consent to the registrant's use and communication of the information for the intended purposes.<sup>119</sup>

If a registrant compiles personal information from its clients using technology that includes functions allowing the person concerned to be identified, located, or profiled, the registrant must first inform them:

- of the use of such technology; and
- of the means available to activate the functions that allow a person to be identified, located, or profiled.<sup>120</sup>

In addition, a registrant that collects personal information through technological means must publish its confidentiality policy on its website and disseminate the policy. The policy must be written in clear and simple terms. If the registrant modifies the policy, it must publish and disseminate a notice to that effect.<sup>121</sup>

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118. Section 8 of the APPIPS.

119. Section 8.3 of the APPIPS.

120. Section 8.1 of the APPIPS.

121. Section 8.2 of the APPIPS.

Also, pursuant to section 9 of the APPIPS, registrants cannot refuse to serve a client who does not want to disclose personal information unless the collection of the information is authorized by law or is necessary for the conclusion or performance of the contract.

**EXAMPLE**

Rufus wants to purchase a life insurance policy. Out of vanity, he refuses to provide his age, weight, and height on the insurance application. Because the insurer needs such personal information to assess the insurance risk, the firm can refuse to serve Rufus.

Lastly, a registrant or person acting on its behalf who collects personal information must do so only from the person concerned (i.e., the client) unless that person consents to the information being collected from a third person or unless the APPIPS authorizes such collection.<sup>122</sup>

Responsible officers must make available a policy on the use of a proxy or a mandatory, as well as a template to be used, as needed.

However, three exceptions to this rule allow personal information to be collected from third persons. Table 9.1 sets out the context for their application and provides an example for each.

**TABLE 9.1**

**Exceptions allowing personal information to be collected from a third party**

Exception	Context for application	Example
<b>First exception</b>	The law authorizes the collection from a third party.	A third party may ask the court for authorization to conduct an autopsy. In so doing, he obtains personal information about the deceased.
<b>Second exception</b>	When the collection is done in the interest of the person concerned and the information cannot be collected from him in a timely fashion.	A third party may need personal information about a person who is seriously ill and needs urgent medical care but cannot provide such information himself due to his state of health.
<b>Third exception</b>	Collection from a third party is necessary to ensure the accuracy of the information.	A claims adjuster can meet with witnesses to confirm the information received from the insured regarding the claim.

<sup>122</sup> Section 6 of the APPIPS.

The executive officers of a firm (directors, executive officers, responsible officer, compliance officer, and person in charge of protecting personal information) must therefore ensure that people collecting personal information on the firm's behalf (for example, an attached representative, employee or service provider, when opening the client record or at any other time) do so in compliance with the APPIPS.

Note that the APPIPS also applies to the personal information collected on executive officers and on the representatives and employees acting on behalf of a registrant.

## EXAMPLE

### Collection of necessary information

Elvira submits a home insurance application for her cottage. In its proposal, the firm Grand'Assurance asks her questions about her health.

The firm has the right to compile a file on Elvira and to collect information about her, but it has no reason to ask her questions about her health, as this topic is unrelated to home insurance. Such information is not useful for the purposes of the file.

The firm cannot refuse to serve Elvira because she refuses to provide such information.<sup>123</sup>



### N.B.

A responsible officer must ensure that a registrant's employees and attached representatives create records that comply with privacy laws.

For example, to ensure the legality of the activities, he may review the forms given to clients and the questions asked of clients during their initial meeting when a representative collects personal information for the purposes of offering a service or applying for a financial product with a financial institution. The responsible officer must also ensure the compliance of the wording of a written document used to obtain various consents.

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<sup>123</sup> Section 9 of the APPIPS.



## EXAMPLE

### Collecting a piece of identification

Roch meets Samuel, a new client. Samuel wants to purchase an unregistered annuity contract that would give him \$15,000 in annual income. Roch asks Samuel for his driver's license in order to identify him, mentioning that the insurer requires this document to issue the annuity contract. Samuel refuses to do so (he does not drive but does not want to tell Roch) and instead gives Roch his Medicare card. Roch refuses to serve the client, telling him that a driver's licence is essential for identification purposes.

In this case, identification is required according to the regulations of the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC).<sup>124</sup> Roch cannot ask the client to present only his driver's licence; he must give him the option of presenting an identification document with a photo issued by a Canadian federal, provincial, or territorial<sup>125</sup> government.

### 9.1.3 Holding and use of personal information

Registrants that hold personal information must apply the security measures necessary to ensuring it remains confidential.<sup>126</sup>



#### Legislative or other references

*An Act respecting the protection of personal information in the private sector, s. 10*

A person carrying on an enterprise must take the security measures necessary to ensure the protection of the personal information collected, used, communicated, kept or destroyed and that are reasonable given the sensitivity of the information, the purposes for which it is to be used, the quantity and distribution of the information and the medium on which it is stored.

124. Section 22 (1) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

125. Section 105 (1) a) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*.

126. Section 10 of the *Privacy Act*, Sections 3 and 18 of the *Regulation respecting the keeping and preservation of books and registers*; Section 16.10 of the *Regulation respecting the pursuit of activities as a representative*; see also *Autorité des marchés financiers c. 6541828 Canada Inc. (Groupe immobilier Vantage)*, 2023 QCTMF 31.

Here are some examples of security measures that a responsible officer must take concerning physical records and office equipment:

- Lock the doors, drawers, and areas where the physical records, computers, and servers are stored.
- Place the USB keys, CDs, backup copies, etc., under lock and key. Do not leave them unmonitored in a car or public space.
- Ensure that the registrant's premises are secured—alarm system, guards, etc.
- Do not loan to third persons the computer equipment or cellular phones assigned by the firm to the employees and representatives.

Concerning computer files, other measures may be required by the responsible officer. Examples include:

- shutting down workstations, activating the auto sleep function;
- using secure passwords;
- installing reliable and recognized computer security systems such as firewalls and antivirus programs, and programming automatic updates of these systems;
- limiting access to the computers or servers to specific persons and being able to promptly trace any unauthorized or suspicious access activity;
- deactivating the automatic saving of passwords for sensitive information and administrator accounts;
- working with renowned IT experts and conducting penetration tests to test the security of the IT systems;
- programming automatic data backups;
- using encryption software;
- using secure networks (HTTPS, SSL); and
- accessing the registrant's environment using VPN, which includes double authentication.

Several cybersecurity resources are available to help registrants prevent the risks of technology-related incidents, in particular on the website of the *Commission d'accès à l'information* and in the AMF's *Governance and Compliance Guide for registrants under the Act respecting the distribution of financial products and services*. Also, the Mortgage Broker Regulators' Council of Canada (MBRCC) has published cybersecurity preparation principles that propose practices designed to prevent—and respond to—cybersecurity incidents in this sector of activity. Mortgage brokerage registrants can also refer to the practices proposed in the *Cybersecurity Readiness*<sup>127</sup> document published by the Canadian Insurance Services Regulatory Organizations (CISRO).

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127. cisro-ocra.com

### 9.1.4 Access to the records and personal information of clients

Files are accessible only to employees for whom the information is necessary for the performance of their duties.<sup>128</sup> Merely having the status of employee or attached representative of a registrant is not sufficient to consult all of the records. In fact, a registrant must demonstrate that access to a client's personal information is necessary to an employee performing his duties, to a representative or service provider conducting their activities, or to the delivery of a service requested by a client. The information may not be used for purposes that are not relevant to the object of the file.<sup>129</sup> Registrants must also ensure that the information contained in its files is up to date and accurate at the time it is used.<sup>130</sup>

Responsible officers must therefore 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.

For example, because a representative does not have the right to see the information about another representative's client, unless the client consents to it (or if the firm grants the representative access for reasons of necessity), responsible officers must ensure that such information is accessible only to the representative responsible for the client file and, in this person's absence, accessible to a trusted person, regardless of the means of conservation.

### 9.1.5 A client's right to access and rectify his record

Sections 27 to 41 of the APPIPS deal with the right of access to personal information.

Every natural person is entitled to access the personal information that an enterprise holds about him. He has the following rights:

- The right to have erroneous personal information about him rectified; and
- The right to obtain a copy at a reasonable cost.

A right to access or rectify a record must be made in writing to a registrant, and the person making the request must justify his identity as the person concerned. It should be noted that a legal representative of this person (for example, a tutor to a person of full age or a public curator) may request access to such information. The independent representative or the firm must transmit such information to them. Such access must be free of charge; however, a reasonable charge may be required for the transcription, reproduction, or transmission of such information.

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128. Section 20 of the APPIPS.

129. Section 12 (2.2) of the APPIPS.

130. Section 11 of the APPIPS.

Where such information is inaccurate, incomplete, or equivocal, a client may ask that it be deleted or rectified. The firm or independent representative, as the case may be, must do what is needed to enable the client to make these rectifications.

The APPIPS also stipulates that certain persons can access the personal information of a deceased client (for example, to receive assistance with the grieving process). The APPIPS also allows a liquidator, beneficiary, heir, or successor to obtain information from an enterprise; however, it is not enough for the person to merely present himself as the liquidator, beneficiary, heir or successor. In fact, the person must also demonstrate that the requested information document affects his interests or rights as a liquidator, beneficiary, heir, or successor.<sup>131</sup>



### Legislative or other references

*An Act respecting the protection of personal information in the private sector, s. 40.1 and 41*

- 40.1 A person carrying on an enterprise may communicate personal information that he holds concerning a deceased person to the spouse or a close relative of the person if knowledge of the information could help the applicant in the grieving process and if the deceased person did not record in writing his refusal to grant such a right of access.
41. Subject to section 40.1, a person carrying on an enterprise must refuse to communicate personal information to the liquidator of the succession, to a beneficiary of life insurance or of a death benefit, or to the heir or successor of the person to whom the information relates, unless the information affects their interests or rights as liquidator, beneficiary, heir or successor.
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131. *Arrata c. Sun Life Financial, 2023 QCCA 132.*

Registrants must respond to requests with diligence and not later than 30 days after the request. If they do not respond within that time limit, the registrant is deemed to have refused the request. Consequently, the person who requires the information or documents can make a request before the administrative tribunal of the *Commission d'accès à l'information du Québec* to obtain them.

In certain cases, however, registrants may deny access to personal information, notably:

- where disclosure would be likely to hinder an inquiry conducted by their internal security service, the purpose of which is the prevention, detection or repression of crime or statutory offences;<sup>132</sup> and
- where disclosure would be likely to affect judicial proceedings.<sup>133</sup>

Registrants *must* refuse access to personal information if the disclosure thereof would likely reveal personal information about a third person or the existence of such information and the disclosure thereof may seriously harm that third person (with exception).<sup>134</sup>

### 9.1.6 Transmission to third parties

A client must give his consent to a registrant who communicates personal information about the client to a third party.

#### EXAMPLE

BigCabinet Inc., which is collecting personal information about its client for the purchase of a disability insurance policy, would like to send this information to its partner Minifirm Inc., a damage insurance firm, for referral purposes. This sending of information is permitted only with the consent of the client.

The client's consent is also needed if a registrant wants to use the personal information it is holding for purposes other than the purposes for which it was collected.<sup>135</sup> Such consent must be clear, free, and informed and given for a specific purpose.<sup>136</sup>

The AIPPPS does not require **written consent**, but it is clearly preferable for registrants to obtain written consent to show that it was obtained in compliance with the criteria set out under the AIPPPS.

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132. Section 39 (1) of the AIPPPS.

133. Section 39 (2) of the AIPPPS

134. Section 40 of the AIPPPS.

135. Section 12 of the AIPPPS.

136. Section 14 of the AIPPPS.

There are exceptions to this rule whereby an enterprise can communicate personal information to a third person without the consent of the person concerned.<sup>137</sup>



**N.B.**

A representative who obtains personal, financial, or medical information from a client must demonstrate vigilance as regards this information being consulted by third persons. The responsible officer must ensure that any transmission to third persons is done with the consent of the client or in accordance with the law.

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**FYI**

Once a client record has been closed, a firm may no longer use the information contained therein unless the client or the law so authorizes.

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Section 18 of the APPIPS sets out various situations where registrants can communicate personal information contained in a client record without the client's consent (for example, a request for information by the Director of Criminal and Penal Prosecutions if the information is required for the prosecution of an offence or if the information held by the registrant must be communicated in an emergency situation that threatens the life, health, or safety of the client).



**N.B.**

A mortgage broker may collect information about the financial position of a client for a third person, but he cannot communicate that information to the third person without the client's consent (or if authorized by law). Consequently, a client must give consent prior to the transfer of a loan application to the lender.

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137. Sections 18, 20, 22 and 23 of the APPIPS.

## EXAMPLE

At the request of the Director of Criminal and Penal Prosecutions, Assure-toi inc. can, without the consent of Didier, a client, communicate information it holds about Didier in the case where a car theft is being investigated.



### FYI

Client authorization is useless when the AMF requests access to a mortgage broker's files during an inspection or investigation.

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### Legislative or other references

*Informing clients*

APPIPS, s. 19

Section 19 of the APPIPS states as follows:

Every person carrying on an enterprise having as its object entering into a credit contract [...] who consults credit reports or recommendations as to the solvency of natural persons prepared by a personal information agent, must inform such persons of their right of access and rectification in relation to the personal information held by the agent and indicate to them the manner in which and the place where they may have access to the reports or recommendations and cause them to be rectified, where necessary.

The person carrying on such an enterprise must communicate to a natural person, on request, the content of any credit report or recommendation he has consulted for the purpose of making a decision concerning the person. [...]

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### 9.1.7 The new provisions of the *Act respecting the protection of personal information in the private sector (APPIPS)*

New provisions have been added to the APPIPS and impose additional obligations on registrants about the protection of personal information. Responsible officers must therefore have thorough knowledge of what is expected of the registrant and make sure that the following actions are taken:

- **Name a person in charge of the protection of personal information**

The APPIPS created the role of person in charge of the protection of personal information.<sup>138</sup> By default, said role is assigned to the person with the highest authority in the firm—generally the responsible officer—or the person registered as an independent representative. This person in charge ensures implementation of the law and compliance therewith.

The contact information of the person in charge of protecting personal information must be posted on the registrant’s website or, if it is not, be accessible by any other means.



#### **Legislative or other references**

##### *Informing clients*

APPIPS, s. 3.1

Section 3.1 of the APPIPS states as follows:

Any person carrying on an enterprise is responsible for protecting the personal information held by the person.

Within the enterprise, the person exercising the highest authority shall see to ensuring that this Act is implemented and complied with. That person shall exercise the function of person in charge of the protection of personal information; he may delegate all or part of that function in writing to any person.

The title and contact information of the person in charge of the protection of personal information must be published on the enterprise’s website or, if the enterprise does not have a website, be made available by any other appropriate means.

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138. Person in charge of the protection of personal information – *Commission d’accès à l’information du Québec* (gouv.qc.ca).



- **Assess the risk of damage, notify the *Commission d'accès à l'information (CAI)* and the persons concerned, if needed**

A failure by a registrant to fulfill its obligation to protect the personal information of its clients is likely to trigger a confidentiality incident. Moreover, a registrant may be subject to a theft or system penetration causing such a confidentiality incident, even after having deployed adequate measures to safeguard personal information, for example, where:

- a representative has lost his clients' files to theft after leaving them unattended in a coffee shop;
- an employee of a firm copies the personal information of its clients onto a USB key in order to sell it to a third person;
- a hacker hacks into a database to make a copy of client information; and
- a registrant loses his laptop or disposes of a computer without ensuring the secure destruction of the personal data stored on it.

A registrant who has reasons to believe that a confidentiality incident has occurred must:

- take reasonable measures to limit the risks of injury for the client and prevent the recurrence of similar incidents;
  - assess whether the incident poses a risk of serious injury to the client according to the APPIPS criteria, after consulting with the person in charge of protecting personal information (often the responsible officer);
  - notify the client and the CAI when the incident has presented a risk of serious injury as well as any person or organization likely to help the registrant limit the consequences of the incident for the client according to the manner provided for;
  - promptly notify the insurer (if the registrant is covered by a cyber risk insurance policy); and
- **keep a register of confidentiality incidents.**

Registrants must keep a register of confidentiality incidents and record any incidents therein in accordance with the *Regulation respecting confidentiality incidents*. A copy of this register must be sent to the CAI at its request.<sup>139</sup>

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139. Section 3.8 of the APPIPS.

The register of confidentiality incidents must contain the following information:

- A copy of the personal information subject to the incident. If this information is not known, then the reason why it's not possible to provide this description must be provided;
- A brief description of the circumstances surrounding the incident;
- The date or period when the incident occurred or an estimate of this period if it is unknown;
- The date or period during which the registrant became aware of the incident;
- The number of persons affected by the incident or, if unknown, an estimate of this number;
- A description of the factors that lead the registrant to conclude whether or not there has been a risk of serious injury to the persons affected, such as:
  - the sensitivity of the personal information concerned;
  - possible malicious uses of the information; and
  - the anticipated consequences of the use of the information and the likelihood that the information will be used for injurious purposes;
- The transmission dates of the notices to the *Commission d'accès à l'information* and to the persons concerned when the incident presents a risk of serious injury. The registrant must also specify if it has given public notices and the reasons for them; and
- A brief description of the measures taken by the registrant, following the incident, to mitigate the risks of injury.

The information in the register must be kept up to date and kept for at least five (5) years after the date or period when the registrant became aware of the incident.<sup>140</sup>

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140. See *Commission d'accès à l'information, Incidents de confidentialité – Registre des incidents de confidentialité*, May 2, 2023. <https://www.cai.gouv.qc.ca/incident-de-confidentialite-impliquant-des-renseignements-personnels/registre/>. See also AMF, *Firms and representatives – Protection of data and personal information*. See also *Chambre de la sécurité financière, InfoDéonto, Protecting Personal Information; Chambre de la sécurité financière, InfoDéonto, Using Information Technology*.

- **Establish and implement governance policies and practices that protect personal information**

Such policies and practices should at the very least include:

- rules applicable to the keeping and destruction of personal information;
- the roles and responsibilities of employees, throughout the lifecycle of the personal information (page currently being updated); and
- a complaint-processing process.<sup>141</sup>



**N.B.**

If a registrant does not declare a confidentiality incident to the CAI or the persons concerned, it may incur substantial monetary administrative penalties (up to \$10 million or 2% of sales)<sup>142</sup> or administrative penalties that could total \$25 million dollars or 4% of sales.<sup>143</sup> For a natural person, an attached representative for example, the administrative penalty may vary between \$5,000 and \$100,000.



**N.B.**

If a registrant commits an offence under the APPIPS, the person in charge, be it the responsible officer or any other officer who ordered or authorized the act or omission or consented to it, is a party to the offence and personally liable to a fine ranging from \$5,000 to \$100,000.

Nor can the registrant take any reprisals (demotion, suspension, dismissal, transfer or any other disciplinary measure) or threaten a person to refrain from filing a complaint or collaborating in an investigation.

The registrant must provide the information requested by the CAI, in particular the incident register.<sup>144</sup>

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141. See <https://www.cai.gouv.qc.ca/entreprises/politiques-et-pratiques-gouvernance/>.

142. Sections 90.1 and 90.12 of the APPIPS.

143. Sections 91 al. 1 and 91 al. 1 (3) of the APPIPS.

144. Sections 3.8 and 81.2 of the *Distribution Act*.



### Legislative or other references

APPIPS, s. 91 and 93

Sections 91 and 93 of the APPIPS stipulate that:

91. Anyone who:

- (1) collects, uses, communicates, keeps or destroys personal information in contravention of the law;
- (2) fails to report, where required to do so, a confidentiality incident to the Commission or to the persons concerned;
- (3) (...)
- (4) does not take the security measures necessary to ensure the protection of the personal information in accordance with section 10;
- (5) (...)
- (6) (...)
- (7) [...] contravenes section 81.1;
- (8) refuses or neglects to comply, within the specified time, with a demand made under section 81.2;
- (9) (...)

commits an offence and is liable to a fine of \$5,000 to \$100,000 in the case of natural person.

93. Where an offence under this Act is committed by a legal person, the administrator, director or representative of the legal person who ordered or authorized the act or omission constituting the offence, or who consented thereto, is a party to the offence and is liable to the prescribed penalty.

- **Staying informed of legislative and regulatory changes**

Other changes will come into force on September 22, 2024, including the right to data portability, which will create added responsibilities for the person in charge of the protection of personal information. As of that date, if a client so requests, a registrant will have an obligation to communicate, in a structured and commonly used technical format, the computerized personal information it has collected on that client.<sup>145</sup>

### **9.1.8 Best practices for responsible officers**

In a small firm, the responsible officer is often the person tasked with ensuring compliance with the APPIPS. This person must publish his professional contact information on the registrant's website, indicating that he is the person in charge of the protection of personal information. In a large firm, the protection of personal information is often assigned to a manager who has the necessary competencies to occupy this position. Moreover, to obtain support with his duties, this manager can delegate certain tasks to an employee of the firm or to external suppliers.

In all cases, for the AMF, responsible officers are ultimately in charge of ensuring the adoption, implementation, and compliance with the policies and procedures applicable to the collection, use, transmission and destruction of the personal information of clients. They must ensure the creation of an incident register and ensure that the person in charge of the protection of personal information enters any incidents into the register. Moreover, responsible officers must ensure that the registrant's protection of personal information policy is published on its website and that the name of the person in charge of protecting personal information also appears there.

Responsible officers must know and thoroughly understand privacy rules or, at the very least, be well advised by a privacy specialist. They must ensure that a registrant's employees, representatives, suppliers, mandataries, and executive officers understand and apply the regulations set out in the APPIPS given that they have access to the personal information of clients that the registrant must protect.

To summarize, a best practice for the registrant is to take the following measures to ensure the:

- assessment of privacy-related factors (APRF);<sup>146</sup>
- creation and implementation of policies and practices to ensure compliance with the APPIPS and protection of the firm's personal information;
- creation of an incident register;

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145. See <https://www.cai.gouv.qc.ca/espace-evolutif-modernisation-lois/thematiques/droit-portabilite/>.

146. See the *Guide d'accompagnement Réaliser une évaluation des facteurs relatifs à la vie privée of the CAI*: <https://numerique.banq.qc.ca/patrimoine/details/52327/4580975>.

- adoption of sound cybersecurity practices;
- training provided to the firm’s employees and representatives covering the requirements of the APPIPS as well as training covering the policies, procedures, and sound practices adopted by the registrant;
- signing of a confidentiality agreement by non-certified employees and service providers with access to confidential information; and
- an internal control mechanism to verify compliance with established policies.

## 9.2 **Proceeds of Crime (Money Laundering) and Terrorist Financing Act**

The *Proceeds of Crime (Money Laundering) Act* was passed in 2000 as part of the creation of Canada’s anti-money laundering regime. In 2001, the scope of this law was widened to include terrorist financing. It therefore became the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.<sup>147</sup>

This Act has the following key objectives:

- To implement specific measures to detect and deter money laundering and the financing of terrorist activities;
- To facilitate the investigation and prosecution of money laundering offences and terrorist activity financing offences;
- To respond to the threat posed by organized crime; and
- To assist in fulfilling Canada’s international commitments to participate in the fight against transnational crime.

### 9.2.1 **Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)**

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) was created in July 2000. It ensures compliance with the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA) and its regulations. Its role also includes receiving, analyzing and disclosing financial intelligence on suspected money laundering and terrorist financing.

Certain persons are required to declare any suspicious financial transactions to FINTRAC. These persons include employees of financial institutions (banks, credit unions, financial services cooperatives, credit cooperatives, life insurers (including insurance of persons representatives), trust companies, loan companies, securities brokers (legal persons), real estate brokers (legal persons and agents (natural persons)) and real estate developers).

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147. *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17.



## FYI

According to the *Regulations amending certain regulations made under the proceeds of crime (money laundering) and terrorist financing act*, the obligations stipulated in this act and its regulations have been extended to include mortgage brokers.

More information about FINTRAC, its activities, and the instructions for completing a suspicious transaction report are available on the FINTRAC website.<sup>148</sup>

### 9.2.1.1 Guidance from FINTRAC

FINTRAC has published guidance for persons who are subject to the Act and the regulations.<sup>149</sup> This guidance revisits the obligations imposed by the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its regulations. Listed below are the main obligations:

- Establishment and implementation of a compliance program;<sup>150</sup>
- Record-keeping requirements;<sup>151</sup>
- Reporting requirements (suspicious transactions, terrorist property, large cash transactions, large virtual currency transactions); and<sup>152</sup>
- Know-your-client requirements (including client identification requirements):
  - verification of a client’s identity (individuals and entities);
  - verification of the business relationship;
  - ongoing monitoring of the business relationship;
  - identification of beneficial owners;
  - third-party determination; and
  - determination of politically exposed persons (PEP) and heads of international organizations (HIO).

148. See <https://www.fintrac-canafe.gc.ca/>.

149. See FINTRAC, Mortgage administrators, brokers, and lenders, effective October 11, 2024.

150. See FINTRAC, Compliance program requirements, November 19, 2021.

151. At the time of publication of this guide, FINTRAC had yet to publish guidelines for the mortgage loan sector addressing specific record-keeping obligations.

152. See FINTRAC, Mortgage administrators, brokers, and lenders effective October 11, 2024 (under the “Report” heading).

## 9.2.2 Compliance program

A compliance program constitutes the foundation for ensuring compliance with the requirements set out in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its regulations, in particular, compliance in the areas of reporting, record-keeping, client identification, and getting-to-know-clients.

All reporting entities must create and implement a compliance program. In particular, they must:

- designate a compliance agent responsible for implementing a compliance program;
- develop and apply compliance policies and procedures that are written out, updated and, in the case of an entity, approved by an executive officer;
- assess the enterprise's risks to examine and record the risks of proceeds of money laundering offences in connection with its activities;
- develop and continually update a written ongoing training program covering compliance and intended for employees, mandataries, or other persons authorized to act on behalf of the reporting entity;
- develop and document a plan for professional development program covering compliance and deliver the training (training plan); and
- develop and document a plan to assess the effectiveness of the compliance program and conduct this assessment at least every two years (biannual effectiveness assessment).

Note that the AMF and FINTRAC have signed a memorandum of understanding to share compliance-related information covered in the laws administered by the AMF as well as compliance-related information covered in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* administered by FINTRAC.<sup>153</sup>



### FYI

FINTRAC has published information on the requirements that apply to firms and their mortgage brokers. It will be updated progressively before coming into force on October 11, 2024.

The AMF invites firms and mortgage brokers to refer to it.<sup>154</sup>

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153. See AMF and FINTRAC sign compliance information-sharing agreement, June 28, 2006. See also AMF, *Financial Crime Risk Management Guideline*.

154. See FINTRAC, *Mortgage administrators, brokers and lenders*, effective October 11, 2024.



### 9.3 Canada’s National Do Not Call List (National DNCL)

The *Telecommunications Act* (TA), adopted by the federal government in 1993, has several objectives, a notable one being the protection of privacy. Thanks to this law and its regulations,<sup>155</sup> consumers who do not wish to receive unsolicited calls from telemarketers—people doing telemarketing for themselves or on behalf of one or more persons—may register their number with the National DNCL. This registration is done effortlessly on the site of the Canadian Radio-television and Telecommunications Commission (CRTC).<sup>156</sup> Please note that the DNCL does not apply to calls made to enterprises.

The TA prohibits Canadian telemarketers from soliciting persons who are registered on the DNCL, aside from certain exemptions specified by law.<sup>157</sup> These exemptions are as follows:

1. Telemarketing calls made by or on behalf of an enterprise to a “consumer” with whom there is already a business relationship (existing business relationship), provided that this consumer has not specifically requested an exclusion from the enterprise.<sup>158</sup> In fact, even if the consumer’s number does not appear on the DNCL, that consumer may have asked the enterprise to exclude its name and telephone number from its internal list of excluded numbers. As for “existing business relationship,” it means:<sup>159</sup>
  - the purchase of a product or service in the past 18 months;
  - a request for information or application prepared in the past 6 months; or
  - a written contract that is existing or that expired in the past 18 months.
2. The obtainment of the express consent of a consumer who, while registered on the DNCL, has asked to not be excluded from calls made by an enterprise to consumers. The term “express consent” is the consumer’s written permission to be called (form completed by hand or electronically or online) or verbal authorization provided in an audio recording or verified by an independent third party.

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155. See the *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules* (the “Rules”), <https://crtc.gc.ca/eng/trules-reglest.htm>.

156. <https://lnnte-dncl.gc.ca/en/Consumer/Register-your-number/#1/>.

157. Section 41.7(1) of the TA.

158. Enterprises must keep an internal list of excluded numbers (desists). See Government of Canada, *Canada’s Do Not Call List*, 2018-04-09.

159. Section 41.7(2) of the TA.



### Legislative or other references

#### *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules*

##### Part II – National DNCL Rules

4. A telemarketer shall not initiate, and a client of a telemarketer shall make all reasonable efforts to ensure that the telemarketer does not initiate, a telemarketing telecommunication to a consumer's telecommunications number that is on the National DNCL, unless express consent has been provided by such consumer to be contacted via a telemarketing telecommunication by that telemarketer or the client of that telemarketer.
5. For the purposes of section 4, express consent shall clearly evidence the consumer's authorization that a telemarketing telecommunication made by or on behalf of a specific person may be placed to that consumer and shall include the telecommunications number to which the telemarketing telecommunication may be placed.

Independent representatives or firms that solicit clients by telephone (directly or using pre-recorded messages), by fax, or through telemarketing firms hired by the registrant, are considered to be telemarketers. They are therefore subject to the TA and its regulations.

To avoid soliciting a person registered on the DNCL, and to adhere to the TA and its regulations, a telemarketer should subscribe to the DNCL, which requires payment of annual fees. To do so, a telemarketer will provide information about its enterprise to the CRTC website, purchase a subscription to the DNCL, and then download it or search it.<sup>160</sup> A subscription to the DNCL helps registrants to raise their chances of reaching persons likely to be interested in their service offering. Proof of subscription and payment to the DNCL must be kept for a period of three years.<sup>161</sup>

The list to which a registrant has access through its subscription cannot be shared with other persons, except for the service provider who does its telemarketing.<sup>162</sup>

160. The "Telemarketers" section of the CRTC site contains information on the subscription rates and formats of the records as well as other useful information. For more information, see <https://lnnte-dncl.gc.ca/en>.

161. Section 5 of Part III of the *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules*.

162. Sections 11 to 13 of the TA.



### Legislative or other references

#### *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules*

6. A telemarketer shall not initiate a telemarketing telecommunication on its own behalf, unless it is a registered subscriber of the National DNCL and has paid all applicable fees to the National DNCL operator.
7. A telemarketer shall not initiate a telemarketing telecommunication on behalf of a client unless that client is a registered subscriber of the National DNCL and the applicable fees to the National DNCL operator associated with that client's subscription have been paid.

Any solicitation call to a consumer made by an employee or attached representative of a registrant or independent representative must comply with the CRTC's rules. The same applies to solicitation calls made for a registrant by employees of telemarketing firms.

Telemarketing communication can only be made from Monday to Friday, between 9:00 a.m. and 9:30 p.m., or on Saturday and Sunday, between 10 a.m. and 6 p.m.<sup>163</sup>

When an employee, attached representative, or telemarketing firm employee who is making calls for a registrant solicits a consumer, he must provide the following information in a clear manner as soon as the consumer answers:

- His real or fake name;
- The name of the telemarketing firm calling on behalf of the registrant, if that is the case;
- The name of the registrant;<sup>164</sup> and
- The purpose of the call.<sup>165</sup>

Upon request, the person making the call must also provide the contact information (telephone number, email address, or mailing address) of an employee of the telemarketer (the registrant or telemarketing firm making calls for the registrant) to whom the consumer can send his comments about the telemarketing call received, or make a do-not-call request or check that his request has been received. The telemarketer must communicate with the consumer within three business days after the consumer's message has been left on the voicemail system or email of the telemarketer.<sup>166</sup>

163. Section 23 of the *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules*.

164. Section 16 of the *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules*.

165. Section 41.7 (3) of the TA.

166. Section 17 of the *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules*.

Responsible officers must familiarize themselves with the rules applicable to the DNCL, particularly if the registrant wants to make telemarketing calls to consumers. Here is a summary of key elements to remember:

- The representatives, advisers, employees, and persons hired by a telemarketing firm that solicits consumers by telephone are telemarketers.
- A registrant who makes telemarketing calls must register with the DNCL (<http://www.LNNTNTE-DNCL.gc.ca>).
- That registrant must purchase a subscription to the DNCL.
- The person who calls must first check the telephone numbers.
- If the telephone number of a consumer is on the DNCL, the registrant cannot call it, except if the person concerned has previously given their express consent (or if they are part of the exemptions).
- It is important to:
  - keep an internal list of clients who have specifically asked not to be called;<sup>167</sup>
  - keep as proof the list of persons having not made a request for exclusion to the registrant;
  - keep a record of the subscriptions, registration, and proof of payment of fees;
  - identify themselves and the purpose of the call; and
  - make telephone calls during the permitted hours.

Violating the rules can have significant financial consequences for representatives, responsible officers, employees, registrants, or telemarketing firms.

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<sup>167</sup>. Sections 8 and 9 and Part III of the *Canadian Radio-television and Telecommunications Commission Unsolicited Telecommunications Rules*.



### Legislative or other references

#### *Telecommunications Act*

#### Administrative monetary policies – Unsolicited telecommunications

#### Violation

72.01 Every contravention of a prohibition or requirement of the Commission under Section 41 (...) constitutes a violation and the person who commits the violation is liable:

- (a) in the case of an individual, to an administrative monetary penalty of up to \$1,500;
- (b) in the case of a corporation, to an administrative monetary penalty of up to \$15,000.

(...)

72.03 A violation that is continued on more than one day constitutes a separate violation in respect of each day during which it is continued.

## 9.4 Canada's anti-spam legislation

Canada's anti-spam legislation<sup>168</sup> (CASL), administered primarily by the *Office of the Privacy Commissioner of Canada and the Canadian Radio-television Commission (CRTC)*,<sup>169</sup> aims to prevent spam from being transmitted to a natural person, legal person, corporation, association, organization, trustee, liquidator, etc.<sup>170</sup> It applies to all commercial electronic messages (CEM) such as emails, text messages, and instant messages (sent through social media) or any other similar account.<sup>171</sup>

The CASL does not apply to web advertisements posted on a blog, a private group, a discussion forum, a Tweet, or a wall on Facebook or LinkedIn.<sup>172</sup> Nor does it apply to non-commercial activities, telephone calls, automated calls, or fax transmissions, as these items are governed by the *Telecommunications Act* and the DNCL rules examined in section 9.3.

168. The full title of this act is *An Act to promote the efficiency and adaptability of the Canadian economy by regulating certain activities that discourage reliance on electronic means of carrying out commercial activities, and to amend the Canadian Radio-television and Telecommunications Commission Act, the Competition Act, the Personal Information Protection and Electronic Documents Act and the Telecommunications Act*, S.C. 2010, c. 23.

169. The Office of the Privacy Commissioner of Canada shares responsibility for applying the CASL with the CRTC and the Competition Bureau Canada.

170. Section 1(1) and 1(5) of the CASL: For the purposes of this Act, a reference to the person to whom an electronic message is sent means the holder of the account associated with the electronic address to which the message is sent, as well as any person who it is reasonable to believe is or might be authorized by the account holder to use the electronic address.

171. Section 1(1) of the CASL.

172. Frequently Asked Questions about Canada's Anti-Spam Legislation – What is a commercial electronic message?: <https://crtc.gc.ca/eng/com500/faq500.htm>.

The purpose of a CEM is to encourage the recipient to participate in a commercial activity (for example, to purchase a good or a service).<sup>173</sup>

As such, a CEM transmitted by a registrant's representative or employee for prospecting purposes is subject to this law. Responsible officers must therefore know the key regulations applicable to registrants and ensure that appropriate compliance measures are put in place.

### 9.4.1 Consent

The main characteristic of the CASL is that persons who send CEMs from—or to—Canada, must first obtain the consent of the recipients.

According to the CASL, a person may send CEMs to a potential client if the recipient has given his **express** or **implied** consent. Without express or implied consent, a registrant's representatives, executive officers, or employees are prohibited from sending a CEM. However, there are exceptions to this rule, namely, when the CEM is transmitted:

- by an individual to a family member (spouse, child) or to persons with whom that individual has a personal relationship (friends); or
- by a person or enterprise that has previously received a request for information about the business's activities, that is responding to a client request (e.g., quote or estimate), that is completing or confirming a commercial transaction, or that is providing warranty information or other factual information about an acquired product or service.<sup>174</sup>

The CASL clarifies what is meant by "implied consent." There is implied consent if the person who sent the message has an **existing business relationship** with the recipient.

#### EXAMPLE

For firms, CEMs may be sent to clients who receive a service from an insurance representative, a financial planner, or a mortgage broker given that the client has an existing contract with the representative and does business with the registrant.

173. Section 1 of the CASL.

174. See the complete list in sections 6 (5) and (6) of the CASL. For more details, consult <https://fightspam-combattrelepourriel.ised-isde.canada.ca/site/canada-anti-spam-legislation/>.

Also, a registrant, representative, or employee can send a CEM to a person who has requested information about a product or service in the six months preceding the CEM or can send a CEM to a person who has consented to receiving it.<sup>175</sup>



### Legislative or other references

#### CASL

##### *Unsolicited electronic messages*

- 6 (1) It is prohibited to send or cause or permit to be sent to an electronic address a commercial electronic message unless:
- a) the person to whom the message is sent has consented to receiving it, whether the consent is express or implied; and
  - b) the message complies with subsection(2).
- 10 (1) A person who seeks express consent for the doing of an act described in any of sections 6 to 8 must, when requesting consent, set out clearly and simply the following information:
- (9) For the purpose of section 6, except subsection 6(7.1), consent is implied only if:
- a) the person who sends the message, the person who causes it to be sent or the person who permits it to be sent has an existing business relationship or an existing non-business relationship with the person to whom it is sent;
  - b) the person to whom the message is sent has conspicuously published, or has caused to be conspicuously published, the electronic address to which the message is sent, the publication is not accompanied by a statement that the person does not wish to receive unsolicited commercial electronic messages at the electronic address and the message is relevant to the person's business, role, functions or duties in a business or official capacity;
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175. Sections 6(1) and 10 (9) of the CASL.



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

- c) the person to whom the message is sent has disclosed, to the person who sends the message, the person who causes it to be sent or the person who permits it to be sent, the electronic address to which the message is sent without indicating a wish not to receive unsolicited commercial electronic messages at the electronic address, and the message is relevant to the person's business, role, functions or duties in a business or official capacity; or,
- d) the message is sent in the circumstances set out in the regulations.

#### *Definition of existing business relationship*

- (10) In subsection (9), *existing business relationship* means a business relationship between the person to whom the message is sent and any of the other persons referred to in that subsection—that is, any person who sent or caused or permitted to be sent the message—arising from:
- a) the purchase or lease of a product, goods, a service, land or an interest or right in land, within the two-year period immediately before the day on which the message was sent, by the person to whom the message is sent from any of those other persons;
  - b) the acceptance by the person to whom the message is sent, within the period referred to in paragraph (a), of a business, investment or gaming opportunity offered by any of those other persons;
  - c) the bartering of anything mentioned in paragraph (a) between the person to whom the message is sent and any of those other persons within the period referred to in that paragraph;
  - d) a written contract entered into between the person to whom the message is sent and any of those other persons in respect of a matter not referred to in any of paragraphs (a) to (c), if the contract is currently in existence or expired within the period referred to in paragraph (a); or
  - e) an inquiry or application, within the six-month period immediately before the day on which the message was sent, made by the person to whom the message is sent to any of those other persons, in respect of anything mentioned in any of paragraphs (a) to (c).



If the person to whom a party wishes to send a CEM has published, in a clearly visible manner, his email address on his website, in a paper publication or even on the wall of a social media site (LinkedIn), it isn't necessary to obtain his express consent. In fact, that person did not mention in his publication that he does not wish to receive CEMs and the message concerns the functions he holds with his enterprise.

Likewise, if a person sends his email address or gives his business card to a representative without specifying that he does not wish to receive CEMs at this address, this exchange could be considered as implied consent to send him CEMs, provided that the message relates to the functions that the representative exercises within the enterprise for which he works.

As for **express (or positive)**<sup>176</sup> **consent**, it must demonstrate a positive or express willingness on the part of the recipient. Meaning, a consent message at the bottom of an email cannot, for example, indicate that if a recipient fails to click on an opt-out mechanism, he will receive CEMs.

A consent message must state, in clear and simple terms, the reason for the request for consent. It must also contain information that can be used to identify the person requesting consent (or that of the person from whom it was sent).<sup>177</sup> The CRTC site describes an express consent mechanism that has been deemed acceptable by the regulator for CEMs sent by email.<sup>178</sup>

## EXAMPLE

### PURCHASE CONFIRMATION

You are about to purchase product XYZ for \$20.00.

I consent to receive the newsletter of COMMERCE INC., which includes news, updates and promotions about our products. You can remove your consent at any time.

For more information, refer to our [Confidentiality policy](#) or [contact us](#).

**Confirm purchase**

176. Section 6 (1) a. of the CASL.

177. Section 10 (1) of the CASL.

178. *Compliance and Enforcement Information Bulletin*, CRTC 2012-549: <https://crtc.gc.ca/eng/archive/2012/2012-549.htm>.

In the event of a complaint, a registrant and its representatives or employees must prove the existence of valid consent.<sup>179</sup> It is recommended to:

- send a notice of receipt to a consumer when his express consent has been obtained; and
- keep evidence of express consent obtained by a recipient of a CEM (for example, by keeping a consent register).<sup>180</sup>

A common question is whether or not a representative must obtain consent to send a CEM following a recommendation (referral). The CRTC has responded as follows:

*There is an exception to the consent requirement for the first commercial electronic message (CEM) sent following a referral if certain conditions are met. The referral must be made by an individual who has an existing business relationship, an existing non-business relationship, a family relationship or a personal relationship with the sender and any of those relationships with the recipient of the CEM. Also, the full name of the individual who made the referral and a statement that the CEM is sent as a result of a referral must be in the CEM. Only one CEM may be sent without obtaining the consent of the recipient of the message.*

*However, the CEM must still respect the other two requirements—it must contain the identification information and an unsubscribe mechanism.<sup>181</sup>*

### **9.4.2 What information must commercial electronic messages (CEMs) contain?**

Once a registrant's representative or employee has made sure to obtain valid consent from a recipient, he must ensure that the CEM does not contain any false or misleading information. At that point, he can send the CEM provided that the message contains the following information:<sup>182</sup>

- The identity of the person and enterprise to whom the CEM is addressed;
- The identity of the representative or employee who is sending the message as well the identity of the registrant (for example, its email address or mailing address) in such a manner that the recipient can easily contact the person who sent the CEM;
- An unsubscribe mechanism that informs the recipient that he can unsubscribe;<sup>183</sup>

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179. Section 13 of the CASL.

180. Frequently Asked Questions about Canada's Anti-Spam Legislation; <https://crtc.gc.ca/eng/com500/faq500.htm>.

181. <https://crtc.gc.ca/eng/com500/faq500.htm>.

182. Section 6 (1) and (2) of the CASL.

183. Section 11 (1) of the CASL.

- For SMSs, a notice to respond by entering “STOP” or “Unsubscribe”; and
- For emails, a clear and easily visible hyperlink that recipients can click to easily unsubscribe from receiving any CEMs or only certain types of CEMs from the registrant.

If a person sends an unsubscribe request or if a person who had given express consent to a registrant’s representative or employee asks to be excluded, the registrant must follow up on that request no later than 10 business days after receiving it.<sup>184</sup>

If a registrant uses a third party to promote its products and services (for example, a telemarketing enterprise), the registrant, enterprise, and person who sends the CEMs may be held liable for offences under the CASL. Consequently, the registrant’s responsible officer must, among other things, ensure that the enterprise sending CEMs on its behalf has implemented a CASL-compliance program and that this program includes:

- a determination of implied consent or receipt of express consent;
- identification information provided in the CEM; and
- a CASL-compliant unsubscribe mechanism provided in the CEM.

### **9.4.3 Administrative monetary penalties (AMP) and penal offences**

The CRTC may take a variety of measures to apply the CASL. The measures consider the objective of the CASL, that is, to ensure compliance with the law. They may take the form of a simple warning letter, an arrangement, or an agreement to implement compliance obligations, which could include a penalty, a fine, a hearing (accompanied or not by an AMP), and lastly, an AMP. The maximum amount of an AMP for each violation is:

- \$1,000,000 for an individual;
- \$10,000,000 for an enterprise; and
- with the possibility of personal culpability for the directors or executive officers of a firm.

The CASL has established a list of factors to consider to determine the amount of the AMP.

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184. Sections 11 (3) and (4) of the CASL.

The directors of a registrant and its executives (including the responsible officer) as well as its mandataries could be held **personally liable** for a violation under the CASL if they directed, authorized, assented to, acquiesced in, or participated in the commission of the violation, whether or not the registrant is proceeded against.<sup>185</sup> In certain circumstances, a person may be held liable for not having taken measures to prevent the offence. Also, the registrant, in its capacity as employer or mandator, may be held liable for a violation committed by an employee or mandatary acting within the scope of their employment.<sup>186</sup>

Responsible officers have every interest in exercising due diligence to prevent the commission of a violation because, by exercising such diligence, neither the responsible officer nor the registrant may be held liable for a violation.<sup>187</sup>



### Legislative or other references

#### CASL

9. It is prohibited to aid, induce, procure or cause to be procured the doing of any act contrary to any of sections 6 to 8.
  31. An officer, director, agent or mandatary of a corporation that commits a violation is liable for the violation if they directed, authorized, assented to, acquiesced in or participated in the commission of the violation, whether or not the corporation is proceeded against.
  32. A person is liable for a violation that is committed by their employee or representative acting within the scope of their employment or their agent or mandatary acting within the scope of their authority, whether or not the employee, agent or mandatary is identified or proceeded against.
  - 33 (1) A person must not be found to be liable for a violation if they establish that they exercised due diligence to prevent the commission of the violation.
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185. Sections 6 to 9 and 31 of the CASL. See also <https://crtc.gc.ca/eng/com500/faq500.htm>.

186. Section 32 of the CASL.

187. Section 33 of the CASL.

#### 9.4.4 How to be compliant?

To ensure that a registrant and the persons acting on its behalf or its attached representatives are compliant with the CASL, a responsible officer must:

- establish an anti-spam policy and procedure. To do so, he may consult the CRTC's *Guidelines to help businesses develop corporate compliance programs*,<sup>188</sup>
- review and improve the CASL-compliance program from time to time;
- train representatives, employees, and staff on the CASL requirements and regularly review the policies and procedures with them;
- oversee any communication from a third person made on behalf of the registrant or on behalf of the representatives and obtain valid consent, except if the recipient is part of the CASL exemptions;
- take measures to verify and monitor how CEMs are sent (for example, by using a CRM tool);
- keep a register of marketing activities that use CEMs;
- keep a register of implied and express consent; and
- have an action plan to respond to complaints or claims and to take corrective measures.

### 9.5 Competition Act

The purpose of the *Competition Act*, adopted by the federal government in 1985, is to maintain and promote healthy competition in Canada.<sup>189</sup> Concretely, it protects consumers from fraudulent practices and ensures competitive prices and choices of products and services. It prohibits misleading advertising practices and business practices that could lead consumers into error and strives to counter anti-competitive actions and abuses arising from dominant positions.

The *Competition Act* contains specific provisions to prohibit conspiring—which implies an agreement between two or more people—to prevent or unduly reduce competition or to unreasonably increase the price of a product.<sup>190</sup> It also sets out very specific rules prohibiting practices deemed reprehensible, such as, for example:

- frauds and scams;
- sale above advertised price;<sup>191</sup>

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188. Compliance and Enforcement Information Bulletin CRTC 2014-326; <https://crtc.gc.ca/eng/archive/2014/2014-326.htm>.

189. Section 1.1 of the *Competition Act*, RSC 1985, c C-34: The purpose of this 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 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.

190. Section 45 (1) and ss. of the *Competition Act*.

191. *Ibid.*, Section 74.05.

- irregular promotional contests;<sup>192</sup>
- abuse of dominant position;<sup>193</sup>
- conspiracy;<sup>194</sup>
- misleading advertising contest;<sup>195</sup>
- deceptive notice of winning a prize;<sup>196</sup>
- false or unauthorized tests or testimonials;<sup>197</sup>
- deceptive marketing practices;<sup>198</sup>
- false or misleading representations;<sup>199</sup>
- refusal to sell a product;<sup>200</sup>
- deceptive telemarketing;<sup>201</sup>
- bid-rigging;<sup>202</sup> and
- pyramid selling.<sup>203</sup>

Recently, the legislator made some significant amendments to the *Competition Act*. One of them henceforth prohibits agreements between unaffiliated employers from fixing, maintaining, decreasing, or controlling wages and employment conditions.<sup>204</sup> For example, the executive officers of unrelated firms cannot agree to limit the annual bonuses of their employees to 5% of gross salary.

The new amendments also prohibit agreements, again between unaffiliated employers, that would limit an employee's opportunity of being hired by another employer. For example, the responsible officer of a firm cannot conclude, with an officer of another firm, a mutual non-solicitation or non-hiring agreement covering the representatives or employees of their respective firms, during a negotiation for the purchase of one of the firms or as part of a partnership agreement between these two firms.

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192. *Ibid.*, Section 4.06.

193. *Ibid.*, Section 78 (1).

194. *Ibid.*, Section 45 (1).

195. *Ibid.*, Section 74.6.

196. *Ibid.*, Section 53 (1).

197. *Ibid.*, Section 74.02.

198. *Ibid.*, Section 74.01.

199. *Ibid.*, Section 52 (1).

200. *Ibid.*, Section 75 (1).

201. *Ibid.*, Section 52.1 (3).

202. *Ibid.*, Section 47 (1).

203. *Ibid.*, Section 55.1. See also <https://www2.gouv.qc.ca/portail/quebec/en/businesses-and-self-employed-workers>.

204. The amendments to the *Competition Act* came into force on June 23, 2023. See <https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/wage-fixing-and-no-poaching-agreements>.

A violation of new section 45 (1.1) of the *Competition Act* may result in criminal proceedings against the director(s) of a registrant, which may lead to a fine, imprisonment, or both.



### Legislative or other references

#### *Competition Act*

#### *Conspiracies, agreements or arrangements in employment matters*

45 (1.1) Every person who is an employer commits an offence who, with another employer who is not affiliated with that person, conspires, agrees or arranges:

- a) to fix, maintain, decrease or control salaries, wages or terms and conditions of employment;
- b) to not solicit or hire each other's employees.

#### *Penalty*

(2) Every person who commits an offence under subsection (1) or (1.1) is guilty of an indictable offence and liable on conviction to imprisonment for a term not exceeding 14 years or to a fine in the discretion of the court, or to both.

[...]

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The *Competition Act* obviously applies to firms and independent representatives as well as to the executive officers of these registrants. Responsible officers must therefore familiarize themselves with the rules and be aware of the prohibited practices.

A violation of the *Competition Act* could give rise to a settlement without contentious proceedings before a court or to proceedings before a court.

If senior management is involved (for example, if it is proven that the directors, executive officers, or responsible officers have knowingly committed a violation of the *Competition Act*), this fact could be used as an aggravating factor against those individuals. The registrant could also be subject to accusations unless it can show that it used due diligence to prevent their executive officer(s) from committing the violation.

### 9.5.1 Complying with the Competition Act

The organization responsible for applying the *Competition Act* is the Competition Bureau Canada (the “Bureau”). It protects and promotes competitive markets and helps consumers make informed choices.<sup>205</sup>

The Bureau recommends that enterprises adopt a *Competition Act* compliance program. Without getting into the details about the development of such a program, listed below are components recommended by the Bureau to help responsible officers create a credible and effective compliance program. Responsible officers must refer to the website as the primary source.<sup>206</sup> Thus, as seen throughout this guide, a compliance program must include the following essential elements, regardless of the model, complexity, or size of the program:

- Senior management involvement and support;
- Corporate compliance policies and procedures;
- Training and education of executive officers, representatives, employees and general staff;
- Control, audit and reporting mechanisms; and
- Systematic disciplinary measures and incentives.

The adoption of a compliance program is not a legal obligation but doing so helps registrants, when the program is credible and effective, to comply with the obligations of the *Competition Act*, to avoid violating the law and to detect, as of the first signs, any accidental or unauthorized breach of the law. Such a program helps to maintain the registrant’s good reputation, reduces potential litigation costs, and mitigates the risks for employees, senior management, and the enterprise of exposing themselves to criminal, administrative, ethical, or civil liability.

The existence of such a program does not protect a registrant or its executive officers, representatives, or employees from enforcement measures that might be taken by the Commissioner of Competition or from any proceedings that might be initiated by the Director of Criminal and Penal Prosecutions (DCPP). However, having a compliance program could play in favour of the registrant; in fact, the Commissioner might consider its existence when recommending penalties to the DCPP.

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205. See <https://ised-isde.canada.ca/site/competition-bureau-canada/en/corporate-compliance-programs-bulletin>.

206. See <https://ised-isde.canada.ca/site/competition-bureau-canada/en/corporate-compliance-programs-bulletin>.



## 9.6 Provisions of the *Civil Code of Québec* applicable to a firm's activities

As seen in the previous chapters, registrants and their employees and attached representatives are primarily governed by the *Distribution Act* and its regulations. That being said, the *Civil Code of Québec* (C.C.Q.) is the main law governing private interests in Québec. It comprises a body of rules that, in all matters within the letter, spirit or object of its provisions, lays down the common law, expressly or by implication. In these matters, the C.C.Q. is the foundation of all other laws, although other laws may complement the C.C.Q. or make exceptions to it. Responsible officers would be well advised to know, or at least to recognize, some of the provisions of the C.C.Q. In fact, Québec laws that more specifically govern certain matter of civil law must be read in conjunction with the C.C.Q.



### FYI

As previously seen, the *Act respecting the protection of personal information in the private sector* protects privacy. Thus, the legislator also incorporated this law into articles 35 to 41 of the C.C.Q. and into section 5 of the *Charter of Human Rights and Freedoms*. Many other examples are found in the *Distribution Act*.

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The concept of “legal person” is cited in 35 places in the law without the expression being defined. Hence, if a responsible officer wants to know what constitutes a legal person (he would be smart to familiarize himself with this concept given that a firm is a legal person), the person(s) authorized to direct the firm or administer or represent it, he may refer to Title Five of Book One of the C.C.Q. It is important to remember that, because a responsible officer is not an attorney, he is not authorized to give legal advice to a registrant's representatives, employees, or clients. Therefore, if a responsible officer is unsure about how to interpret a section of a specific law such as the *Distribution Act*, it would be wise, if not necessary, for him to consult an expert on the subject, such as a lawyer or notary.

A clarification should be made here: Not all registrants are legal persons. Only firms are legal persons in the eyes of the law. Independent representatives act as natural persons.

### 9.6.1 Legal person

As seen in the previous paragraph, the concept of legal person affects responsible officers, given that their role is to direct a firm, which is a legal person. Accordingly, their position as officers of a legal person may incur civil liability.

A legal person, as defined in articles 298 and 299 of the C.C.Q., is, properly speaking, a legal fiction that exists only if a law so provides. A legal person thus created becomes independent in several respects from the natural persons who set it up. There are various types of legal persons and they 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 corporations are legal persons established for a private interest.

Articles 298 to 364 of the *Civil Code of Québec* govern the legal person as a suppletive. Legal persons are first governed by their constituting act, most often the *Québec Business Corporations Act*<sup>207</sup> or the *Canada Business Corporations Act*.<sup>208</sup> However, while a legal person is independent to the point where they can sue and be sued (i.e., initiate legal proceedings against another person), in certain situations, the liability of executive officers, directors, and shareholders may be at issue.

Moreover, when dealing with clients, a representative of a firm must carry out certain verifications, ask questions, or even ask for a copy of specific documents when doing business with a legal person. However, this chapter focuses more on the obligations of responsible officers in their capacity as managers of a legal person, which is the firm.

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207. *Business Corporations Act*, CQLR, chapter S-31.1.

208. *Canada Business Corporations Act*, RSC 1985, c C-44.



### 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 [...].

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As soon as a firm is registered with the AMF,<sup>209</sup> the liability of the responsible officer is incurred. A firm has to provide the names and addresses of its directors and executive officers, the name of the responsible officer in charge of the legal person's main establishment, and declarations, including that of the responsible officer confirming his honesty, competence, and solvency.

Responsible officers therefore assume personal liability vis-à-vis the AMF, even if exercising their profession of representative (as applicable) through a firm.

Also, responsible officers may, under certain circumstances, be held personally liable for a firm.



### 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.

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.

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209. Section 2 of the *Regulation respecting the registration of firms, representatives, and independent partnerships*, CQLR, c D-9.2, r.15.

As well, articles 321 and thereafter of the C.C.Q.<sup>210</sup> set out the obligations of the directors of a legal person, as such individuals are considered its mandataries. 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. When a responsible officer is one of the directors of a firm, he is obliged to comply with these rules.

### EXAMPLE

The firm Assurances Globales is the subject of fraud in a situation where an insurance policy issued by an insurer contains false declarations and forged signatures. Antoine, the responsible officer, was aware of the situation. He can be held liable for and required to repay any damages suffered by the firm.

Given these clarifications, responsible officers must be fully aware that they may, through their actions, become personally liable for a firm. These principles are also revisited in the laws and regulations that are more specifically applicable to the sectors in which a firm is registered.

## 9.6.2 Natural person

The concept of natural person refers to human beings (an individual). Every natural person possesses juridical personality, has the full enjoyment of civil rights, and has a patrimony. A natural person may therefore exercise rights but must also respect obligations.

Certain laws can be exercised only by natural persons; for example, the right to privacy and the protection of personal information of the natural person or even the right to the integrity of the person.<sup>211</sup> Certain functions (such as a mandatary of a natural person, a tutor of a minor or person of full age, a temporary representative of a person<sup>212</sup> or assistant to a person of full age),<sup>213</sup> may be exercised only by natural persons. Also, in the area of life insurance, a policy can be issued only on the life or health of a natural person and not that of a legal person, for obvious reasons, although a legal person may be the holder of an insurance contract.

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210. Articles 321 to 330 of the C.C.Q.

211. Article 3 of the C.C.Q.

212. Article 304 of the C.C.Q.

213. Article 297.14 of the C.C.Q.

### 9.6.2.1 Protection plans

The C.C.Q. asserts the principle that “every person is fully able to exercise his civil rights.”<sup>214</sup> However, the C.C.Q. also stipulates that minors and incapable persons of full age cannot exercise their civil rights alone, with a few exceptions.<sup>215</sup>

Capacity is a key element to the conclusion of any agreement and contract. For example, an agreement concluded by an incapable person of full age for which he was required to be represented may be annulled if he suffers injury therefrom.<sup>216</sup>



#### **N.B.**

Responsible officers must know these rules. It is very likely that a client who is incapable, who is represented by a tutor, or who requires an assistant of full age or a temporary representative, cannot take out an insurance contract or borrow money without that person’s consent.<sup>217</sup>

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Curatorships to persons of full age were abolished on November 1, 2022. As a result, curatorships existing prior to this date have become tutorships for which the tutor has only powers of simple administration of the property of others. Before November 1, 2022, a curator of the property had full administration of the property of the person of full age, which gave him more powers. The new tutorships to persons of full age are now adjusted to reflect the capacities of the person of full age and must take his wishes and preferences into account.



#### **N.B.**

Representatives must read the tutorship judgment in order to determine which acts the person of full age is or is not capable of performing herself.

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214. Article 4 of the C.C.Q.

215. Articles 153 and 154 of the C.C.Q.

216. Article 297.7 of the C.C.Q.

217. Article 290 of the C.C.Q.

It is possible that the tutor to property may not be the same person as the tutor to the person. Since the reform, in principle, there is only a single tutor to the person. However, both parents of a child of full age can be appointed as tutors at the same time.<sup>218</sup>



### Legislative or other references

Art. 268 C.C.Q.

The court institutes tutorship if it is established that the person of full age is incapable of caring for himself or of administering his property, and needs to be represented in the exercise of his civil rights.

The court then appoints a tutor to the person and to property, or a tutor either to the person or to property. It may also appoint a replacement tutor.

The court is not bound by the application. It may establish a tutorship the nature, terms and conditions of which are different from those applied for or authorize temporary representation of the incapable person of full age.

Art. 286 C.C.Q.

The tutor has the simple administration of the property of the person of full age incapable of administering his property. He exercises his administration in the same manner as the tutor to a minor, unless the court decides otherwise.

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In addition to this regime, there is a protection mandate (formerly known as the “mandate in anticipation of incapacity”). The situation arises when the occurrence of a mandator’s incapacity has been homologated (i.e., confirmed and approved) by a court at the request of the mandatory named in the protection mandate.



### Legislative or other references

Art. 2166 C.C.Q.

A protection mandate is a mandate given by a person of full age in anticipation of his incapacity to take care of himself or to administer his property; it is made by a notarial act *en minute* or in the presence of witnesses. It may not be made jointly by two or more persons.

The performance of the mandate is conditional upon the occurrence of the incapacity, ascertained by medical and psychosocial assessment reports, and homologation by the court upon application by the mandatory designated in the act.

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218. Articles 268 and 268.1 of the C.C.Q.

Since November 1, 2022, a person of full age can ask the Public Curator to appoint an assistant (given that the adviser to a person of full age ceased to exist on that date).



### **Legislative or other references**

Art. 297.10 C.C.Q.

A person of full age who, by reason of a difficulty, wishes to be assisted in caring for himself, administering his patrimony and, in general, exercising his civil rights, may apply to the Public Curator to have a person who accepts to assist him, in particular in his decision-making, recognized by the Public Curator.

The recognition of the assistant is entered in a public register.

Art. 297.11 C.C.Q.

An assistant is authorized to act as an intermediary between the assisted person of full age and any third person, including a person bound by law to professional secrecy. The assistant is presumed to act with the consent of the person of full age.

The assistant may communicate and receive information in the name of, and communicate the decisions made by, the person of full age.

A third person may not refuse that the assistant act as such.



### **N.B.**

An assistant to a person of full age is not allowed to sign documents on behalf of the person of full age or give consent in the person's stead. He acts as an intermediary, facilitating communication between the person of full age and third parties.

Representatives cannot require that the assistant intervene in a matter, but they cannot refuse to deal with the assistant either.

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Lastly, a person of full age may also ask the court to appoint a temporary representative to him when he is in a specific situation that is unmanageable by himself, even though he does not otherwise need assistance or representation in his daily activities (for example, the sale of a business or immovable or a proceeding brought before the courts).



### Legislative or other references

Art. 297.1 C.C.Q.

The court may authorize a person to perform a specific act in the name of a person of full age if it is established that the incapacity of the person of full age is such that he needs to be temporarily represented for the performance of that act.

The incapacity resulting from representation is temporary and pertains only to the performance of that act. It is established solely in favour of the person of full age.

Art. 297.2 C.C.Q.

The spouse of a person of full age, his close relatives and persons closely connected to him by marriage or a civil union, any person who shows a special interest in him, or any other interested person, including the mandatary designated by him or the Public Curator, may apply for temporary representation of the person of full age or be designated as representatives. The person of full age himself may also apply to be so represented.



### N.B.

It is important not to confuse an assistant to a person of full age or a temporary representative with the trusted contact person that the owner of a contract may designate, while he is still capable of consenting, in the context of mutual funds and securities,<sup>219</sup> or even insurance.<sup>220</sup>

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219. Section 13.2.01 of the *Regulation 31-103 Respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

220. *A practical guide for the financial services industry – Protecting vulnerable clients – Autorité des marchés financiers*. See page 12  
[https://lautorite.qc.ca/fileadmin/lautorite/grand\\_public/publications/professionnels/tous-les-pros/guide-bonnes-pratiques-personnes-vulnerables\\_an.pdf](https://lautorite.qc.ca/fileadmin/lautorite/grand_public/publications/professionnels/tous-les-pros/guide-bonnes-pratiques-personnes-vulnerables_an.pdf).



## Incapacity and minors

A minor in Québec, that is, a person under 18 years of age, cannot take out insurance or a loan without the consent of his tutors (often the parents), unless he is fully emancipated (following a marriage or a court order). In fact, a tutor of a minor who has taken out an insurance policy could ask for the contract to be annulled by reason of lesion and, for example, be reimbursed for the premiums paid.

In addition, a minor cannot collect insurance benefits. The mother and father are, by operation of law, the tutors of their children and generally administer the property devolved to a child,<sup>221</sup> including the payment of insurance benefits, save for exceptions.<sup>222</sup>

However, article 156 of the C.C.Q. stipulates that a minor aged 14 or over is deemed to be of full age for all acts pertaining to his employment or to the practice of his craft or profession.<sup>223</sup>

The preceding topic is vast, complex, and often filled with grey areas. Responsible officers may therefore deem it important, if not essential (depending on the makeup of the registrant's clientele) to ensure the adoption and implementation of a policy for managing vulnerable clients.



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221. Article 208 of the C.C.Q.

222. Article 210 of the C.C.Q. All property given or bequeathed to a minor on condition that it be administered by a third person is withdrawn from the administration of the tutor (usually the parents).

223. For example, in the matter of the SSQ, *Société d'assurance-vie inc c. Rouillard*, 2005 CanLII 46512 (QC CS), the Superior Court ruled that a child of 17 years of age had the capacity to designate his mother as the beneficiary of his workplace group insurance by virtue of article 156 of the C.C.Q.

### 9.6.3 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.

The following table can be used as a quick reference for responsible officers of firms.

**TABLE 9.2**

**Movable and immovable property**

<p><b>Movable by nature</b> (Art. 905 and 906, C.C.Q.)</p>	<p>Movable property</p> <p>This consists of things that can be moved or that have been defined by law.</p> <p><i>E.g., a chair, a car, a refrigerator, waves or energy harnessed by man.</i></p>
<p><b>Movable by anticipation</b> (Art. 900 and 902, C.C.Q.)</p>	<p>These are immovables that will eventually become movables.</p> <p><i>E.g., wheat that will be harvested, a building material permanently removed from a building.</i></p>
<p><b>Residual movable</b> (Art. 907, C.C.Q.)</p>	<p>All other property, if not qualified by law, is movable property.</p> <p><i>E.g., personal rights, movable real rights, patrimonial rights.</i></p>
<p><b>Immovable by nature</b> (Art. 900, C.C.Q.)</p>	<p>Immovable property</p> <p>This is the ground and any extensions from it.</p> <p><i>E.g., soil, plants, minerals, construction and works of a permanent nature that are attached to the ground.</i></p>
<p><b>Immovable upon incorporation and as integral parts</b> (Art. 901, C.C.Q.)</p>	<p>It can be a construction of a permanent nature that is attached to the ground.</p> <p><i>E.g., buildings, structures, bridges.</i></p> <p>Movables incorporated into an immovable, i.e., everything that forms an integral part of the immovable. Movables incorporated into an immovable lose their individuality.</p> <p><i>E.g., elevators and air vents in a building.</i></p>

**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.

*E.g., light fixtures, a recessed cooktop.*

*N.B. There is, however, one exception to this rule where property is used to operate an enterprise: 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.

*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.*

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

- Acquisitive prescription:<sup>224</sup> The general rule is three years for movable property<sup>225</sup> and ten years for immovable property.<sup>226</sup>
- The application of municipal and school taxes: They concern only movable property.
- 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.

224. Articles 2910 to 2920 of the C.C.Q.

225. Article 2919 of the C.C.Q.

226. Article 2918 of the C.C.Q.

“The Land Register’s index of immovables compiles all transactions carried out on a property as well as all rights published about a registered property, i.e., identified by a lot number.

The Land Register also shows:

- the various property transfers conducted for an immovable since its creation;
- the co-ownership declarations; and
- the hypothecs and servitudes that could affect the immovable.”<sup>227</sup>

### **9.6.4 Ownership**

Article 947 of the C.C.Q sets out the essential elements composing the right of ownership, namely, the:

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

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

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; after three years, you become the owner of the watch. A neighbour encroaches on your land for 10 years without opposition from the owner; 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.

A responsible officer, especially one in mortgage brokerage, must understand and even 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.

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227. See <https://www.quebec.ca/habitation-et-logement/achat-vente/recherche-propriete/historique>.

## EXAMPLE

For example, mortgage brokers must be able to discern the elements related to ownership to be disclosed to a lending institution. In other circumstances, responsible owners must have developed the reflex to advise their brokers to contact a lawyer or a notary where certain aspects of a loan may be contentious or involve risks to their clients.

### 9.6.5 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) (article 1385, C.C.Q.);
2. An object (the service of doing or not doing something); and
3. A cause (the goal sought).

There are two types of obligations:

- Obligations arising from the C.C.Q., also referred to as **legal obligations**.
  - Thus, a person who is responsible for an injury caused to another person is bound to make reparation for the injury, under article 1457 C.C.Q.
  - An employer is bound to make reparation for injury caused by his employees in the performance of their duties, under article 1463 C.C.Q.
- Obligations arising from a contract, also referred to as **contractual obligations**.
  - For example, a borrower is bound to repay a loan amount to the bank under the terms of the contract signed with it.
  - An insurer must pay death benefits to the beneficiary or to the liquidator of the holder of the insurance policy, under the terms of the insurance contract issued by the insurer.
  - An insurer must pay its commission to a firm following the sale of an insurance product, pursuant to the terms of the distribution contract signed between them.



### Legislative or other references

Art. 1372 C.C.Q.

An obligation arises from a contract or from any act or fact to which the effects of an obligation are attached by law.

An obligation may be pure and simple or subject to modalities.

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#### 9.6.5.1 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*.

#### 9.6.5.2 Conditional obligations

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



### FYI

An insurer's acceptance of the life insurance application generally constitutes a conditional obligation, because there are several conditions that must be met by the holder (acceptance without modification, payment of the initial premium, and no change in the insurability of the risk since the application was signed) in accordance with article 2425 C.C.Q.

In the mortgage brokerage sector, the acceptance of an application is conditional on the borrower maintaining his employment and income, or even on condition that he does not obtain a loan from another financial institution. Accordingly, in a loan contract, a 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 in 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.

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### 9.6.5.3 Obligations with a term

A term obligation depends on a certain future event that delays the expiry of the obligation.



#### FYI

The repayment of a mortgage loan is a term obligation given that 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 must sensitize mortgage brokers to the importance of the term, since failure to pay the monthly amount may result in forfeiture, thus the loss of the benefit of the term. This can lead to dramatic consequences for the borrower, including revocation of the mortgage loan or hypothecary remedies.

### 9.6.5.4 Obligations with a penal clause

Penal clauses (also known as “penalty clauses”) are sanctions set out in contracts in which the parties predetermine the penalty that will be paid by the debtor if he fails to perform the stipulated obligation in the agreed upon manner. A penal clause saves creditors from having to prove their actual loss.

### 9.6.5.5 Solidary obligations

Solidary liability results from the presence of multiple creditors or debtors who are solidarily bound by the same obligation.

Solidarity among creditors occurs when a single debtor owes an amount of money to more than one creditor. 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 (article 2125 C.C.Q.), solidarity between debtors is presumed.

## EXAMPLE

Two spouses, Mario et Jean, purchase a life insurance policy together, both being obligated to pay the premium to the insurer. This is usually referred to as a solidary obligation. Accordingly, each month, the insurer may demand the amounts owed from either spouse should one fail to pay his share.

Similarly, when the spouses borrow an amount for the purchase of an immovable, they are solidarily liable for repaying the lending institution.

### 9.6.5.6 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.

### 9.6.5.7 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.<sup>228</sup>

### 9.6.5.8 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.

### 9.6.5.9 Alternative obligations

An alternative obligation is one which has two or more principal prestations, and 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.

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



### EXAMPLE

In their mortgage loan contract, Asha and Nahele, 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.

#### 9.6.5.10 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

Assure-toit, a firm, could be required to repay the commissions that it received twice by mistake from an insurer.

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.

#### 9.6.6 Nominate contracts

The C.C.Q. names and defines 18 contracts in Title Two, entitled “Nominate Contracts” (for example, sale,<sup>229</sup> lease,<sup>230</sup> gift,<sup>231</sup> annuity,<sup>232</sup> insurance,<sup>233</sup> contract of employment,<sup>234</sup> mandate,<sup>235</sup> contract of enterprise or for services<sup>236</sup>).

229. Article 1708 of the C.C.Q.

230. Article 1851 of the C.C.Q.

231. Article 1806 of the C.C.Q.

232. Article 2367 of the C.C.Q.

233. Article 2393 of the C.C.Q.

234. Article 2085 of the C.C.Q.

235. Article 2130 of the C.C.Q.

236. Article 2098 of the C.C.Q.

The following table shows the different types of contracts and their characteristics and provides one or more examples of each type of contract.

**TABLE 9.3**

**Different types of contracts**

Types of contracts	Characteristics
<p><b>Contracts of adhesion and contracts by mutual agreement</b> (Art. 1379, C.C.Q.)</p>	<ul style="list-style-type: none"> <li>• The terms are imposed by one of the parties (<i>example: a contract to lease an automobile</i>).</li> <li>• The terms are negotiated freely (<i>example: a contract for the sale of a used automobile between individuals</i>).</li> </ul>
<p><b>Synallagmatic (bilateral) and unilateral contracts</b> (Art. 1380, C.C.Q.)</p>	<ul style="list-style-type: none"> <li>• Both parties obligate themselves to provide a benefit (<i>example: a contract for the sale of a house</i>).</li> <li>• Only one of the parties obligates itself (<i>example: the gift of a boat to one's brother</i>).</li> </ul>
<p><b>Onerous and gratuitous contracts</b> (Art. 1381, C.C.Q.)</p>	<ul style="list-style-type: none"> <li>• Each party receives an advantage in return for his obligation (money, property) (<i>example: the sale of a house</i>).</li> <li>• One of the parties obligates himself to the other for the benefit of the other without obtaining any advantage in return (<i>example: a gift</i>).</li> </ul>
<p><b>Commutative and aleatory contracts</b> (Art. 1382, C.C.Q.)</p>	<ul style="list-style-type: none"> <li>• The scope of the obligations is certain and determinate at the time the contract is formed (<i>example: the purchase of an automobile</i>).</li> <li>• The scope of the obligations is uncertain at the time the contract is formed (<i>example: the purchase, in advance, of a farmer's harvest</i>).</li> </ul>
<p><b>Contracts of instantaneous performance or of successive performance</b> (Art. 1383, C.C.Q.)</p>	<ul style="list-style-type: none"> <li>• The parties perform their obligations at one single moment (<i>example: a contract for the sale of a house</i>).</li> <li>• The obligations are performed at several different times and without interruption. (<i>example: a contract to rent an apartment</i>)</li> </ul>
<p><b>Consumer contracts</b> (Art. 1384, C.C.Q.)</p>	<ul style="list-style-type: none"> <li>• The contract is governed by consumer protection legislation. The contract is entered into between a natural person and a person who carries on an enterprise (<i>example: the purchase of a television by a consumer in a store</i>).</li> </ul>

There are also **innominate contracts** (for example, consignment contracts, franchise agreements, joint venture contracts, or distribution contracts) governed by the general contract rules, i.e., articles 1377 and thereafter of the C.C.Q.



### FYI

Generally speaking, contracts concluded between a client and a firm or between a client and an independent representative are service contracts,<sup>237</sup> defined by the C.C.Q. as a contract where one person undertakes to carry out physical or intellectual work or to supply a service for a client in exchange for a payment. However, such contracts may include certain duties of representation that can arise from a mandate where a representative must speak on behalf of his clients, notably to obtain information or send information to a financial institution.

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Save for exceptions set out in the C.C.Q., a contract need not be written, since it is concluded by the sole exchange of consents between persons having capacity to contract (refer to the section covering protective supervision regarding the capacity to consent of an incapable person of full age and a minor. Moreover, the contract must have a cause and an object. That being said, it is strongly recommended that a contract be signed in writing, thereby making the evidence of its existence easy to verify in the event of a dispute.



### Legislative or other references

Art. 1385, C.C.Q.

A contract is formed by the sole exchange of consents between persons having capacity to contract, unless, in addition, the law requires a particular form to be respected as a necessary condition of its formation, or unless the parties subject the formation of the contract to a solemn form.

It is also of the essence of a contract that it have a cause and an object.

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237. *Immeuble Toron Canada inc. c. Capreit Apartments Inc.*, 2010 QCCA 803; *Côté c. St-Jovite Hôtel inc.*, 1997 CanLII 10024 (C.A.); *Lefebvre c. Filion*, 2007 QCCS 5912; *Compagnie Trust Royal c. Veilleux*, 2000 CanLII 8778 (C.A.); *Pellerin Savitz LLP c. Guindon*, 2017 CSC 29; *Leduc c. Soccio*, 2007 QCCA 209; *Côté c. Mirabel (Ville de)*, 2015 QCCS 1751; *Girard c. Pelletier*, 1998 CanLII 12145 (QC CS); *Immeubles Le Proprio courtier immobilier agréé inc. c. Duguay*, 2002 CanLII 20775 (C.S.); *Général Accident, compagnie d'assurances du Canada c. Genest*, 2001 CanLII 17737 (C.A.); *Compagnie d'assurances générales Kansa international (Liquidation de)*, 2002 CanLII 63360 (QC CA); *Richter & Associés inc. c. Merrill Lynch Canada inc.*, 2007 QCCA 124; *Penfund Capital (No 1) Ltd. c. Glopak inc.*, 2000 CanLII 18780 (QC CS); *Woods c. F. Berardini inc.*, 2018 QCCS 832; *Sœurs du Bon-Pasteur de Québec c. Banque Royale du Canada*, 2006 QCCS 5160; *Caroline Légaré, "Le mandat"* dans *École du Barreau du Québec, Contrats, sûretés, publicité des droits et droit international privé*, Collection de droit 2022-2023, vol. 7, Montréal, Éditions Yvon Blais, 2022, 75; *François Beauchamp et Hélène Mondoux, "La nature et l'étendue du contrat d'entreprise ou de service"* dans *École du Barreau du Québec, Contrats, sûretés, publicité des droits et droit international privé*, Collection de droit 2022-2023, vol. 7, Montréal, Éditions Yvon Blais, 2022, 25.

The following table summarizes the conditions needed for a contract to be valid.

**TABLE 9.4**  
**Necessary conditions for a contract to be valid**

<b>Consent</b>	Express	It is free and enlightened, not vitiated (impaired) by error, fraud, fear or lesion.  It is the clear and specific manifestation of a person's will.
	Tacit	It is free and enlightened, not vitiated (impaired) by error, fraud, fear or lesion.  It is the manifestation of an implicit wish; it is inferred by the conduct of the parties.
<b>Capacity to enter into a contract</b>	In the case of a minor	He enters into a contract <ul style="list-style-type: none"> <li>• for his normal needs;</li> <li>• for acts pertaining to his employment; and</li> <li>• as a married or fully emancipated person or with the consent of his tutors.</li> </ul>
	In the case of a capable person of full age not under protective supervision	He has the capacity to enter into any type of contract not prohibited by law or contrary to public order. He may, however, receive assistance from his assistant to a person of full age.
	In the case of a person of full age under protective supervision	He enters into a contract through his tutor or protection mandatary. The tutorship judgment may, however, allow him to perform certain juridical acts on his own.
	In the case of a legal person	It has the capacity to enter into an insurance of persons contract provided it is authorized to do so by its charter and by-laws. Moreover, the representative (employee) who acts on behalf of the legal person must have the authority to bind the legal person under the contract.

<b>Object</b>	Juridical operation contemplated by the parties	<p>The operation must not be prohibited by law.</p> <p>The operation must not be contrary to public order.</p>
<b>Cause</b>	Reason that leads the parties to enter into a contract	<p>The reason must not be prohibited by law.</p> <p>The reason must not be contrary to public order.</p>

## 9.6.7 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.

Responsible officers may give rise to their liability if they commit a fault that causes injury to a person or if they are guilty of an offence or criminal act.

### 9.6.7.1 Criminal liability

The *Criminal Code* is a federal statute that deals with crimes liable to lead to criminal prosecution in Canada. Criminal offences could result in prison sentences when a person is guilty of a criminal act or offence. Charges are then laid by the State (in the name of the King) against the accused.



#### **FYI**

The offence of fraud may be a criminal act 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.

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### 9.6.7.2 Penal liability

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



#### **N.B.**

Under the *Distribution Act*, any person who acts as a firm 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.

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### 9.6.7.3 Professional liability

Professional liability is the liability incurred when professionals commit any act that is inconsistent with legislation and rules to which they are subject by their profession (for example, their code of ethics or professional conduct, the constituting act of their order, or the *Professional Code*).

#### **EXAMPLE**

Maïka, a representative, must act with competence by developing and updating her knowledge of the sector for which she holds a certificate, her knowledge of applicable regulations, and her skills, as must her representative colleagues. Failure to comply with this requirement will give rise to her professional liability and constitutes an offence under the *Distribution Act* or its regulations.

### 9.6.7.4 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 his fault and is bound to make reparation therefor. Such injury may be bodily or material in nature. 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

Aline, the owner of an immovable, may be bound to make reparation for an injury caused by its roof falling down as a result of poor maintenance.

As well, a loss of coverage by an insured resulting from late delivery of information to the insurer by a representative could incur that representative's civil liability and that of the firm to which he is attached.

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

### 1. Contractual civil liability

Contractual civil liability may be incurred when 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. Existence of a contract (verbal or written);
2. Fault, i.e., non-performance (total, late, partial or inadequate) of the contract;
3. Damage (also referred to as "injury"); and
4. The causal link between the non-performance of the contract and the damage.

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

In contractual civil liability, because each party is bound to meet their commitments, fault arises from the non-performance or poor performance of the contract.

### 2. Extracontractual civil liability

If a person commits a fault that causes damage but that fault is not related to the non-performance or poor performance of a contract, it's a situation of extracontractual civil liability, or even tort. Thus, excluding the existence of a contract, extracontractual civil liability requires the presence of fault, damage, and a causal link between the two.

The *Civil Code* qualifies fault in three ways:

- **Simple fault** (the failure of a person to meet an obligation imposed by law or by a regulation);
- **Voluntary or intentional fault** (a fault committed with the intent to harm another); and
- **Gross fault** (fault that shows gross recklessness, gross carelessness or gross negligence).<sup>238</sup>

In extra-contractual civil liability, fault is a breach of the rules of conduct that a prudent and diligent person would follow in the same circumstances.

To summarize, any fault, regardless of the type, could give rise to the civil liability of a person, and thus, of a responsible officer.

### **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 imply that a person is liable for the fault of others or a thing.

Hence, there is a presumption that employers are liable for the fault 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.<sup>239</sup> Nevertheless, employers retain remedies against their employees at fault.

Knowledge of this regulation by responsible officers is important and vital to the sound management of firms.

### **EXAMPLE**

**If a support employee of an insurance firm commits a fault that causes injury to a client, the firm will be deemed liable for the fault and will have to make reparation for the injury suffered.**

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238. Article 1474 of the C.C.Q.

239. As well, there is no defence available to the principal other than that of establishing that the conditions creating liability were not met. It's objective liability from which the principal can be released only by proving that it's impossible for the victim to use this liability regime, because the author of the injury is not his subordinate, that this person did not commit any causal fault (fault of the victim, fault of a third person (article 1478 of the C.C.Q.), superior force (article 1470 of the C.C.Q.)) or even that his fault falls outside the scope of the performance of his duties (Alicia Soldevila, *La responsabilité pour le fait ou la faute d'autrui et pour le fait des biens*, dans *École du Barreau du Québec, Responsabilité*, Collection de droit 2022-2023, vol. 5, Montréal, Éditions Yvon Blais, 2022, 53).



Similarly, article 1466 of the C.C.Q. has a the presumption of liability with respect to things. It stipulates that custodians of a thing are bound to make reparation for injury caused by the autonomous act of the thing unless they prove that they are not at fault. Accordingly, this is rebuttable presumption.

### **Burden of proof**

It is up to the victim of an injury to prove that the damage he has suffered is an immediate and direct result of the debtor's fault and that this fault is due to a breach of a contractual obligation or to conduct inconsistent with that of a reasonable person.

### **Civil action**

A client seeking to be compensated for damages incurred due to a fault committed by a registrant's representatives or executive officers (and who has suffered damages due to this fault) may exercise recourse using the *Code of Civil Procedure*.<sup>240</sup> The recourse may be initiated against an employee or the responsible officer, personally or as a mandatary, or against the registrant, or both. It's a situation of civil recourse. The goal is to obtain compensation for the damage suffered.

This recourse must be instituted in Superior Court when the damages claimed are equal to or greater than \$85,000, in the Court of Québec, Civil Division, when the damages claimed are greater than \$15,000 but less than \$85,000, and in the Court of Québec (Small Claims Division) when the damages claimed are \$15,000 or less.

When the fault, error or negligence was committed in connection with the activities of a representative, responsible officer, or firm, the insurer will be called upon to intervene as a guarantor, given the professional liability insurance coverage of the representative.

#### **9.6.7.5 Responsibilities specific to responsible officers**

When managing the employees of a registrant, the attached representatives of a firm, or even his own practice, a responsible officer must always be thinking about the basic rules of liability, since a fault, error, or offence on his part could result in severe consequences for himself or the firm.

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240. *Code of Civil Procedure*, CQLR, c C-25.01.

## Civil and professional liability of responsible officers

Any person who has suffered an injury may, in addition to pursuing the employee or mandatary who committed the fault, pursue the employer as needed (the firm or independent representative) and, in the case of a firm, its responsible officer or even its executive officers.

For the liability of a registrant to be incurred, the fault of an employee, attached representative, or responsible officer must have been committed in the performance of their functions, and, for the mandatary, in the performance of its mandate.<sup>241</sup> If this is not the case, the registrant is not liable to make reparation for damages.



### Legislative or other references

*Distribution Act, s. 80*

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.

However, the firm retains the remedies available to it against the representative concerned.

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For this reason, having liability insurance is a regulatory requirement for representatives and firms registered with the AMF.

However, it should be noted that firms retain the remedies available to them against employees, representatives, executive officers, or mandataries at fault.



### Legislative or other references

*Distribution Act, s. 80*

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.

However, the firm retains the remedies available to it against the representative concerned.

Art. 1463 C.C.Q.

The principal is bound to make reparation for injury caused by the fault of his subordinates in the performance of their duties; nevertheless, he retains his remedies against them.

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241. Article 2152 of the C.C.Q.



### Legislative or other references (continued)

Art. 2152 C.C.Q.

The mandator is bound to discharge the mandatary from the obligations he has contracted towards third persons within the limits of the mandate.

The mandator is not liable to the mandatary for any act which exceeds the limits of the mandate. He is fully liable, however, if he ratifies such act or if the mandatary, at the time he acted, was unaware that the mandate had terminated.

Art. 2157 C.C.Q.

A mandatary who binds himself, within the limits of his mandate, in the name and on behalf of the mandator, is not personally liable to the third person with whom he contracts.

The mandatary is liable to the third person if he acts in his own name, subject to any rights the third person may have against the mandator.

Art. 2158 C.C.Q.

A mandatary who exceeds his powers is personally liable to the third person with whom he contracts, unless the third person was sufficiently aware of the mandate, or unless the mandator has ratified the acts performed by the mandatary.

## Ethical and disciplinary liability of responsible officers

Given that, most of the time, responsible officers are also certified representatives, if they are non-compliant with their ethical obligations (*Regulation respecting the pursuit of activities as a representative* in mortgage brokerage or the codes of ethics of one of the Chambres), they will likely be the subject of a complaint filed with the AMF or a disciplinary committee of the CSF or ChAD.<sup>242</sup> The provisions of the *Professional Code*<sup>243</sup> addressing the filing and hearing of a complaint and the decisions and penalties arising from the complaint, apply to a hearing before the disciplinary committee of the *Chambre de la sécurité financière*.<sup>244</sup>

242. Or of the disciplinary committee of the *Chambre de l'assurance de dommages* in the event of non-compliance with the *Code of ethics of damage insurance representatives* or with the *Code of ethics of claims adjusters*, or of the *Direction principale du contentieux* of the AMF in the event of non-compliance with the *Regulation respecting the pursuit of activities as a representative* in the case of mortgage brokers (sections 16.1 to 16.16). It is important to note that the AMF is responsible for inspecting firms, and not the *Chambre de la sécurité financière* and the *Chambre de l'assurance de dommages*, which are solely responsible for representatives. However, from 2005 to 2019, the *Chambre de l'assurance de dommages* was mandated by the AMF to inspect firms with 24 representatives or less. The AMF has taken back this responsibility in order to better assess the evolution of products, practices and business models, and thus, to better assess the effectiveness of the existing regulatory framework and to adapt it as needed.

243. *Professional Code*, CQLR, Chapter C-26.

244. Section 376 of the *Distribution Act*.

Unlike recourse in civil liability, recourse for ethical breaches do not lead to financial compensation; rather, the purpose is to protect the public, particularly by imposing punishment (removal, cancellation, suspension, or imposition of restrictions) or removing the representative's right to pursue his activities.

### **Criminal liability of responsible officers**

Responsible officers may incur criminal liability in certain cases, in particular if they commit fraud or an offence under the *Competition Act*<sup>245</sup> or if they breach certain regulations related to countering terrorism<sup>246</sup> that can apply to a firm, as seen in chapter 9.3.

In other situations, such as fraud, they risk no longer being able to act as responsible officer for a maximum of five (5) years.<sup>247</sup>

### **Penal liability of responsible officers**

Responsible officers could be held liable for a penal offence if they take part, incite, or permit an offence to be committed.



#### **Legislative or other references**

*Distribution Act*, s. 488

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.

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It's also important to remember the penal offences that can arise out of the *Act respecting the protection of personal information in the private sector*, i.e., if a person permits the collection, use, or communication of personal information in a way that violates the law.<sup>248</sup>

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245. Sections 45 (1) and 45 (1.1.) of the *Competition Act*.

246. Section 83.231 (1) a) of the *Criminal Code*.

247. Section 115.1 of the *Distribution Act* and articles 329 and 330 of the C.C.Q.

248. Section 93 of the APPIPS.

## EXAMPLE

Failure to fulfill the obligation to report terrorist property may lead to financial administrative penalties and serious penal sanctions.

### Professional liability of responsible officers

As discussed in the previous chapters, responsible officers must oversee the conduct of a firm's representatives and ensure that they are acting in accordance with the *Distribution Act* and its regulations.<sup>249</sup>

When responsible officers fail to meet these obligations, the Financial Markets Administrative Tribunal or the court may punish them.

In certain cases, in addition to imposing penalties, the court may prohibit them from serving as a responsible officer for a maximum period of five (5) years.<sup>250</sup>

Moreover, the AMF could refuse a firm's registration if the responsible officer's registration has previously been cancelled or if it deems that this officer does not show the required honesty, competence, and solvency. The same rule applies to independent representatives.



#### Legislative or other references

*Distribution Act*, s. 78

The Authority may refuse registration for a given sector, or impose restrictions or conditions for registration, where the applicant's registration for any of the sectors listed in the second paragraph of section 13 has previously been cancelled, where the registration of a director or executive officer of the applicant has previously been cancelled, or where a director or executive officer of the applicant has previously been a partner in an independent partnership, or a director or executive officer of a firm, whose registration has previously been cancelled.

*Distribution Act*, s. 79

The Authority may also refuse registration where the applicant for registration or a director or executive officer of the applicant does not, in the opinion of the Authority, show the required honesty, competence or solvency.

249. Sections 84 and 85 of the *Distribution Act*.

250. Section 115 of the *Distribution Act*.



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

*Distribution Act, s. 132*

The Authority may refuse to register an applicant as an independent representative or impose restrictions or conditions for registration where the applicant's registration for that sector has previously been cancelled.

The Authority may also refuse to register a partnership for a particular sector where the registration of one of the partners has previously been cancelled, or where one of the partners was previously a partner in an independent partnership or a director or executive officer of a firm whose registration has previously been cancelled.

*Distribution Act, s. 87*

In no case may a firm or its officers help or, by encouragement, advice or consent, or by an authorization or order, induce another firm, an independent representative or an independent partnership to infringe any provision of this Act or the regulations.

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### **Civil liability of responsible officers**

The civil liability of a responsible officer can be incurred if he commits an error or fault or fails to meet his contractual obligations, as seen above. At times, when a firm is subject to legal action, the responsible officer may also be liable or pursued as part of the main action.

This completes the final chapter of this Guide for Responsible Officers.

# CONCLUSION

This Guide provides the basis for the competencies to be acquired by future officers working not only in mortgage brokerage but in all sectors. Future responsible officers in mortgage brokerage must pass the qualification exam in order to obtain the AMF's authorization to act in this role. This Guide is therefore very useful to responsible officers but can also be used as a reference for everyone.

It allows future responsible officers, whose main duty will be supervision and oversight, to develop competencies on the principles arising from the legal framework applicable to his duties.

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